



## Criminal justice system & trials and investigation holocaust of human rights

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### Abstract

Justice Delivery System is the very essence of a civilized society. Justice is the epitome of existence. With the development of the concept of welfare state, the justice delivery system has become an integral part of each and every civilized society. The violent act of the people endangered the security and integrity of the state. It led to the development of The Criminal Justice System. The Criminal Justice System is the set of agencies and processes established by governments to control crime and impose penalties on those who violate laws. Most criminal justice systems have various components, out of which the underlining process of investigation and trial plays a key role in criminal justice system. This process of trial and investigation has a decisive role in the delivery of justice. A smell of arbitrariness in the authority exercising such powers gives a clear insight of the chances of miscarriage of justice. There are number of cases where there has been clear miscarriage of criminal justice system. This research paper is dedicated to the drawbacks of the criminal justice system and its improvement. The paper elaborates the procedure of criminal justice system and its connection with the constitution of India. Further it depicts the violation of natural rights during the process of trials and investigation. It tries to provide ways for improving the efficiency of the Criminal Justice System.

**Keywords:** Justice, human rights, criminal

### Introduction

The Justice Delivery System (JDS) basically involves judges, lawyers, police officers, forensic experts and also executive officers of other wings. In other words, the judicial systems and the administrative systems of justice involve almost all the organs of the government to machinery. It is the team work of all these persons which ultimately contributes towards resolutions of disputes between the parties. It is said that justice should not only be done but it must also be seen to have been done. Such a standard of perfection can be achieved only if all the organs involved in Justice Delivery System are well equipped with infrastructures, tools and legal and scientific literature. In this regard, it would be well to bear in mind that such tools of performance, including the literature, undergo changes and even become outdated with the passage of time and need refinement, updating and replacement from time to time.

The justice delivery system<sup>[1]</sup> has the following components

- The people
- The law enforcement (legislature, police, authorities)
- The judiciary (the prosecution, the defense counsel and the judge)
- The correctional facility (rehabilitation centers, remand homes, prison cells, etc.)

The criminal justice system is the set of agencies and processes established by governments to control crime and impose penalties on those who violate laws. Most criminal justice systems have five components-law enforcement, prosecution, defense attorneys, courts, and corrections, each playing a key role in the criminal justice process. This brings me to the factors that we have as a nation, we have a dynamic population, although one of the largest in the world, which is now radically changing its outlook towards how justice is to be perceived and attained, it is however

ironical that this country does not have anything even in terms of man force, we lack police officers, constables etc.

India has the lowest citizen to police ratios in the world. The recommended average is a policeman for every 200 citizens. In India, the ratio is close to 700. If one takes into account those tied up for 'VIP security', the ratio will probably be close to 1 policeman for every 1000 citizens., we lack court clerks, we lack bailiffs, we lack in judges, we lack remand home officials, we have vacancies for every post, there are not enough people in any post apart from maybe lawyers because they seem to swarm every court, "There is a backlog of 30 million cases in India. Even if no new cases are filed, it will take about 350 years to dispose of them all"<sup>[2]</sup>, adding to that we lack facilities, we lack training institutes for policemen, we lack judicial training institutes, it is an established fact which the Govt. of India accepts that there is 40% shortage of judicial staff and we lack prisons, we house inmates with the under trials and we lack detention centers, Prison conditions vary from state to state. Criminal cases remain the bane of the Indian judicial system.

The criminal justice system can be overwhelming, intimidating, and confusing for anyone who does not work within it every day. As a victim, you will need to know what to expect and have support throughout the process.

### Criminal trials: challenges and headways

The incidence of crime in India is increasing alarmingly with a disastrous spatial distribution of population due to mismanagement and an overwhelmingly ubiquitous new technology. The profile of the criminal has undergone a sea change from the earlier stereotypes, requiring a new paradigm to comprehend and manage the emerging scenario. Today's criminal could well be your suave, smooth talking colleague or neighbor, someone who is relatively well off and well educated. The criminal mind is

no more matching the orthodox definition of an economically deprived background but one that seeks to compete, outsmart and short-change the society that he or she lives in.

