

REFORMATION OF THE INDIAN CRIMINAL JUSTICE SYSTEM

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“Law should not sit limply, while those who defy it go free and those who seek its protection lose hope”⁶⁷

The ultimate goal of the criminal justice system and the criminal law is to protect rights and personal liberty of individuals and the society against its invasion by others. The criminal law aspires to protect the weak against the strong, law abiding against lawless and peace against violence. In respect to protection of rights of the citizen, the state prescribes various rules of conduct, sanction for their violation, machinery to enforce those sanctions and a code to protect the machinery. Often it is the selfishness, greed and ill tolerance that leads to deprivation of the various rights of an individual.⁶⁸

For over some decades, there has been a growing demand for amending the criminal justice system. Several amendments have been made since independence in this regard. To the effect the entire Code of Criminal Procedure (Cr.P.C.) was amended in 1973 or in fact an entirely new Criminal procedure code was adopted with the same. Yet, the inadequacy of the system has been posing not only grave challenge to the legitimacy of the system, but also affecting the social system adversely. The former president of India Mr. R. Venkataraman once said that “The bane of Criminal justice system were tardy investigation, absence of witness, delay, cumbersome procedure, lengthy judgements, paucity of criminal courts and large number of vacancies of judges”⁶⁹ and all these need to undergo a process involving a complete overhaul environment around.

The socio-economic and cultural system has also undergone a sea change. Distance has narrowed down and technology is available in a way never known or heard before. Population and poverty

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⁶⁷ Jury in the case of Jennison v. Baker (1972) 1 All ER 997

⁶⁸ http://mha.nic.in/pdfs/criminal_justice_system.pdf (visited on 18.09.2014)

⁶⁹ <http://www.pib.nic.in> (visited on 12.12.2014)

has evidently increased. All these factors have led to exponentially increasing number of crimes and the 21st century has even witnessed a new aura of criminal activities that is Cyber Crime. The Criminals these days are very quick to take advantage of the advanced communication and technology and to get away with it much before the arms of the law could catch them. Such is the speed and ingenuity of their escape that society is a mute witness to the pathetic helplessness of those who have to look after the prevention of crime and to bring to book the criminals and ensure quick justice. On the contrary in the official report titled “Crime in India 2013” prepared and published in the month of October 2014 by The National Crime Records Bureau⁷⁰, Ministry of External Affairs, Government of India clearly states that 66,40,378 cognizable crimes comprising 26,47,722 Indian Penal Code (IPC) crimes and 39,92,656 Special & Local Laws (SLL) crimes were reported, i.e. 66,40,378 was the total number of crimes reported in 2013 showing an increase of 9.9% as compared to 2012 where the total number of crimes reported was of 60,41,559 cases.

The crime rate⁷¹ of total cognizable offences committed in India⁷² has shown an alarming rising since during the period 2003-2004 (from 514.4 in the year 2003 to 555.3 in the year 2004) and declined to 455.8 in the year 2005 and again slightly decreased to 455.7 in the year 2006. However, it rose to 504.5 in 2007, 515.0 in 2008, 570.8 in 2009 and it, however, decreased to 569.3 in 2010, 516.7 in 2011, and further declined to 497.9 in 2012, thereafter it rose to 540.4 during 2013. The sudden drop in crime rate from 555.3 in the year 2004 to 455.8 in the year 2005 may be attributed to the exclusion of certain non-cognizable crimes by Kolkata Police in 2005 data, which were being included inadvertently under the crime-head 'Other SLL crimes' prior to the year 2005 and further crime rate in respect of IPC crimes has increased by 9.6% during 2013, from 196.7 in the year 2012 to 215.5.

⁷⁰ The National Crime Records Bureau, abbreviated to NCRB, is an Indian government agency responsible for collecting and analysing crime data as defined by the Indian Penal Code (IPC). NCRB is headquartered in New Delhi and is part of the Ministry of Home Affairs (MHA), Government of India.

⁷¹ Crime Rate is calculated by dividing the number of reported crimes by the total population; the result is multiplied by 100,000. For example, in 2011 there were 59249 (including and reported crimes in Delhi (National Capital Territory as per information available in NCRB 2011 of Crime in India page 193) and the population was 16,787,941 (Population figure as per the information available on the official website of Registrar General and Commissioner of 2011) . This equals a crime rate of 35.292 per 100,000 general population.

⁷² Report prepared by The National Crime Records Bureau titled “Crimes in India 2013” 61st Volume Compendium page:23 available at <http://www.ncrb.gov.in/> (last visited on 25th April 2015) No official records are available for the year 2014 or 2015.

