

CHAPTER II

METHODOLOGY.

Selection of Courts:

For a meaningful, comprehensive and complete study of sentencing in the Subordinate Courts of West Malaysia, data should be compiled from all the Subordinate Courts of West Malaysia. Due to the pressure of time, this was not possible. Hence, a representative study of the Subordinate Courts was made. Three towns were selected on this basis, and therefore they had to represent a cross-section of the towns in West Malaysia. Bearing this in mind, the Subordinate Courts in the towns of Kuala Lumpur, Taiping (Perak) and Kota Bharu (Kelantan) were selected.

Kuala Lumpur.

Kuala Lumpur, the Federal Territory, is the capital of Malaysia. It acquired city status on the 1st of February, 1972. It is centrally located in the west coast of West Malaysia and is the administrative headquarters for Government departments and most private concerns. Its population exceeds eight hundred thousand¹. Due to its highly industrialised nature, youths from suburban towns flock to the city with the hope of being gainfully employed. Its crime rate is comparatively

¹In 1970, it was 648,312. (Source: Statistics Department, Kuala Lumpur.)

higher than the other two towns², and the criminals are more sophisticated, using subtler methods³. There is a total of nine Subordinate Courts⁴ in Kuala Lumpur, specialising in particular offences⁵.

Taiping.

Taiping has about the same population as Kota Bharu⁶, and is more representative of most towns in West Malaysia. The standard and cost of living here is the lowest of the three selected towns; the highest being experienced in Kuala Lumpur. Development and progress move on a slower tempo. The crime rate is higher⁷ than that in Kota Bharu not withstanding the fact that they have about the same population. There is one Magistrates' Court and one Sessions Court in Taiping⁸.

Kota Bharu.

Kota Bharu, the capital of Kelantan is the largest town in the east coast, the east coast states being

² Table III, Post p.11 and Figure 2, Post. p.12. Kuala Lumpur has the highest number of crimes, followed by Taiping and then Kota Bharu. In all three towns, crime is on the rise.

³ This is based on opinions gathered in the course of interviews with Prosecuting Officers, Magistrates, Deputy Public Prosecutors and police personnel.

⁴ For workload of courts, see Appendix 1, Post. p.96

⁵ See Appendix 2, Post. P.100

⁶ In 1970, Taiping's population was 54,645. (Source: Statistics Department, Kuala Lumpur.)

⁷ Table III, Post. p.11 and Figure 2, Post. p.12. Refer n.2, Supra.

⁸ Refer n.4, Supra.

more rural and less developed⁹. Its population is about fifty thousand too. Police and court sources say that the criminals here are more simpleminded¹⁰. Life in the east coast is generally of a slower tempo. Due to this difference in the way of life between the east and west coast, it was felt that one of the three towns should come from the east coast. There are three Magistrates' Courts and one Sessions Court in Kota Bharu¹¹.

Towns.	1970	1971	1972	1973	1974
Kuala Lumpur.	42,448	46,713	47,710	52,679	57,544
Taiping.	3,819	9,391	10,086	10,663	11,282
Kota Bharu.	602	722	874	716	912

Table III: Number of offences reported to the police in Kuala Lumpur, Taiping and Kota Bharu (1970-1974).

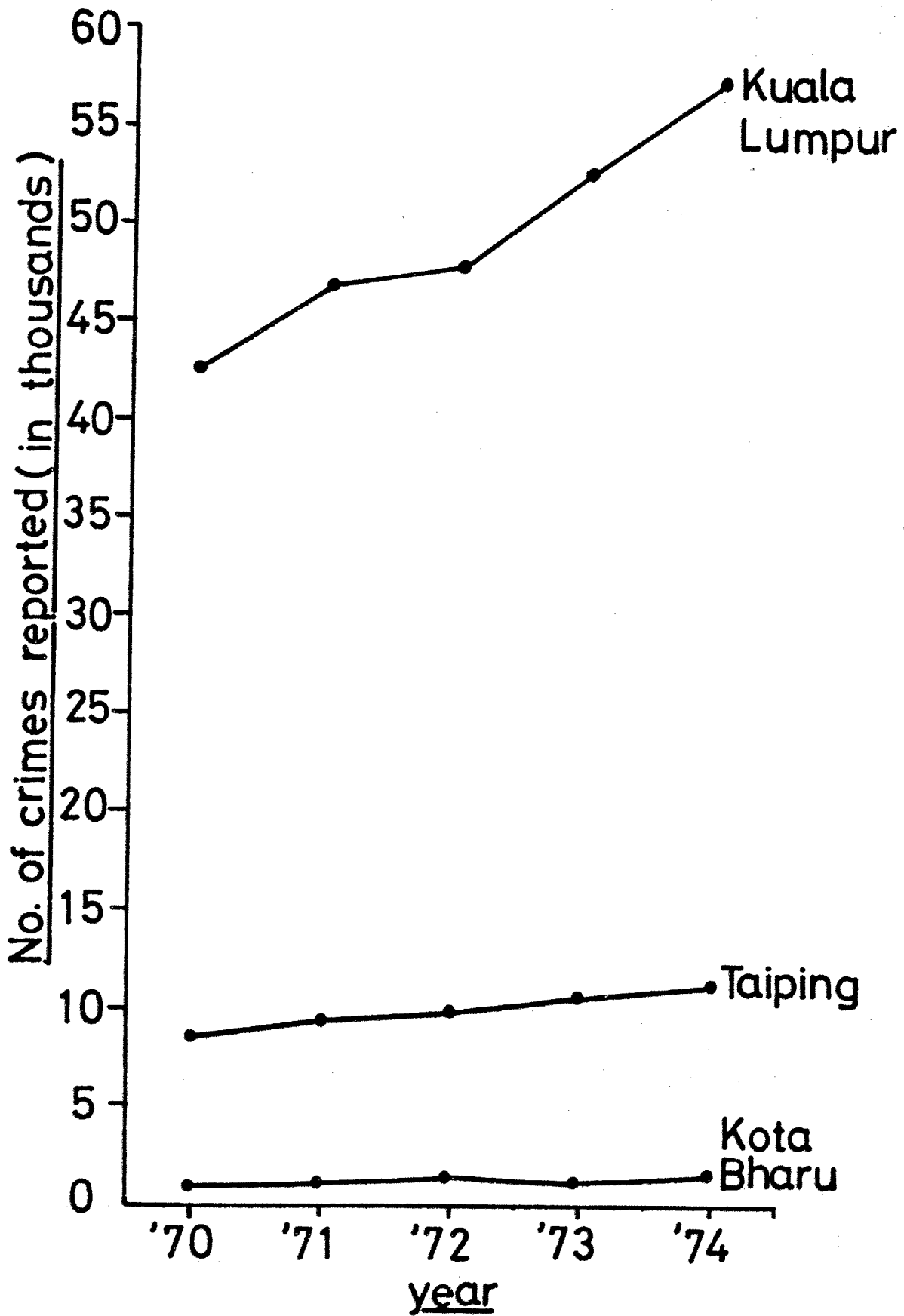
Source: Police Headquarters of each town. (Criminal Investigations Dept)