Recently, an internal survey conducted by a leading retail chain found that the largest section of loss due to theft was of women's clothing and women's innerwear. This by natural extension points to women as the emerging segment for pilferage in the organized retail sector. There is a fair chance that most of the women stealing come from reasonably well-to-do families but their craving for excitement from pilferage is what drives many to the crime. Several Hollywood celebrities are known to be compulsive kleptomaniacs. But this is a relatively mild crime when compared to the number of child rape and molestation that is being reported from all parts of India and include urban, semi-urban and rural areas. Violent crime is on the increase. Emerging trends in cyber-crimes include hacking, phishing and cyber stalking with social media as the new playground for the criminal mind to let itself loose.

With these emerging trends in crime, it is time for India to revamp and reform how crime is reported, investigated and followed through with scientific evidence, which can ensure successful prosecution of the criminal.

The Indian system of policing and criminal investigation is still stuck in the old ways of information gathering and beating out a confession from the suspects. The police force is completely untrained on modern methods of criminal investigation and is not primed to gather scientific evidence to present a watertight case in the court. This is why the gap continues between reporting of crime, arresting a criminal and finally ensuring successful prosecution of the accused.

### Three of the problems

Police is a State subject and the number and quality of the police force varies from State to State. Most of the recruits at the entry level are barely school educated and come from diverse backgrounds, where their upbringing has been influenced by their religion, caste, community or economic status and this usually comes in conflict when policing urban areas, where the mindset of society that they serve, is different from the one that they grew up in. This cultural difference is very visible when it comes to police dealing with women related issues or the educated section of society.

In addition, the lack of education also hampers the police from scientifically investigating any crime. The training is restricted to basic beat policing and does not expose them to modern techniques of criminal investigation. Even the so called 'dedicated' departments that are supposed to be primed up with scientific investigation techniques, is usually saddled with obsolete technology and techniques.

Furthermore, the method and content of data on crime collected and recorded varies from State to State. With cross border crime occurring frequently, tracing criminals is a challenge for any State police, in the absence of criminal data sharing and cooperation. The data collected and recorded by the National Crime Records Bureau (NCRB) is basic and data access at all levels is limited.

### Their Solutions

#### 1. An integrated approach to criminal investigation

Without compromising the federal structure and authority, criminal data recording and access has to be standardized

and seamless, if India is to keep crime down to minimal levels. The first step towards this has to be data recording and capture.

#### 2. Criminal profiling and data

Every person who is brought into the police station as a suspect must be full body scanned and facial data recorded. This will include bone structure, facial and dental profile, iris scan along with finger print and DNA profile collected and recorded for posterity.

The data can be kept under suspect, accused and prosecuted groupings. Sub groupings may also be created, as per need. While, this may evoke strong debate on the need for profiling, it is necessary to understand the importance of collecting this data as the primary requirement in surveillance, tracking and subsequent arrest of a potential criminal.

Today, software is available to capture real time data through surveillance cameras located at public places like airports, railway and bus stations. The data captured is matched on the basis of bone structure and facial recognition software. So if there is a potential terrorist or criminal passing through any public area, there is a fair chance that the software will pick him out of the crowd in real time. This would be possible only if his profile has been collected, recorded and made available to all law enforcement agencies, seamlessly.

The National Security Agency (NSA) of the United States is using this widely and the same data has helped agencies like FBI, CIA, State Police, Homeland Security etc. solve several cases, in addition to monitoring and tracking suspects to prevent crime. There is no point in data being collected by one agency and not being available to other agencies, seamlessly. This was one of the biggest lessons the United States learnt post the 9/11 incident.

India has no choice but to learn and implement similar strategies if it were to seriously attempt crime prevention and crime control. Data collection, availability and access are the first tool in this battle.

#### 3. Adopting forensic science

Crime scene investigation is the first and most important moment in solving any crime. The forensic information captured by way of pictures, body fluid sample, DNA sample, fingerprinting or material sample can go a long way in helping the police to solve crime.

In India, the police appearing at a crime scene are usually not even aware of the need to maintain crime scene integrity for forensic purposes nor are they geared to collect crime scene evidence from a forensic perspective.

#### 4. Adopting modern techniques of interrogation

One of the biggest challenges for any police is to get a suspect to confess to a crime. In India, the police still follow all kinds of physical force to get suspects to confess to a crime, only to have them deny the same in court, subsequently.

All developed nations now follow basic human rights principles and have done away with physical means to elicit confession from a potential suspect. Modern techniques are applied to confirm innocence or psychologically break down a suspect into confessing a crime.

If a watertight case has to be built against an accused, then all evidence collected against him must pass judicial

scrutiny during trial. The process of interrogation is one component of this evidence gathering and therefore the same has to comply with accepted norms, as permitted by the law in India.