Year	No. of Crimes Reported	Rate of Crime
2009	66,75,217	570.8
2010	67,50,748	569.3
2011	62,52,729	516.7
2012	60,41,559	497.9
2013	66,40,378	540.4

Table 1 Cognizable crimes registered and rate of crime during 2009-2013⁷³

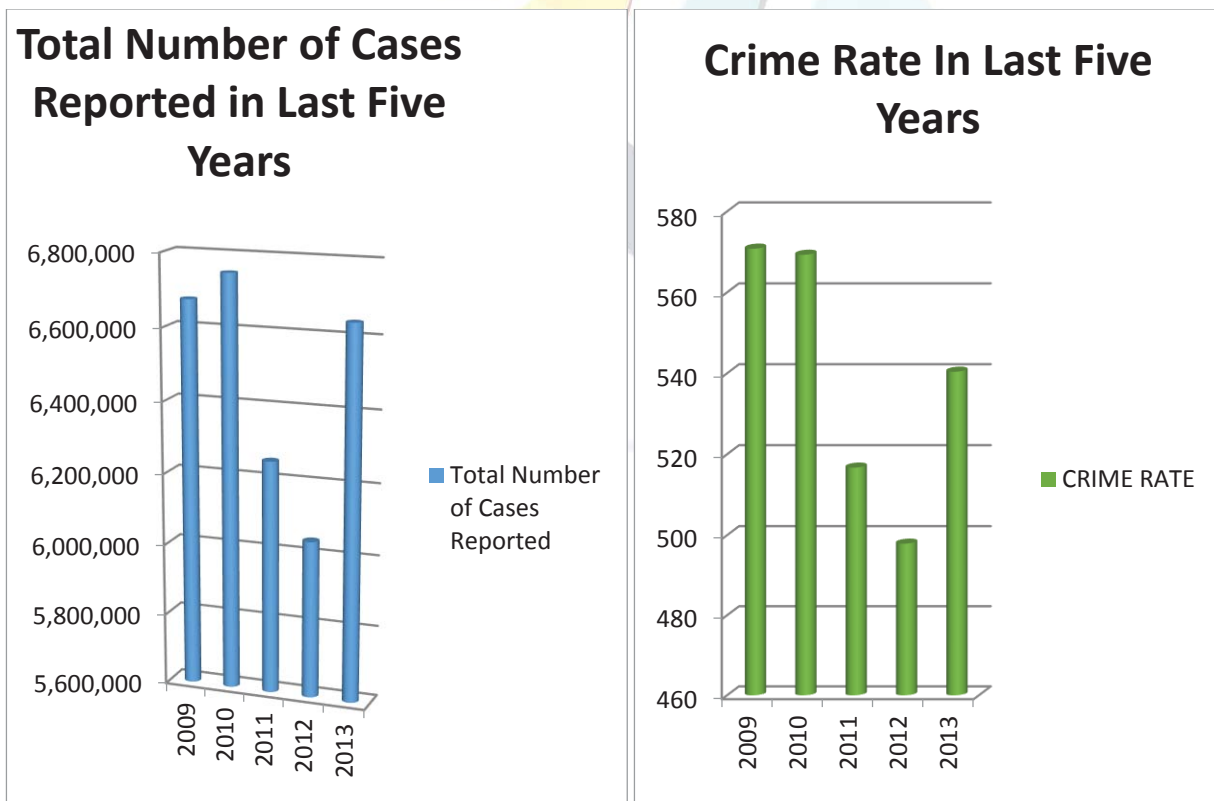


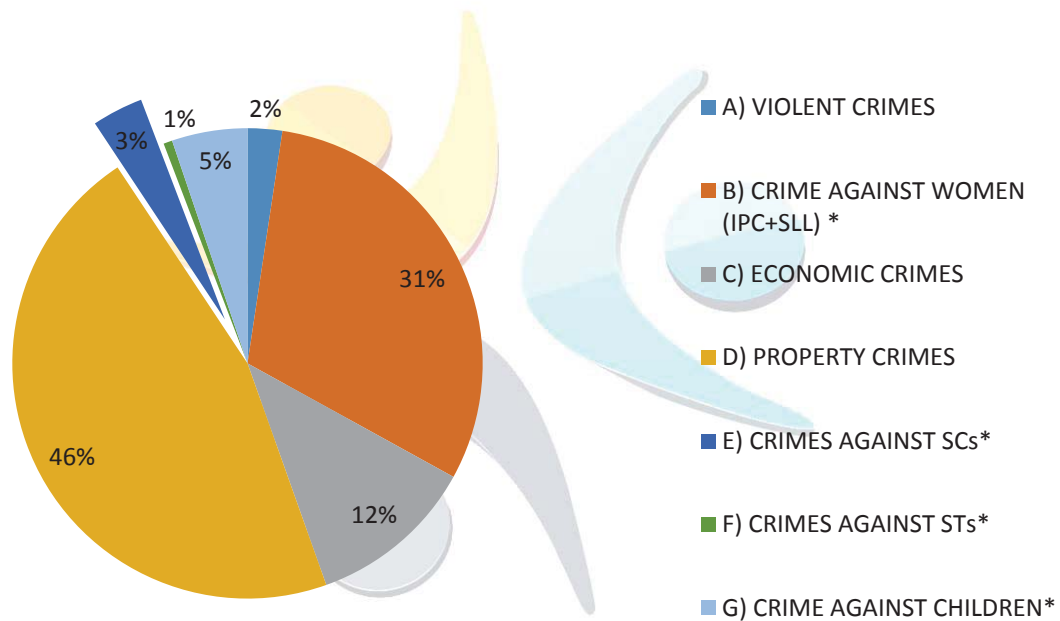
Figure 1: Total Number of Cases Reported in Last Five Years⁷⁴ Figure 2: Crime Rate in Last Five Years⁷⁵

⁷³ Report prepared by The National Crime Records Bureau titled “Crimes in India 2013” 61st Volume Compendium page:17 available at <http://www.ncrb.gov.in/> (last visited on 25th April 2015)

⁷⁴ Based on analysis of Data provided by The National Crime Records Bureau in its report titled “Crimes in India 2013” 61st Volume Compendium available at <http://www.ncrb.gov.in/> (last visited on 25th April 2015)

⁷⁵ Based on analysis of Data provided by The National Crime Records Bureau in its report titled “Crimes in India 2013” 61st Volume Compendium available at <http://www.ncrb.gov.in/> (last visited on 25th April 2015)

Currently the Crime Rate in India as illustrated by Table 1 and figure 2 stands to be at 540.4 per 1,00,000 of population which is quite alarming. The crime rate includes various categories of Crime i.e. A) Violent Crimes B) Crime Against Women including I.P.C. and Special and Local Laws such as Dowry Prohibition Act, 1961; Indecent Representation of Women (Prohibition) Act, 1986; etc C) Economic Crimes D) Property Crimes E) Crimes Against Scheduled Castes F) Crime Against Scheduled Tribes G) Crime against Children.



* For calculation of Crime Rate of Crime Against Women, Crime Against SCs, Crime Against STs and Crime against Children, their respective population has been used instead of overall total population figures as used for other crime heads.

Figure 3: Classification of Crimes Committed in year 2013 and their percentage share in total number of crimes committed:

Figure 3 clearly illustrates that commitment of heinous crimes that seriously endangers the harmony of the society such as rape, molestation, murder, child sex abuse, child trafficking, dowry harassment etc. have a dominant share in crimes for example crime against women itself constitutes about 31% of crimes committed in the year 2013. From the figure its clearly evident

