

INDIAN CRIMINAL JUSTICE SYSTEM: A CRITICAL STUDY

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“Entire existence of orderly society depends upon sound and efficient functioning of criminal justice system”

- Justice Malimath Committee

Criminal Justice System is a vital aspect of governance and it ensures that proper decorum of social conduct is maintained for each individual to enjoy his rights under Article-21. It includes three branches which are the Police, Prisons and Courts. All three are indispensable for any democratic nation. It guarantees that Rule of Law is supreme and everyone is subjected to same laws and punishments. Foundation of our system has been laid by Britishers with Charles Cornwallis (Setting up Indian Civil Services), Thomas Macaulay (Indian Penal Code draft 1834) and others. With time, the motive of this system has transformed from imperialism to public welfare.

Over the years, Indian Criminal Justice System has seen some great feats of success like bringing Naxal areas down to 90 districts as per Ministry of Home Affairs signalling the impact of proper policing, filling in legislative gaps by Courts (like Vishaka Guidelines), free legal aid under Article 39A, recent decision to revamp entire Indian Penal Code. On the contrary, the recent rise in crime rate and backlog in Courts indicate that the system has some clogs hampering its efficiency.

Let's shine some light on the ground realities of Police System. Presently there are only 137 personnel per lakh, vis-à-vis 222 UN recommended level. This inadvertently increases the workload on officers making them use aggressive methods which not only violate Human Rights but are unethical also. Even 2nd Administrative Reforms Commission, reported that due to these practices “*citizens now perceive Police as corrupt and inefficient*”. This is not completely unjustified as conviction rate is nearly 47% (Law Commission 2012), crime against women have increased by 6% (National Crime Records Bureau 2017), 60% arrest are unnecessary (268th Law Commission Report). These all create a negative image in eyes of the people who are supposed to be their ‘eyes and ears’.

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Despite Supreme Court ruling against custodial violence in *Sheela Barse v. State of Maharashtra*¹ and *D. K. Basu v. State of West Bengal*,² NCRB reported 1300 custodial deaths from 2001 to 2013 and of these only 50% were registered. In the domain of emerging issues, Police isn't fairing as good as indicated by the NCRB 2017 report, which stated that cybercrimes in 2017 rose by 77% with respect to 2016. Even one of the most fundamental parts of governance which is data collection is opaque in terms of method used to collect and compile data. In 2019 itself, Ministry of Home Affairs said that the NCRB data on lynching and attack on journalist is "unreliable".

On a related subject, the Prisons of India are in abysmal state. In Delhi, Prisons are filled to 151% capacity with only 50% staff. This is not a regional issue but pan India as UP has 165% and Chhattisgarh has 157% occupancy in prisons (NCRB 2017). 'Prisons' being a State subject, there exist different Prison Manuals resulting in differentiated view towards Prisons. Paucity of Public Prosecutors has had huge ramifications on this area as 65% inmates are under trial compared to about 11% in UK and about 20% in USA.

In spite of being a Welfare State, India is not a member of UN Convention against Torture (which is in force since 1987). This has been a major impediment in extradition of Kim Davy (Purulia Arms Case), Vijay Mallya (Fugitive Economic Offender) as Sections of IPC and CrPC are inadequate as stated in this regard by 273rd Law Commission Report. Criminals have a 'debt to society' and once it is repaid it is the duty of the State to rehabilitate them, to lead a dignified life and not indulge in illegal activities. However, there are only a handful of such schemes which leaves the prisoners with very less options after they are released from jail.

Moving onto Judiciary, which is the guardian of Fundamental Rights, has played a proactive role with PIL powers under Articles 32 and 226 in cases like Union Carbide (Bhopal Gas Tragedy)³. There is still a long way from its true potential because India has only 13 Judges per 10 lakh persons vis-à-vis, 50-100 in developed Nations which has led to nearly 3 crore case pendency. 'Justice delayed is justice denied' this line is very suitable to Indian Judicial System because there is a huge pendency of cases in courts in addition to this the Law

¹ AIR 1983 SC 378

² (1997) 1 SCC 416

³ (1989) 2 SCC 540

Commission in 2009 suggested that with current strength of Courts, it would take 485 years to clear the backlog, delineating grim conditions of our Courts with such a huge vacancy. Corruption among Judges can't be ruled out, with cases like Soumitra Sen and the dominance of Collegium System giving rise to 'Uncle Judge Syndrome'.

