

CRIMINAL JUSTICE SYSTEM IN INDIA: REQUIRES A REVAMP

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ABSTRACT

Criminal Justice System includes a specific division or the arrangement of procedures, bodies and establishments that intend to ensure or re-establish the system of social control. Fundamentally, the organization of Criminal Justice System lay on police, prosecution, courts, and jails. These four organs are occupied with the urgent job of prevention, acknowledgment, prosecution, discretion, and punishment of wrongdoers in the public eye. A well-organized criminal justice system guarantees a secure and peaceful society. The whole subsistence of organized society depends upon smart and effective criminal justice system. The diminishing conviction rate in India has encouraged criminals and prompted an expansion in the crime percentage. One justification the low conviction rate is the inability of the insightful efforts of police and allied agencies. The Union of India is a Federal Polity comprising of various states. The states have their own forces and working under the Constitution of India. This article clarifies the construction, powers, and working of the three essential offices of the Criminal Justice System of India, to be specific, the Police, Judiciary, and Correctional Administration. The object of the Criminal Justice System in the field of investigation of the crime by the police has been dealt with in this article. Crime prevails in every society, and for maintaining any society, it is important that the criminals must be punished. The criminal trial justice is both for the accused and for the victim to maintain law and order. The court ought to consistently keep up the public confidence of individuals in the administration of justice.

Keywords: Criminal Justice System, Crime, Malimath Committee, Administration of Justice, Human Rights, Fundamental Rights, Rule of Law, Judiciary, Police.

INTRODUCTION

Rule of law is the bedrock of democracy, which is recognized as the best arrangement of administration to ensure of respecting human rights. The respect and worth of the individual are at the center of a democracy, constitutional administration in a democratic based set up is the most secure assurance for the protection of human rights. Equal respect for the privileges of all sections of the public is important to acquire full human resource development respecting the human rights of non-discrimination. The idea of comprehensive democracy perceives this aspect. The Criminal Justice System consisting of Police, Judiciary and Correctional Institutions play a major role in implementing human rights and thereby protect and safeguard the human rights of the citizens of a country. The Criminal Justice System has the power to control crime, prevent crime and punish the criminals. The pre-trial procedure involves arrest and Investigation under the **Criminal Procedure Code 1973**. Criminal Justice System has composed mainly three vital organs, namely Police, Judiciary and Prison. In India, the human rights have been characterized as fundamental rights and are given a special status. Fundamental Rights are important for the fact that the same are considered inherent for every citizen and thus, their violation gives the citizens, the right to move to the **Supreme Court** and the **High Courts** under **Article 32** and **Article 226** of the **Indian Constitution**, respectively.ⁱ Criminal Justice System of any nation is the ground of setting up harmony and peace. It incorporates the legal framework as well as the investigating machinery too. Criminal Justice is one of the basic areas of human pride where the general set of laws is tried on a ceaseless reason for conservation of harmony and security in the public arena from one viewpoint, and anticipation of human pride of the two casualties of wrongdoing and individual blamed for it, on the other.

WHAT IS CRIMINAL JUSTICE SYSTEM

The Criminal Justice System (CJS) includes the institutions, agencies and processes established by a government to control crime in the country. This includes components like police and courts. The aim of the Criminal Justice System (CJS) is to protect the rights and personal liberty of individuals and the society against its invasion by others. The Criminal law in India is contained in a number of sources – The **Indian Penal Code of 1860**, the **Protection**

of Civil Rights Act, 1955, Dowry Prohibition Act, 1961 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. CJS can impose penalties on those who violate the established laws. The criminal law and criminal procedure are in the concurrent list of the Seventh Schedule of the Constitution.ⁱⁱ