⁹The east coast states are Kelantan, Pahang and Trengganu.

¹⁰For the number of crimes in Kota Bharu, see Table III, supra., and Figure 2, Post. p.12. Refer also n.2, Supra. p.10.

¹¹Refer n.4, Supra. p.10.

Fig.2: Graph of No. of crimes reported against year, (Kuala Lumpur, Taiping and Kota Bharu).



Sources of Data.

The bulk of the study involved the compilation of data from the Subordinate Courts of the three towns. There were three sources of data, namely, court records, interviews and observation in the courts.

Court Records.

This was the main source of data. The writer went through the court registers and charge sheets for criminal cases. Random samples of property offences were taken from the courts in each town over a period of five years¹². The period of study does not extend beyond the year of 1974 as cases after 1974 were not totally disposed of yet due to the chronic backlog of cases. The writer is aware that for a proper and thorough study of sentencing policy, a longer period is more appropriate. This was not possible as in most of the courts visited, records did not date back to 1968¹³. The collection

¹²ie. over the years of 1970 to 1974.

¹³Records before 1970 were so badly kept that only a handful of cases could be found in certain courts. In Kota Bharu, most of the files were missing. (See Appendix 1, Kota Bharu, post. p.98) In 1970, 277 cases were registered in the Magistrates' Court, but only about fifty files were found, of which only a handful were of property offences, although the register showed a total of 77 such offences for that year. The writer was told that once checked and audited, the files were not of much use and therefore not much care was afforded them.

of data was greatly hindered by missing files. The writer resorted to going through the registers, but they did not contain all the data required, as only the sentence and offence are noted in the register¹⁴. The sample sizes varied from court to court. Cases which were acquitted and discharged, transferred and struck-of were excluded as not being relevant for the discussion of sentencing in the Subordinate Courts.

Interviews.

The writer conducted interviews with different people concerned with the administration of criminal justice.

a) Magistrates and Presidents.

A questionnaire was prepared¹⁵ and the questions were put to the magistrates and presidents¹⁶.

There was however, no way of detecting the spontaneity of their responses.

b) Others.

The writer spoke to court officers such as Senior Assistant Registrars, interpreters and Deputy Public Prosecutors to gather information and views

¹⁴For the form for the recording of data, see Appendix 3, Post

¹⁵See Appendix 4, Post. p.102

/p.101

¹⁶In future references to "magistrates" shall include Presidents of the Sessions Court unless the distinction is expressly stated.

on the sentencing process. Included among those interviewed were prosecuting officers and police personnel.

Observation in Court.

The writer spent whatever time available observing court proceedings and the different manners of sentencing adopted by the Magistrates.

Method of Analysis of Data.

There are several factors that affect the process of sentencing. The most important factors are the offender's age, his antecedents, character and background, other mitigating factors the accused may tender, whether he is legally represented or not, his plea, the gravity of the offence, the role he played in the offence ^{and} the town and locality in which the case arose. The aim of this paper is to gauge the significance, weight and effect these factors have on sentencing, and where possible, data will be supplied to illustrate the role these factors play in the sentencing practices in the Subordinate Courts of West Malaysia. The writer will also attempt to examine into the rate of use of custodial and non-custodial sentences, and the factors that affect the choice of Magistrates. Attempts to suggest reforms will be made, based on the findings.

Problems and Limitations.

- 1) As stated earlier, the records were badly kept. Several figures and files were missing, so that the sample might not be "random" from the statistical point of view.
- 2) Hence, the sample sizes tend to be small, especially when broken down into individual offences. Thus the findings may not be very representative of the actual position.
- 3) Arising out of this, the writer was unable to perform any formal statistical test. This problem was heightened by the writer's lack of statistical knowledge. Thus, a caveat should be noted, to the effect that any reference to "significant differences" or to "the significance of a finding" is not based on any formal statistical test, but on the subjective interpretation of the data.
- 4) The next problem is how representative the sample taken is of the court from which it is taken. The paper moves on two basic assumptions:- i) that the samples taken substantially represent the actual position of the sentencing policy in that court and town ; ii) that the findings regarding the court in a town is representative of courts in towns of similar size and nature in West Malaysia.

5) Only nine magistrates were interviewed out of a total of fifty-five magistrates. It was not possible to interview more, given the limitation of time imposed on this study.