that how the state machinery is lacking in terms of tackling Crimes against properties such as preparation & assembly to commit dacoity, robbery, burglary and theft. A total of 5,16,648 cases were reported during the year 2013 as compared to 4,65,055 such cases during the year 2012, showing an increase of 11.1%. The share of these crimes to total IPC crimes at the national level was 19.5% during the year 2013. Further on the issue of Crime against women, entire world knows that how safe are women in India, The Overseas Security Advisory Council⁷⁶ (OSAC) in its India 2014 Crime and Safety Report advised U.S. citizens, particularly women, are cautioned not to travel alone. According to the report European and American women had reported of incidents related to verbal and physical harassment by groups of men and such incidents are termed as “Eve-teasing,”. Report of OSAC explicitly describes Delhi “rape capital.” Such allegations cannot be denied by us in any situation as in 2014 itself 1121 rape cases were reported in the capital⁷⁷ as compared to 572 cases in 2011. Rape frequently goes unreported. The OSAC report (relying on the reports of NCRB) stated that the “number of rape cases registered in India increased by a startling 31.70 percent (from 1571 in 2013 to 2609 in 2014)⁷⁸. Although most victims have been local residents, recent sexual attacks against female visitors in tourist areas underline that foreign women are also at risk and should exercise vigilance. Further OSAC upon crime threats, in its report stated that “Petty crime, especially theft of personal property, is common, particularly on trains and buses. Pickpockets can be very adept, and women have reported having their bags snatched, purse straps cut, or the bottom of their purses slit without their knowledge. Theft of U.S. passports is also quite common, particularly in major tourist areas, on overnight trains, and at airports and train stations.”⁷⁹