With rise in proxy litigants for instance in '2G Spectrum Case' and judicial overreach like regulating height of Dahi Handi, our Courts have to deal with all this at a pittance of 0.2% budget allocation. Many of the measures like setting up of Tribunals and Fast Track Courts have not yielded the desired results as noted by a recent study by National Law University, Delhi.

These ground realities put a question mark on how our Criminal Justice System and society have failed to protect the Human Rights of individuals. Hence, it is imperative for the Government to take proactive steps because 'a stitch in time saves nine'. Below are few of the remedies to make this whole system more transparent and citizen friendly.

Starting with the Police, 'SMART' Policing should be the goal i.e. S= Strict and Sensitive, M= Modern and Mobile, A= Alert and Accountable, R= Reliable and Responsive, T= Tech Savvy and trained. Prakash Singh vs Union of India recommendations can be applied which state that DGP to have fixed tenure of 2years, Police Complaint Authority (dealing with misconduct) and Police Establishment Board (dealing with Posting, Transfer, and Promotion below DGP rank) should be established.

Police can learn from the successful models like that of Gujarat for Forensics, Community Policing- Maitri (Andhra Pradesh). Modernization in terms of NATGRID (National Intelligence Grid) is also a step in the right direction.

Prisons also need a dedicated approach as stated in Ramamurthy vs State of Karnataka to at least meet the 'Mandela Rules' on treatment of prisoners. The Government should also provide for witness protection to ensure speedy delivery of justice as stated in Zahira Habibulla H Sheikh & Anr. v. State of Gujarat & Ors⁴. Delhi Model of Witness Protection can be the guiding light for rest of the nation (14th Law Commission). Prevention of Torture Bill, 2010 which was supported by National Human Rights Commission needs to be presented again to prevent any more custodial deaths.

⁴ (2006) 3 SCC 374

As the majority of the inmates are under trial, those who have served more than half of their sentence can be released and the concept of 'Open Prison' can be adopted like that of Rajasthan. Poor are ordinarily unaware of their rights hence, National Legal Services Authority (NALSA) should play a bigger role to ensure that Prisons are not crowded with innocent people. As technology has penetrated in normal governance, it should also be adopted in Prisons for surveillance and management as done in Bihar.

Released Prisoners face a tough time after their sentence and should be helped with post release integration policy on lines of 'Parivartan' in Andhra Pradesh. This process of reform has to be continuous and not a onetime exercise and this can be ensured by National Prison Commission (Mulla Committee). Also, all States must adopt the 2016 Prison Manual instead of having an individual Manual to bring in uniformity in the system.

Lastly, Courts need to decrease judicial delay to maintain constitutional democracy. Steps like Legal Information Management and Briefing System (LIMBS Portal 2015) (track government cases), National Legal Mission (decrease pendency from 15 to 3 years) are positive signs of improvement. Further, promotion to Alternate Dispute Resolution and establishment of All India Judicial Service (11th Law Commission), like in France, can increase the rate of adjudication and also make justice affordable. Full digitization of Courts would ensure that 'justice is not only done but seen as being done'.

Courts need to shift from the present Adversarial System to Inquisitorial System to ensure that entire process of legal case is transparent. Government needs to change its attitude from 'compulsive litigant' as 46% cases in Courts have Government as a part. Even the recent Economic Survey stated that Income Tax Department has less than 30% success rate but still the biggest litigant. A National Litigation Policy, as per 126th Law Commission Report, is a viable solution.

Expeditious disposal of cases can be attained by establishing 'Social Justice Bench' to deal with pendency of cases having social issues which are on the rise and require special expertise. Along with this, 4 National Court of Appeal in (North, South, East, West) to act as final body to hear Appeals against High Court and Tribunal Judgements can leave Supreme Court free to deal with Constitutional Matters with more scrutiny.

A sound system would have huge repercussion not only on the delivery of justice but also on

India's Soft Power (Would be seen as protector of rights on global scale), Ease of Doing Business ('Resolution of Insolvency' one of the parameters), more successful extradition (present success rate is approximately 33% as Prison conditions are poor and fear of torture) are only some of its positive effects.

As Montesquieu said, *"There is no crueller tyranny than that which is perpetuated under the shield of law and in the name of justice"* hence, the goal of the entire Indian Criminal Justice System should be to follow Principle of Natural Justice and be transparent in its functioning. The promise of '*JUSTICE*'- social, economic and political as per our Preamble lies hugely on strong foundation of our Criminal Justice System.