BACKGROUND OF THE CRIMINAL JUSTICE SYSTEM IN INDIA

The Criminal Justice System in India is an age-old system primarily based upon the Penal legal system that was established by the British Rule in India. The system has still not undergone any substantial changes even after 70 years of Independence. The biggest example could be **Section 124A** of the **Indian Penal Code (IPC)** that defines Sedition and provides for its punishment. The entire **Code of Criminal Procedure (Cr. P. C.)** was amended in **1973**. The appointment of the **Vohra Committee** was the very first attempt towards reforming the Criminal Justice System in India. **Vohra Committee Report (1993)** saw on the criminalization of politics and of the nexus among criminals, politicians, and bureaucrats in India. In **2000**, the government formed a panel headed by **Justice V.S. Malimath**, the former **Chief Justice of Kerala** and **Karnataka**, to suggest reform in the century-old criminal justice system. The **Malimath Committee** submitted its report in **2003** with **158** recommendations but these were never implemented.ⁱⁱⁱ The committee's primary goal is to achieve justice, which is to punish those who are guilty and protect those who are innocent. The committee recommended that the focus of the program should be on the protection of the accused. The committee found that the immense pending and fresh inflows of cases were inadequately handled by the judges. The average ratio of judges to the Indian population in many parts of the world is 10.5 to 13 per million, compared with 50 Judges in a million.^{iv} The Committee felt that the existing system "*weighed in favour of the accused and did not adequately focus on justice to the victims of crime.*"^v

- **Important Recommendations of the Malimath Committee^{vi} were**
 - ✓ There is a need for more judges in the country.

- ✓ The Constitution of a National Judicial Commission to deal with the appointment of judges to the higher courts and amending Article 124 to make impeachment of judges less difficult.
- ✓ The higher courts should have a separate criminal division consisting of judges who have specialized in criminal law.
- ✓ The Inquisitorial system is practiced in countries such as Germany and France should be followed.
- ✓ Court's power to summon any person, whether listed as a witness if it felt necessary.
- ✓ A modification to **Article 20 (3)** of the Constitution that protects the accused from being compelled to be a witness against himself/herself. The court should be given freedom to question the accused to elicit information and draw an adverse inference against the accused in case the latter refuses to answer.
- ✓ A schedule to the Code be brought out in all regional languages to make accused aware of his/her rights, as well as how to enforce them.
- ✓ The courts follow "proof beyond reasonable doubt" as the basis to convict an accused in criminal cases which is an unreasonable burden on the prosecution and hence a fact should be considered as proven "if the court is convinced that it is true" after evaluating the matters before it.
- ✓ The victim should be allowed to participate in cases involving serious crimes and be given adequate compensation. If the victim is dead, the legal representative shall have the right to implead himself or herself as a party, in case of serious offences. The State should provide an advocate of victim's choice to plead on his/her behalf and the cost must be borne by the state if the victim cannot afford it.
- ✓ A Victim Compensation Fund can be created under the victim compensation law and the assets confiscated from organized crimes can be made part of the fund.
- ✓ Setting up of a National Security Commission and State Security Commissions.
- ✓ A new post, Director of Prosecution, should be created in every state to facilitate effective coordination between the investigating and prosecuting officers.

- ✓ The dying declarations, confessions, and audio/video recorded statements of witnesses should be authorized by law. There should be a strong witness protection mechanism. Witnesses should be treated with dignity.
- ✓ To settle those cases which are pending for more than two years through Lok Adalat on a priority basis.
- ✓ It should be changed to the social welfare code, correctional code, criminal code, and economic and other offences code instead of the current classification of cognizable and non-cognizable.
- ✓ Though crime is a state subject, a central law must be enacted to deal with organized crime, federal crimes, and terrorism.
- ✓ A Presidential Commission was recommended for a periodical review of the functioning of the Criminal Justice System.
- ***Some of the Key Recommendations***^{vii}
 - ✓ **Malimath Committee Report** recommends making confessions made to a senior police officer (SP rank or above) admissible as evidence. Confessions to police have repeatedly come under scrutiny because of allegations of custodial torture, instances of custodial deaths, fake encounters and tampering with evidence.
 - ✓ The report recommends diluting the standard of proof lower than the current 'beyond reasonable doubt' standard. It means that if a proof is enough to convince the court that something is true, then it can be considered as a standard proof. Such a measure would have adverse implications on suspects and requires considerable deliberation.