Well the situation of law and order is a no secret in India, the mentality of today’s generation is that they could get away after committing any crime or at least with petty crimes like over speeding, rash driving, defamation, stalking and other wide range of crimes i.e. non cognizable offences but the harsh reality is that money does not only saves this generation from such non

⁷⁶ The Overseas Security Advisory Council (OSAC) was created in 1985 under the Federal Advisory Committee Act to promote security cooperation between American private sector interests worldwide and the U.S. Department of State

⁷⁷ <http://www.ndtv.com/topic/rape-cases-in-delhi> (last visited on 25th April 2015)

⁷⁸ Crime in Delhi, by Tej Hassan, Special Commissioner of Police. Page 23. can be viewed on http://www.delhipolice.nic.in/Crime_in_Delhi.pdf (Last Visited on 05th January 2015)

⁷⁹ <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=13695> (Last Visited on 3rd December 2014)

cognizable offences but also from heinous and violent crimes such as murder, attempt to murder, rape, Riots and Arson, Criminal Breach of trust, counterfeiting, abduction etc.

CAUSES OF CRIME

Political influence on members of all agencies involved (namely, the police, the public prosecutors, the courts and their staff) seems to make them vulnerable. Money and power are behind most of the unsolved cases, which have inordinately been delayed, thereby denying justice. Often, the upholders of law commit crime by hiding the crimes of important or eminent VIP's and facilitating their escape from the hands of law and there are innumerable instances of VIP's being given 1st Class treatment in jails and lock up's which is even to the extent of them escaping from the Prisons. This enhances the confidence of offenders time and again.

All the parties involved in the matter of criminal justice be it the police, the lawyers, the courts or the various investigating agencies are forced to face high end pressure from various influential persons and of course the peer monetary pressure which many a times distracts them from their duties and they end up defying the judicial system. Further, there has hardly been any effort on behalf of the government and the administration to provide any kind of infrastructural amenities to the aforesaid parties of the criminal justice system and still they are forced to work in coherence with the same age old traditional infrastructure. Further, they also lack proper professional training for handling and investigating crimes and also have enormous pressure of work and investigation. On an average an investigating officer has to handle 122 cases in a year⁸⁰.

As per the reports of the Justice Malimath committee the two major problems assailing the Criminal Justice System are the huge number of pending criminal cases and the inordinate delay in disposal of criminal cases on one hand and the very low rate of conviction in cases involving serious crimes on the other.⁸¹ As for arrears of cases in courts, there is an enormous backlog of cases of around 31.28 million cases pending in various courts including High courts⁸². Moreover, India has 14,576 judges against the sanctioned strength of 17,641 judges in various courts across the country. This works out to a staggering ratio of 10.5 judges to a population of one million

⁸⁰Padma Ramchandran, 'Revamping the Criminal Justice', The Hindu 28 January 2003.

⁸¹http://mha.nic.in/pdfs/criminal_justice_system.pdf (visited on 21.07.2013)

⁸²http://articles.timesofindia.indiatimes.com/2010-03-06/india/28143242_1_high-court-judges-literacy-rate-backlog (visited on 17.07.2013)

and at the current rate it would take 320 years for the Indian Judicial system to dispose all the cases as per the reports of a leading newspaper⁸³. It is a sombre state of affair at the lower courts where no one is bothered about the merit of the case. Neither the complainant nor the accused understands the scenario and sometimes even the lawyers do not understand the ongoing proceedings. Besides, there is a recent development in field of judiciary that is termed as “public litigation”, where the courts can *suo moto* take up cases on the basis of petition from a member of the public or even on the good will of the judge. Besides, more people are now approaching the court for anything and everything despite the costly litigation fee, mysterious procedures and the adjournments sought by lawyers on excuses which in many cases are often untrue in order to delay the proceedings. One of the other developments in litigation is the development of the concept of Public Interest Litigation. Having its origin in the United States of America in 1960’s, a new wave of public interest litigation has struck the Indian courts in the last few years opening a floodgate of litigation in public interest where the judiciary is seen to project itself as the expounder of the freedom of people. It has become a handy tool for the people to file petitions in the various High Courts and the Supreme Court of India and often these petitions are less of public interest and more inspired due to personal rivalry or personal profits and sometimes to gain media attention.