India has made some progress with initial training in modern interrogation techniques, as followed by FBI of the USA and Scotland Yard of the UK. But India is still a long way from introducing these techniques as part of Standard Operating Procedure (SOP) for all arms of police, at the State level. It is time India implemented reforms across all State police and integrated and shared all criminal data, seamlessly.

### **Committee on Reforms of the Criminal Justice System**

The Committee on Reforms of the Criminal Justice System submitted its report in April 2003. It was constituted by the Ministry of Home Affairs of the Government of India in November 2000 and headed by former Chief Justice of Kerala and Karnataka, and former member of the National Human Rights Commission (NHRC), Justice V.S. Malimath. The two-volume report, over 600 pages in length contained 158 recommendations for 'reforming' the Criminal Justice System (CJS).

The recommendations of the Committee cover are wide ranging, from making confessions to the police admissible to courts to making matrimonial cruelty a bailable offence; they include placing a police officer as head of the prosecution and adding provisions from the Prevention of Terrorism Act (POTA) into the regular penal law. The Malimath Committee appears to share the opinion that there is need for a reform of penal law in India and this should "not be an exercise to be carried out only by lawyers and Judges. Public men and women representing different walks of life and different schools of thoughts, social scientists, politicians etc. should be on such a committee to recommend to the Parliament a better and progressive penal law for the country." (Page 175 of the Report) the Committee also expresses that Judges should be provided with proper training and vocations on a regular basis to improvise their drafting, hearing and writing skills along with the skill of taking correct and fast judgment. Judicial accountability is one of them is important factor.

Furthermore, there is sufficient material to suggest that the poor constitute a disproportionately large number of the criminal defendants going in and out of the criminal justice system. A large percentage of the 2.7 lakh prisoners in India belongs to the economically weaker section of society, is by and large illiterate and unaware of the law or working of the legal system. The Committee on the other hand believes that "the accused now-a-days are more educated and well informed and use sophisticated weapons and advance techniques to commit offences without leaving any trace of evidence" (page 19); "the accused is normally represented by very competent lawyer of his choice" (page 19).

### **Right To Speedy Trial – Problems and Solutions**

The constitutional guarantee of speedy trial is an important safeguard to prevent undue and oppressive incarceration prior to trial; to minimize concern accompanying public accusation and to limit the possibilities that long delays will impair the ability of an accused to defend him. This is despite statutory provisions that permit speedy trial of criminal cases. For instance, Section 309 of the Code of Criminal Procedure gives considerable powers to courts. In

a succession of judgments, the Supreme Court has reaffirmed the importance of speedy trials, interpreting it as a right enshrined in Article 21 (right to life) <sup>[3]</sup>. This is not to deny that the accused is often responsible for delaying the proceedings, since the onus of proving the guilt vests on the prosecution. It is not always practical to prescribe a time limit across all criminal cases. However, it is somewhat bizarre if there are under-trials in prison who have been awaiting trial for more than the maximum stipulated sentences for petty crimes. "It is a matter of common experience that in many cases where the persons are accused of minor offences punishable not more than three years - or even less - with or without fine, the proceedings are kept pending for years together. If they are poor and helpless, they languish in jails for long periods either because there is no one to bail them out or because there is no one, to think of them. The very pendency of criminal proceedings for long periods by itself operates as an engine of oppression. Quite often, the private complainants institute these proceedings out of oblique motives. Even in case of offences punishable for seven years or less - with or without fine - the prosecutions are kept pending for years and years together in criminal courts. In a majority of these cases, whether instituted by police or private complainants, the accused belong to poorer sections of the society, who are unable to afford competent legal advice. Instances have also come before courts where the accused, who are in jail, are not brought to the court on every date of hearing and for that reason also the cases undergo several adjournments." <sup>[4]</sup> The police are a key element in ensuring criminal justice reform, since investigations are a police subject. Investigations, under norms stipulated by the Code of Criminal Procedure, lead to a final report that can either lead to a no-offence situation or a charge-sheet.

In some ways, the right to a speedy trial is even more important in a criminal case than a civil one, since there are restraints imposed by arrest and consequent incarceration. Justice Krishna Iyer while dealing with the bail petition in *Babu Singh v. State of UP* <sup>[5]</sup>, remarked, "Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings." In *Sheela Barse v. Union of India* <sup>[6]</sup> court reaffirmed that speedy trial to be fundamental right. Right to speedy trial is a concept gaining recognition and importance day by day.