PRESENT CRIMINAL JUSTICE SYSTEM IN INDIA

The central purpose of criminal justice administration is to protect and defend the rule of law. The current criminal justice system in our country is influenced by several loopholes and faults. The legal approach is time-consuming and generally geared towards the mind of the accused i.e., a system that is involved with the rights and interests of the offender instead of those of the victims. The current criminal justice system has been unsuccessful in delivering speedy and

prompt justice to people and guaranteeing the certainty of penalization to perpetrators of crime. The necessity is therefore to offer a reformed look at the various aspects of the criminal justice system in the field of justice for people and regarding the increasing challenges of criminal justice reform.^{viii} In India only about 16 out of 100 people booked for criminal offences are finally convicted. Low rate of conviction points to the inefficiency of the Criminal Justice System of India – which includes the police, prosecutors, and the judiciary. This results in a big problem of people losing faith in the Criminal Justice System of India – which is extremely dangerous.^{ix}

The truth is that silence and rejection are always painful and unrequested. The irony is that 2/3rd of the criminal justice system involving legislation and prisons still abuses human rights and perpetuates human abuse, and the tiny 1/3rd of the judiciary seeks to protect and uphold human rights. To cope with this problem, we formed the National Commission of Human Rights – with all our good intentions, to remediate the situation and address pressing human rights issues in the country. The nation is facing a difficult situation, both internally and externally, because violations of human rights are now commonplace, and our thoughts and emotions are marked by a lack of hope. Justice Krishna Iyer describes our human rights record as “*testing illusion and promise of unreality*”. Despite its guidelines for police, jail, and other agencies being upheld rather than in violation, the Supreme Court, the sentinel for human rights, could only make superficial changes. The Writ Courts are too distant and expensive to help indigent and illiterate victims of human rights violations. In the absence of compliance, the privileges now given by the courts are illusory. **Justice Krishna Iyer** also said that: “*Rights, however, solemnly proclaimed and entrenched in great instruments are but printed futility, unless a puissant judiciary armed with legal authority. Remedial process and jurisdiction, operational and pragmatic, transforms the jurisprudence of human rights into public law of enforceable justice.*”^x

- ***Pendency of Cases in India***

The pendency of litigation is another key issue within the Indian legal system. A common expression says that “*equity deferred is denied equity*”. In the Supreme Court, there are several pending appeals, and the legal system has been invalidated by the other lower courts. To no

small amount, burdensome procedural regulation frequently leads to the delay in the resolution of proceedings. The lack of control over the case file and legal proceedings leads to the late disposition of cases in no small measure. The various aspects of the criminal justice system, that is police, prosecutors, judiciary, and correctional agencies, are typically lacking in comprehension and teamwork. Lastly, due to the lack of information and awareness about the law and its procedure, misuse, delay, and confusion among individuals is often creating a problem. Speedy justice has always been the sine qua non of criminal jurisprudence. The core of criminal justice is the right to speedy trial and justice is inevitably denied. Because of the prolonged pendency of cases, an individual suffers in multiple and different ways. Delay shakes his faith in the criminal justice system and makes him cynical. Therefore, it is essential to eliminate the delay in disposition as far as it is possible for criminal cases. Although in the Constitution, the right to prompt justice is not expressly stated in the broad sweep of **Article 21** as a fundamental right, it is implied. **Article 21** confers on each person, except under the procedure laid down in law, a fundamental right to not be deprived of their lives or rights. The process for depriving anyone of freedom may now obviously not be “reasonable, decent, or equal unless that procedure ensures a speedy trial for determination of guilt of such a person” said the **Supreme Court** in the case of *Hussainara Khatoon v. Home Secretary of State of Bihar*. The **Supreme Court**, in *A. Lantulay v. R.S. Nayak*, held that the fundamental right under **Article 21** ensures an expedited trial to decide on the culpability of such an individual.^{xi}

- ***How Covid 19 Pandemic Hit the Administration of Justice in India***

The Covid-19 induced disruptions have made a bigger dent on the administration of justice in India with the pendency of cases having crossed 4.4 crore across all courts. A record, the backlog of cases across Supreme Court, High Courts and about 19000 district and subordinate courts have gone up by at least 19% since March last year. Despite resuming urgent hearings on the digital platform on lifting of the lockdown imposed in March last year, more than 70 lakh cases have been added in the pendency list. The total cases pending as of March 25, 2020 was 3.68 crore which has now increased to 4.4 crore. The district and subordinate courts have been the worst affected with total pending cases increasing from 3.2 crore to 3.8 crore during the last one year. Just about two years ago, the pendency in lower courts at 2.9 crore had shown a trend of slowing down. During the same period, the 25 High Courts have added 10 lakh cases

in the pending list. The pendency's in High Courts have increased from 46 lakh last year in March to over 57 lakhs as on April 15.^{xii}