In a report titled “Prison Statistics India 2013” published in the month of October 2014 by The National Crime Records Bureau⁸⁴, Ministry of External Affairs, Government of India, revealed a shocking fact that out of the fact that thousands of under trials were imprisoned in various jails with the majority being in the states such as Uttar Pradesh, Delhi, Punjab and worst being Bihar where over 30% of the total prisoners are under trials and are in prison for over 5 years.⁸⁵ Further as estimated by National Human Rights Commission 60 percent of the arrests made every year

⁸³http://articles.timesofindia.indiatimes.com/2010-03-06/india/28143242_1_high-court-judges-literacy-rate-backlog (visited on 17.07.2013)

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⁸⁵<http://vakilsearch.wordpress.com/2011/01/15/under-trials-in-india-their-rights-and-their-plight> (Visited on 12/07/2013)

are unnecessary and unjustifiable⁸⁶. Another aspect related to unnecessary and unjustifiable arrest and detention is Bail justice and Prison justice system.

Bail is a blanket term used to mean release from judicial custody, i.e. '*Custodia Legis*'. The right to get bail i.e. one's right to be released from jail in a criminal case after he/she has furnished sufficient security, has been recognised as a basic aspect of human rights in every civilized society. This concept is based on the fundamental principle that it would be unfair to deprive a person of his liberty and freedom, if his presence whenever required for the enquiry, trial and investigation before the court is assured.

To quote Parkinson, "*Delay is deadliest form of denial*", holds well in the framework of the Judiciary. Hence, Justice delayed is justice denied. This happens more in those criminal cases where the liberty of an individual is in jeopardy. The irony being, in all such cases it is the poor and weak who become the victims of this system and not the rich who easily get away.

The Supreme Court of India, first noted the plight of the under trials in the landmark case of *Hussainara Khatoon v. State of Bihar*⁸⁷ in 1979 wherein it was acknowledged that thousands of under trial prisoners were withering in various jails of Bihar for the periods which were longer than the maximum term which they could have been sentenced with, if convicted. The court in this case held that the detention of the under trials was clearly illegal and was in violation of their fundamental right of Life guaranteed under Art.21 of the Constitution of India. The court also held that Speedy trial is a constitutional mandate and the state cannot avoid its constitutional mandate by merely citing administrative or financial inability.

Also, a Public Interest Litigation was filed by Sanjay Suri, a trainee newspaper reporter in the Supreme Court of India to gather information about seven juvenile prisoners who were locked up in Tihar Jail, Delhi. After a thorough investigation of the matter, the Supreme Court came to know that the prisoners were living in pathetic conditions and also that there was overcrowding in jail. A number of directions were issued accordingly to the jail administration under the

⁸⁶ Human Rights Report by Mr. R.A.K. Harris: International Organization for Human Rights Protection presented in a Meeting on 25th June Allahabad District.

⁸⁷ 1979 AIR 1369

provisions of the Indian Prison Act, 1884 to undertake corrective measures, so that the prisoners could avail the facilities provided under the Law and were not harassed or tortured.

However till date, hardly any change is seen in the jail conditions and the attitude of the jail administration. In spite of constitutional mandate for speedy trial, still over two lakh prisoners and under trials await an early hearing of their cases.

As Kuldeep Singh and B.L. Hansaria, JJ said: *“Unless there is introspection the part of all concerned with the criminal justice system, issues relating to jail reforms, improvement in the prisoner’s condition, and better administration of justice will continue to remain on paper. It is possible to reduce the backlog of criminal cases if the judiciary and lawyers together resolve to refrain from unnecessary and repeated adjournment.”*⁸⁸

Also, there are numerous cases where the numbers of convictions are very few as compared to the number of cases filed. The conviction rate in crimes defined as under the IPC in 2010⁸⁹ has been just 38.33 % which is very less as compared to the same that was 50 years ago in 1960 where the conviction rate of the same was somewhere close to 64.81 %. It seems self evident that the mechanism involved between the prosecutors and the police / investigating agency has mitigated to a large extent.

Amongst many concerns in relation to the criminal justice system in India, one of the most serious and consistent one, which has emerged towards the end of the 20th century is the negative image of the police in the mind of common masses of the country. The faith of the common man in the police has declined drastically in recent times and the main reason for the same is often attributed to arbitrary arrests, custodial abuse and usage of unreasonable force and torture even for minor offences or in the cases of routine investigation. The majority of the sufferers of illegal arrests, detention and ill-treatment are the class of the destitute who lack all the resources to do anything about it. Various studies and surveys conducted by various governmental and non-governmental organizations suggests that around 60% of the arrests made in India are needless since in majority of the times the detained persons are hardly of any use for the purpose of investigation or trial⁹⁰.