In the case *Katar Singh v. State of Punjab* <sup>[7]</sup> it was declared that right to speedy trial is an essential part of fundamental right to life and liberty <sup>[8]</sup>. At the same time it cannot be denied that cases are delayed in the interest of the defendant. It's rightly said that "delay is known as a defense tactic". Moreover, we cannot give effect to 'demand rule' as justice cant de denied or delayed on the grounds that the litigants did not ask for speedy trials.

Take into consideration Bhopal Gas Leak Tragedy involving lives of more than 15000 people. 30 years had passed for that incident and still people suffered a lot to get the compensation. The condition of those girls who were brutally gang raped during the Godhra riots in front of their helpless family members. Consider the case of Jessica Lal, where Delhi police yet to grab Manu Sharma, key accused,

still able to safeguard himself from the clutches of the judicial administration. The victims of Best Bakery case who awaited justice to be dispensed in their favor but the climax starts with the key witness in the case turned hostile and the entire fate of the Bakery case is in turmoil. Today the victims of the all the above-enumerated cases know full well that the price of truth is extremely high.

### Under trial Prisoners

In *Hussainara Khatoon v. State of Bihar* <sup>[9]</sup> which formed the basis of the concept of the Speedy Trial, it was held that where under trial prisoners have been in jail for duration longer than prescribed, if convicted, their detention in jail is totally unjustified and in violation to fundamental rights under article 21. Inordinate delays violates article 21 of the constitution: for more than 11 yrs the trial is pending without any progress for no faults of the accused-petitioner. Delay in trial unnecessarily confers a right upon the accused to apply for bail. Under sec. 482 read with 483, Cr. P.C lays that every possible measure to be taken to dispose of the case within 6 months from today. No adjournments to be granted until and unless circumstances are beyond the control of judiciary. It is the responsibility of the judiciary to keep a check on under trial prisoners and bring them to trial. Overcrowded courts, inadequate resources, fiscal deficiency cannot be the reasons for deprivation of a person. Finally, to conclude with the words of Lord Hewet as it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

The judicial capacity and capability is judged by the time taken for disposal of the cases. There are many scams and frauds which need to be disposed of as quickly as possible but this is not the case in India. For e.g. Harshad Mehta scam took about 6years for the pronouncement of the decision when he already died while at the same time a scandal in Singapore Nick leeson of barring company which was decided in 2years. This shows how the delay in justice providing system works in the favor of judicial system.

### Human Rights of Under Trials

Custodial crime stands for an “Unwarranted Intrusion of Personal Liberty”. Torture is endemic in the criminal justice system. It is an act of deep, indelible, traumatic indoctrination. Whether it is physical assault or rape in police custody, the extent of trauma a person experiences is beyond the purview of law. Cruelty disfigures our national character. The flagrant human rights violations reflect serious democratic deficit even in the largest democracy of the world. The brutal inhuman treatment to the prisoners in prisons and detention centers by the police and the jail officials gore the death of human rights in a democracy even. Where injustice, verging on inhumanity emerges from hacking human rights guaranteed in Part III and the victim beseeches the Court to intervene and relieve, the Court will be a functional futility as a constitutional instrumentality if its guns do not go into action until the wrong is corrected.

Custodial torture ranging from assault of various types to death by the police for extortion of confessions and imputation of evidence are not uncommon. Such a method of investigation and detection of a crime, in the backdrop of expanding idea of ‘humane’ administration of criminal justice, not only disregards human rights of an individual and thereby undermines his dignity, but also exposes him to

unwarranted violence and torture by those who are expected to ‘protect’ him. Custodial crime is socio-legal holocaust of human rights which needs to be tackled properly through composite framework and application of stringent norms.

### Judiciary-Custodian of Prisoners’ Rights

Modern Judiciary is the Custodian of the Fundamental Human Rights. Judge-made law has civilised our prisons, banished bar fetters and handcuffs, eliminated solitary confinement. The Supreme Court is heralded as a beacon of rights against torture. *The Hon’ble Supreme Court of India* by interpreting Article 21 of the Constitution has developed Human Rights Jurisprudence for the preservation and protection of prisoner’s right to human dignity. The Supreme Court has taken a very positive stand against police atrocities, intimidation, harassment and use of third degree methods to extort confession. The Court has characterized all theses as being against human dignity. The Apex Judiciary of India has ruled that it is a well-recognized right under Article 21 that a person detained lawfully by the police is entitled to be treated with dignity befitting a human being and that legal detention does not mean that he could be tortured or beaten up. If it is found that the police officer has ill-treated a detenu, he would be entitled to monetary compensation under Article 21 <sup>[10]</sup>. The Court has often awarded compensation, exemplary damages to the victims of police brutality against the State.