The Niti Aayog, in a 2018 strategy paper (New India @75), had noted that at the current rate of disposal of cases in our courts, it will take more than 324 years to clear the backlog. Then the pendency was 2.9 crore cases. The Covid-19 pandemic has only made it worse with the backlog of 30-year-old cases alone rising by 61% over the last two years across the country- from 65,695 in December 2018 to 1,05,560 till January 2021. The other reason that has compounded the current situation is rising vacancies across all three-tiers of the judiciary. While there have been more than 400 judges' positions vacant in High Courts, the situation is worrisome in the lower judiciary with vacancies of 5,000 judges. The Apex Court must look at implementing with urgency the next phase of the proposed E-Courts project which envisages complete transformation of Indian Courts into a digital platform – having facilities of E-Pay, E-Summons, E-Hearings and E-Judgement. It proposes a 24/7 digital window for litigants to file cases from anywhere, anytime with provision of scheduling digital hearings and ensuring compliance of timelines by both judges and lawyers.^{xiii}

Different Measures have been taken to Accelerate the Removal of Overdue Debts of Cases

According to Hon'ble **Justice S.B. Sinha** and **Justice Dalveer Bhandari** of **Supreme Court of India**: “*Speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India and the law must endure reasonable, just and fair procedure which has a creative connotation.*”

On recommendations of the **11th Finance Commission**, the Central Government decided to create **1734** fast track courts for clearing up lingering cases in districts, including plugging the vacancies of judges, assessing working days or annual vacations in the high courts, the districting and subordinate courts, and streamlining the rules and procedure and so on. According to the report, clearance of oldest session cases and cases involving trials in the dungeons shall be given priority by the fast-track court. The prolonged civil cases would also take priority over fresh cases.^{xiv}

DENIAL OF BASIC LIBERTIES IN THE CRIMINAL JUSTICE SYSTEM

Human Rights are those that everyone has as a person directly from birth. They are inherent and inalienable rights. Common freedoms are the fundamental rights that an individual has. In a country like India, we come across various instances in which the individual is threatened with the possibility of violation of his human rights in every walk of life. They are based on mankind's demand for a life in which the inherent dignity of human being will receive respect and consideration. The **Universal Declaration of Human Rights (UDHR)** clearly states that respect to human rights and human dignity is *"the foundation of freedom, peace, and justice in the world"*. Crimes have increased day-by-day because of the combined contribution of socio-politico-economic factors. Some reasons, which can be said, increase in population, increase in the unemployment and denial of opportunities to a certain section of people. Organized crimes have increased. Organized gangs have such control on finances, weapons, and communication; such crimes have emerged as a serious challenge not only to the police but also to the existence of civilized society itself. In general, organized crime corrodes the social, economic, and political fabric of the society. The extent of terror, which the organized gangs inflict on the society, is alarming. These gangs are also responsible for large-scale corruption in social and economic institutions. Democracy gets threatened when the police cease to respect the legal and constitutional rights of the citizens and persistently disregard the due process of law. Allegations of the police violence and brutality are being constantly received from different parts of the country. It is a known fact that a common complainant of crime is rudely received in the police stations and is treated with discourtesy, indifference, and indignity. The victims of police perversions are almost always the disadvantaged sections of society who are incapable of legitimate self-defense. In the garb of combating criminality, the police take the law into their hands and trample upon the basic human rights of the crime-suspects. These no doubt, are the cruellest forms of human rights violations. The reality can be gauged only by visiting prisons. Instances of prison injustice abound, and the penal regime has not changed much despite two-dozen reports on prison reform, such as the Mulla Committee report. Also, in the *Hussainara Khotoon's case*, the **Supreme Court** observed: *"It is a crying shame on the judicial system which permits incarceration of men and women for long period of time. We are shouting from housetops about the protection and enforcement of human rights. We are talking passionately and eloquently about the maintenance and preservation of basic freedoms. But*

are we not denying the right to these nameless persons who are languishing in jails for years for offences which perhaps they might ultimately be found not to have committed? Are we not withholding basic freedom from these neglected and helpless human for years? Are expeditions trail and freedom from detention not part of the human right and basic freedoms".^{xv}