⁸⁸ <http://www.legalserviceindia.com/articles/op.htm>(Visited on 19/07/2013)

⁸⁹ <http://ncrb.nic.in/CII2010/cii-2010/Chapter%204.pdf>(Visited on 19/07/2013)

⁹⁰ Hon’ble Sh. K.G. Balakrishnan, The then Chief Justice of India 10th D.P. Kohli Memorial Lecture, New Delhi – April 2, 2009: Criminal justice system – growing responsibility in light of contemporary challenges’

Though the Supreme Court had laid down certain guidelines to regulate arrest and detention in the D.K. Basu case⁹¹ but certainly despite the strict guidelines of the Supreme Court, illegal arrest and detention without any valid reason is rampant, all across the country.

Another problem in the criminal justice system of India in relation to Police is that a swamping majority of the crimes go unreported primarily due lack of motivation to approach the police for registration of an FIR⁹² in all types of criminal offences and for the cases of sexual assault, domestic violence etc. The reasons often cited for not reporting such crimes are honour and prestige of the victim and its family. Most of the times, heinous crimes such as abduction, Kidnapping, Culpable Homicide, Murder, Forced Labour, Slavery, Robbery and Dacoity go unreported to the Police due to the fear of the offenders / Criminals to the victim and his / her family. Further many of the times Police officials at the local police station are very reluctant to lodge an F.I.R. in order to maintain low crime rates in their areas since in all most all the states of India this is the basis of evaluation of police officials by their seniors, though this system of maintaining low crime rates is completely artificial but surely its practice is an open secret to the senior officials of the police as well.

Power and control dominate the thinking of the police men where, imitative humaneness, integrity and commitment have no role to play. There is a complete alienation of the police from the common men and also the politicians and the other VIP's want them to act according to their wish and benefit which has further depleted the faith of the common man in the Criminal Justice System of India. Further overpopulation and poverty are also the causes for increase in incidence of crime. Even the media sometimes blows certain things out of proportion that can increase their T.R.P.⁹³ where hardly do we pay any attention to the real news that actually is needed to be brought into the public purview or does public good. Also at times the attitude of the courts is not very coherent to the common man.

The Legal system that deals with the Crime and Criminals prevailing in India is an age old system primarily based upon the Penal legal system that was established by the Colonial Establishment of the British Rule in India. The Indian Penal Code of 1860 and The Evidence Act of 1872 which

⁹¹D.K. Basu v. State of West Bengal, AIR 1997 SC 610

⁹²First Information Report

⁹³Definition T.R.P. : Television Rating Points

define various crimes and evidences respectively were made by the aforesaid Colonial Government in India in their Interest have still not undergone any substantial changes even after 66 years of Independence from a Foreign Government. The biggest example could be none other than Section 124A⁹⁴ of the Indian Penal Code, 1860 that defines sedition and provides for its punishment. The said section since the formation of The Indian Penal Code in 1860 has been amended only once in 1898 when the word “contempt” and “hatred” were added in the same section. The section 124A was incorporated in The Indian Penal Code of 1860 to provide for a legal provision to the colonial government to prosecute and severely punish those who were involved in some kind of activity towards Nationalism and overthrowing the colonial government. This section provided as an armour for the aforesaid colonial government against the revolutionary nationalists but unfortunately India unlike United States of America, Britain, Canada etc. has neither amended nor repealed the provision of Sedition which is still often used or rather misused at various times by the government and a recent example of this was seen in September 2012 when Aseem Trivedi, a famous Cartoonist was arrested acting on an almost silly complaint that the cartoons made by him insulted the Constitution of India and the National Emblem⁹⁵ and same provisions have been used in different cases such as against Arundhati Roy and Binayak Sen. Such provisions need to be repealed immediately as they hamper various other rights of the Citizens of Free India. For example: Right to Freedom of Speech and Expression guaranteed to every citizen of India under Article 19(1)(A) gets infringed by implicating section 124(A) upon the citizens.

Furthermore, other than the age old laws, the Indian Legal System is facing severe problems for which Lawyers, Investigating Agencies, Judges and Politicians are accountable. These includes

- Prolonged cases;
- Insufficient number of judges;
- Inadequate education of the lawyers and dilatory procedures adopted by them in self interest; and

⁹⁴ Section 124 A. Sedition.- Whoever by words, either spoken or written, or by signs, or by visible representation, brings or attempts to bring into hatred or contempt, or excite disaffection towards the Government established by law in [India] shall be punished with [imprisonment to life], to which fine may be added, or imprisonment which may extend to three years, to which fine may be added, or with fine.

⁹⁵<http://www.hrw.org/sites/default/files/wr2013web.pdf>

- Lack of awareness amongst the general public regarding legal system and its procedures.