The Supreme Court in *State of Andhra Pradesh vs. Challa Ramakrishna Reddy* <sup>[11]</sup> and other series of decisions observed that fundamental rights, also includes basic human rights, which continue to be available to a prisoner and those rights cannot be defeated by pleading the old and archaic defense of immunity in respect to sovereign acts of the State <sup>[12]</sup>.

Custodial death and violence is one of the worst crimes in a civilized society governed by the rule of law. *D. K. Basu v. State of West Bengal* <sup>[13]</sup> proved to be a landmark judgment that consolidated the basic rights under criminal law especially those of the persons under the conditions of curtailed personal liberty such as arrested persons, detainees, under trials etc. and laid down the rules of arrest. The Court while holding torture, rape, death, in police custody/ lockup to be violative of the basic human rights also held that torture not only involves physical suffering but also mental agony and is the naked violation of human dignity and destructive of human personality. While laying down the basic guidelines for arrest, the court held that interrogation though essential, must be on empirical principles. Third degree (inhuman) treatments are totally impermissible.

Parliament’s attention was drawn to the urgent need to amend the rules of evidence regarding prosecution of police officials accused of custodial violence, in particular the recommendations of *the Law Commission of India in its 113th Report* regarding a shift in the burden of proof, with the introduction of a presumption of custodial violence if there is evidence that the detainee’s injury was caused during the period of detention, and the consideration by the court of all relevant circumstances.

The Court has observed in *Raghubir Singh v. State of Haryana* <sup>[14]</sup>: “We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are

under a new peril when the guardians of the law gore human rights to death.”<sup>[15]</sup>

The Court has recognized the right to fair treatment and dignity of the prisoners as a tool against the alleged acts of torture by police and jail authority. *Justice V.R. Krishna Iyer in Charles Sobraj v. Superintendent, Central Jail, Tihar*<sup>[16]</sup> observed that imprisonment does not spell farewell to fundamental rights although, by a realistic re-appraisal, the Courts will refuse to recognize the full panoply of Part III enjoyed by the free citizens of the largest democracy. Further, he observed that the axiom of “prison justice” is the Court’s continuing duty and authority to ensure that the judicial warrant which deprives a person of his life or personal liberty is not exceeded, subverted or stultified by the atrocities in prison.

Indeed, since 1990s, the Supreme Court has come up with two innovative ways of dealing with custodial torture and custodial deaths, namely: *the right to compensation for custodial crime* and *the formulation of custodial jurisprudence*.

### Conclusion

First, there is the natural conclusion that the number of judges and courts needs to be increased. At a Chief Justices’ conference in 2004, a committee was constituted to get a fix on the recommended judge/case ratio<sup>[17]</sup> and a figure of 500 to 600 was suggested for district and subordinate courts. Working with the pendency figures, this translates into an additional 35,000 courts or so, depending on how one derives the number.

Second, there are procedural improvements required. While the Code of Civil Procedure was amended in 2001 and 2002, there is still scope for improving orders issued under the code for issues like written statements, costs, examination of parties, framing of issues, evidence on affidavits and ex-parte injunctions. More importantly, these orders grant discretion to judges and there is scope for better use of this discretion. Since two-thirds of the backlog consists of criminal cases, amendments to the Code of Criminal Procedure and the Indian Evidence Act are long overdue. Consequently, there are problems with lack of pretrial hearings, service of summons, delays in supplying copies to the accused, exempting the accused from personal appearances, delays in framing charges, repeated adjournments, non-availability of witnesses and compounding, not to speak of lack of public prosecutors and problems with the police. But it is necessary to mention that the average conviction rate is not six percent, as is commonly believed to be the case.

The violation of fundamental right of under trials is one of the most serious issues of today’s time and brings disrepute to the fame of the country. To conclude, author would like to quote Nelson Mandela- “*A nation should not be judged by how it treats its highest citizens, but its lowest ones.*”

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