The Indian Constitution, which has been clarified in many Supreme Court rulings, provides for human rights protection in keeping with international standards like in *Maneka Gandhi v. Union of India*, the **Supreme Court** held that no one should be subjected to arbitrary arrest, detention, or exile. Under **Article 21** no person shall be deprived of life and personal liberty except according to the procedure prescribed by law. Since the decision of the Supreme Court, the procedure under **Article 21** must be fair, just, and reasonable and cannot be arbitrary, unfair, or unreasonable. In *Sunil Batra v. Delhi Administration*, the Supreme Court held that keeping of under trial prisoners, who are presumed to be innocent, with convicts, offends the test of reasonableness under **Article 19** or fairness under **Article 21**. In *Sheela Barse v. Union of India*, the **Supreme Court** emphasized that children should not be confined to jails because it has a dehumanizing effect and is harmful to the growth and development of children. The court also ordered that where a complaint is filed or a first information report is lodged against a child below the age of 16 years for an offence punishable with imprisonment of not more than 7 years, the investigation should be completed within 3 months and if the investigation is not completed within 3 months, the case against the child should be treated as closed. **The Human Rights Commission Act of 1993** sets down the constitution of **State and National Commissions on Human Rights** to investigate allegations of human rights abuses and government machinery infringements to prevent such abuses and recommend legislation for the successful enforcement of constitutional and national guarantees.^{xvi}

SUGGESTIONS FOR IMPROVING THE CRIMINAL JUSTICE SYSTEM IN INDIA

Changes are constant in the judiciary, yet Criminal Justice System of India is expected to improve its framework.

- ✓ In Subordinate Courts and High Courts, there must be enough Judicial officers and Judges.
- ✓ The arrangement of Indian law ought to be totally digitized from the beginning as far as possible.
- ✓ There must be a speedy disposal of long pending cases by using fast-track courts.
- ✓ Priority should be given to increase the number of police stations and courts at the rural areas.
- ✓ Police brutality, misbehaviour by the police, prison abuse, police misconduct ought to be taken care of completely and effectively.
- ✓ Police Reforms should also be prioritized.
- ✓ Upgrades are needed in the jails.
- ✓ The number of Forensic Science Institutions with modern technologies should be enhanced.
- ✓ Scientific investigation must be taken place.

CONCLUSION

Criminal Justice System in India is presently in a condition of vulnerability and is profoundly disagreeable because of its inefficacy. Obviously, the changes in India's Criminal Justice System are a need of great importance. The government needs to draft a reasonable approach that can educate changes in the Indian Penal Code and Code of Criminal Procedures. The changes ought to make CJSI more productive as well as be touchy to both the innocent and the needs of the law enforcing officers.

ENDNOTES

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- ⁱ Shruti Chaudhary, *Indian Criminal Justice System and Human Rights*, 3 IJARND. 271, 271 (2018).
- ⁱⁱ Alok Kumar, *Criminal Justice System of India – Is it time to implement the Malimath Committee Report*, CLEAR IAS (May 25, 2021, 11:37 AM), <https://www.clearias.com/criminal-justice-system-india/>.
- ⁱⁱⁱ *Ibid.*
- ^{iv} Ayush Verma, *Reforms Needed in the Indian Criminal Justice System*, IPLEADERS (May 25, 2021, 3:10 PM), <https://blog.ipleaders.in/reforms-needed-indian-criminal-justice-system/>.
- ^v *Supra* at 2.
- ^{vi} *Supra* at 2.
- ^{vii} *Supra* at 2.
- ^{viii} *Supra* at 4.
- ^{ix} *Supra* at 2.
- ^x *Supra* at 4.
- ^{xi} *Supra* at 4.
- ^{xii} Pradeep Thakur, *Pending Cases in India Cross 4.4 Crore, Up 19% Since Last Year*, THE TIMES OF INDIA (May 28, 2021, 8: 20 AM), <https://timesofindia.indiatimes.com/india/pending-cases-in-india-cross-4-4-crore-up-19-since-last-year/articleshow/82088407.cms>
- ^{xiii} *Ibid.*
- ^{xiv} *Supra* at 4.
- ^{xv} *Supra* at 1.
- ^{xvi} *Supra* at 4.