As earlier stated adjournments are rampant, and prosecutors are not selected on the basis of merit but rather on political contacts (especially in Higher Courts where for the appointments of prosecutors there lies no particular criteria). Our system is more concerned with the accused than the victim who has to prove the guilt of the accused since India follows the Adversarial System⁹⁶ of Justice.

Criminal Law which is not only designed to punish the criminals but also to reform them, hardly takes into account the by product of such offences- i.e. the victim.

The guilty is taken care of, by the State expenses in the prison; from the taxes paid by the victim to the treasury and he on the other hand is completely overlooked contributes towards the criminal's stay in prison. The weakness of our criminal justice system is that the victims of the crime do not get their due share of attention. The courts are empowered by Sec. 357 of Code of Criminal Procedural, 1973 and Sec. 5 of Probation of Offenders Act, 1958 to compensate the victims of crime however it is seen that the courts seldom resort to such methods. The Supreme Court in Hari Krishan's case directed all the courts to exercise their power to compensate the victims under the above mentioned sections of both the acts liberally and to award compensation even in the cases of compromise between the parties or an accused being released on admonition or probation.

Undoubtedly, in recent years the Apex court and the High Courts have tried to provide compensatory relief to the poor victims of illegal detention to some extent by invocation of Art. 21. But, unfortunately there are a very few cases of this nature and would not attract the much needed attention.

One of the other reasons behind the inefficiency of the Criminal Justice System in India is the out dated scheme for classification of offences in our criminal laws, for example the division between bailable and non bailable offences, cognizable and non-cognizable offences and nature

⁹⁶ <http://www.silf.org.in/16/indian-judicial-system.htm>

and quantum of punishments for various offences, among few others need to be thoroughly revised and undergo a sea change.

Also, not to forget the concept of Legal aid and services included in our Constitution provides for free legal services to those who are unable to afford the services of an advocate for a legal proceeding before a judicial authority. The aim of the Preamble of the Indian Constitution is to secure social, economic and political justice for its people. In the words of his lordship Justice P.N. Bhagwati:

“Legal Aid means providing an arrangement in the society which makes the machinery of administration of justice easily accessible and in reach of those who have to resort to it for enforcement of rights given to them by Law⁹⁷.”

While Article 38(1) declares that *‘the State shall promote the welfare of the people by securing and protecting the social order including justice.’* On the other hand article 21 says that *‘every person has an equal right to life and liberty except according to the procedure established by law.’*

In the case of *Hussainara Khatoun v. State of Bihar*, the court held that any accused who could not afford legal services has the right to free legal aid at the cost of the State.

If the accused does not have sufficient means to engage a lawyer, the court must provide one for the defense of the accused at the expense of the State. – Sec. 304 of Code of Criminal Procedure, 1973.

The constitutional duty to provide legal aid arises from the time the accused is produced before the Magistrate for the first time and continues whenever he is produced for remand. – *Khatri II v. State of Bihar*⁹⁸

A person entitled to appeal against his/her sentence has the right to ask for a counsel, to prepare and argue the appeal. – *Madhav Hayayadanrao Hoskot v. State of Maharashtra*⁹⁹

⁹⁷<http://www.legalserviceindia.com/article/1261-Legal-Aid.html>

⁹⁸ 1981 SCR (2) 408

⁹⁹ 1979 SCR (1) 192

Time and again, at various occasions the provision for Legal Aid has been upheld by the Courts showing the need of a fair trial per se. But, we also see various occasions where poor are denied this provision as was the case of Hussainara Khatoon.

Since the problems are not confined to one particular section or a particular crime or criminals the entire apparatus of the System from the point of making a complaint to the delivery of justice needs to be re-engineered.

The very first attempt taken towards criminal justice reformation was the appointment of The Vohra Committee to gather all relevant information about crime-syndicate / mafia organizations which had developed links with and were protected by Government Functionaries and Political Personalities¹⁰⁰. The Vohra committee Report observed that there are various agencies to deal with corrupt activities, but they have resulted in ineffectiveness and irrelevance due to corruption and kickbacks. Though the Vohra Committee pioneered the Reformation of Criminal Justice System in India but was highly limited to crime-syndicate / mafia organizations and corruption on part of government functionaries and political personalities.

Again in November 2000, the Ministry of Home Affairs, Government of India set up a committee on reforms of the Criminal Justice System under the chairmanship of Justice V.S. Malimath to review all the agencies of Criminal Justice System and also to suggest reforms. Before the setting up of the Justice Malimath Committee, Mr. Atal Bihari Vajpayee led N.D.A. government had designed the “National Policy on Management of Crime and delivery of effective Criminal Justice¹⁰¹” which was later collaborated with the recommendations of The Justice Malimath Committee.

The Malimath Committee came up with as many as 58 recommendations under 23 heads attracting both praise and criticism from various people associated with the criminology. Unfortunately the recommendations made by the aforesaid committee did not serve the purpose for which it was constituted. Though the report contained useful suggestions but the overall crux of the report was attributed as even more dangerous and mitigating for the Criminal Justice Reforms.

¹⁰⁰Vohra Committee Report, Government of India, Ministry of Home Affairs, 1993,1.1.

¹⁰¹ http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/DraftPolicyPaperAug.pdf page 5

The major flaw that lay in the Committee's report was that it was against the interests of the common people as it intended to give a lot of powers to the police authorities who were likely to misuse the same against the interests of public at large, as it was clear from the past that "absolute power tends to corrupt absolute". The Committee had further observed that there were two major problems inherent in The Criminal Justice System of India and that were a huge number of pending Criminal Cases on one hand and a very low rate of conviction in cases on the other. But the committee failed to take the cognizance of the fact that a large number of false cases are being registered every day, therefore, at the time of evidence either the matter is settled among the parties or a party becomes hostile.

Justice Malimath Committee had also recommended that the standard of Proof i.e. "proof beyond reasonable doubt" which is till today followed in criminal case should be done away with, without realizing that it will bring innocent persons into conviction even though if the prosecution is not able to establish his / her guilt.¹⁰²

It seemed that the direction and content of the Reforms recommended and the crux of the report suggested that the Committee had actually tried attempting to undermine the entire normative framework of the Criminal Justice System rather than addressing the real systematic problems faced by the Criminal Justice System today. Thankfully the recommendations of the Committee did not find a place in the Criminal Justice system or else it would have had suffered much greater harm than good. It is quite evident that the committee while dealing with the Reformation of the Criminal Justice System was not much aware of the ground realities of the same and they primarily relied upon the sources such as books, newspapers and the media.¹⁰³

There were several recommendations been made by the various law commissions and committees on criminal justice reforms and considering the same The Government of India prepared a Criminal Law Amendment Bill in 2005¹⁰⁴ which was passed by both the houses and notified but due to nation wide agitation by the legal community, the amendment was kept in abeyance .

SUGGESTED REFORMS

¹⁰²V. K. Ohri :Think India Quartely. Volume 15. October – December "Reforms in The Criminal Justice" p. 55

¹⁰³V. K. Ohri :Think India Quartely. Volume 15. October – December "Reforms in The Criminal Justice" p. 57

¹⁰⁴ <http://www.nia.gov.in/acts/TheCCP%28Amendment%29Act,2005.pdf>

The criminal justice system of India needs to be re invented.

Higher standards of professionalism are required to be upheld by the criminal investigation system and it should be provided apposite logistic as well as technological support. Grave offences should be classified for the purpose of specialized investigation and only specially selected, trained and experienced investigators should investigate such offences. Also such investigators should not be burdened with other duties like maintenance of security and law and order etc.

The other reform needed is enhancement of Forensic Science Institutions with advanced technologies like DNA fingerprinting technology. The process of decriminalization should also include the system of plea-bargaining; as was recommended by the Law Commission of India in its Report as well.

The confidence of people is the greatest asset that the police enjoy in investigation of crimes and maintenance of law and order. In the present day scenario, this confidence is at its nadir where the police are increasingly losing public confidence. If Police itself is seen as the transgressor of law and abuser of the power, the public develops repugnance towards the same making the duties of the police officials even more difficult affecting the investigation system adversely thereby having the same effect on the Criminal Justice System.

To restore public confidence in the police administration, there should be a periodical review of all the arrests made in the districts by the police officials of the district making a note of the number of cases in which the arrests made actually culminated in the filing of Charge-sheets and also of those cases where the arrests that were made turned out to be unnecessary in the end. This review will act as a watch dog over the tendency of unnecessary arrests.

Participation of the civilians should be encouraged by the Legal Services Authority by setting up committees which would bring the accused and the victim in reconciliation to work out compounding of the offences.

CONCLUSION

Therefore in lieu of all the aforesaid as well as other facts and circumstances it is evident that the Criminal Justice System is to be studied by its ground realities and it is high time to come up with best possible reformations in coherence to its ground realities that could benefit the public at large and of course it should be protected enough so that it shouldn't get away as per the wishes and desires of those who are moving in red beacon vehicles or have a Swiss bank account.

Further simplifying judicial procedures and coherence among the judiciary and the Prosecution and Police, making the system simpler, faster, cheaper and user-friendly, and restoring the confidence of the common man should be the priority while considering the reformation of the Criminal Justice system of India.

