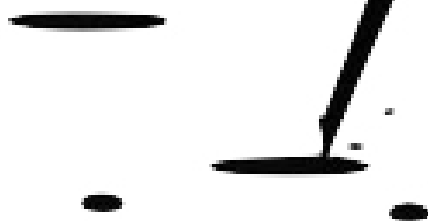


Journal of

Business,

Law &

Society



**Criminal Justice System Reforms in India: It's  
Players and Suggestions**

**Nijandhan K P**

Student, School of Excellence in Law

## **Introduction**

The Criminal Justice system in India is merely amended from time to time from the Colonial Period System. It is hostile to the poor and the weaker sections of society. The law still serves and protects the needs of the haves and ignores the have-nots. The hierarchy of courts and the Appeal procedure has led to a situation where the poor cannot reach the temple of justice due to heavy cost of its access. In other words one can state that granting justice at a higher cost indirectly means the denial of justice. Such circumstances lead to a clear violation of the Supreme Court judgement which held, legal aid to a poor is a constitutional mandate not only by virtue of Article 39A but also Articles 14, 19, 21 which cannot be denied by the government.

## **Objectives of the Criminal Justice System**

The main objective of the Criminal justice system is to maintain law and order by punishing the offenders and inducing the prevention of future crime occurrence through punitive means to create a sense of peace upkeep. But over the course of time it changed to protecting the welfare of the victims as far as possible. It strives to achieve a peaceful society devoid of aggressions through reprimands and rehabilitation methods for economic as well as national prosperity.

## **Need for Criminal Justice System Reform**

The present Criminal Justice System is in shambles owing to a larger part of setbacks in the structural and procedural aspects of its function. The criminal justice system operates under some questionable principles and unverified assumptions inherited from the colonial legacy. The social responsibility of the judges has to be seen in terms of an effective democratic accountability of the bench.

What is 'proved' or 'not proved' is what the judge believes to be proved or not proved on the basis of evidence produced before him. A public and open dialogue on judicial behaviour and relationships can help in operationalizing this responsibility and accountability in democratic terms. The bench cannot afford to enjoy a fair image by silencing popular criticism in the name of contempt of courts.

If the investigator is influenced or transferred by authorities at their discretion, justice gets tainted and the process becomes an instrument of harassment against those who are weak and unable to fight through the system.

## **Criminal Justice System Reforms**

The reform to the Criminal Justice System is a need of the hour for it navigates in a way much deteriorating and irreversible consequences. The amendment to the Criminal Statutes is only to be exploited for the benefit of the profession. Crime control cannot be a concern of the Bar and the Bench. So, the job of re-authoring the basic Acts should be entrusted to an Institutional framework like National Penological Commission, which should have a majority of its members from the press, the politics, the academics, the women's organisations, the weaker sections and the trade unions, as proposed by the Administrative Reform Commissions and other committees constituted for the purpose<sup>1</sup>.

### **The Police Reforms**

Police Reform is the much debated and analyzed of all the reforms in Criminal Justice System, owing to various defaulters. Yet, no progress on the implementation of the reforms has been made. An independent professional police is indispensable for an effective criminal justice system. Independence does not mean the police are not accountable to the Home Minister, who is answerable to the legislature in a democratic setup. Functionally, the police are accountable to the Constitution and laws of the country which the force is obliged to uphold even if the Minister desires otherwise in cases under investigation.

The Police Force should be divided into:

- (1) Police for law, and
- (2) Police for order.

The former, which is popularly known as Civil Police has to be given a quasi-judicial status, something on the lines of the French 'Police Judiciaire'. The investigation process of crime has to be given the sanctity of judicial work, which independent and judicious police officers alone should pursue to help the senior judge in the discharge of their duties.

Once the other part of armed police is separated and left to the care of political masters, the investigation and prosecution work of 'Law-Police' may be put under the charge of a prosecution director-general and the prosecution directors, somewhat on the lines of the Comptroller and the Auditor General of India at the Centre and the Accountant Generals in the states. Fudging of evidence in cases will not be needed and mercenary witnesses on easy money will not be allowed to make a mockery of justice.

After analyzing all the reforms and their reports, it can be concluded that the recommendations of none of the committees have been taken into account seriously, and that there has been no or very little change in the conditions of the police in India. The society has

---

<sup>1</sup>Dr.NManoharan, *Reforming the Criminal Justice System*, VIF INDIA (Sep. 01, 2018) <https://www.vifindia.org/article/2013/february/08/reforming-the-criminal-justice-system>.

undergone many changes economically and politically, but there have been almost negligible changes in the Indian Police structure.

## **The Judicial Reforms**

### **The Judge**

The Judges constitute the Judicial System. Since, the judges are humans, they are susceptible to be influenced by circumstances. To enhance professionalism among judges an all-India Judicial Service (IJS) may be constituted. The meritorious ones, desirous for careers on the Bench 'only' should compete and the junior, senior and selection level cadres may be created at district, state and Union levels. The Lawyers may enter only at the junior level by competitive examination to be conducted by the Supreme Court.

The age relaxation may be 35 years, but no High Court and Supreme Court judge should be picked up from among the affluent or successful advocates. The retired judges should be attached to the law schools of the universities and should in no case be allowed to appear as advocates or part-time politicians for making a living.

### **The Adjudicatory Process**

The Adjudicatory functions of the criminal courts are ascertaining the facts and to decide the guilt or innocence of the accused and determine appropriate punishment. In both these functions, the judges of the trial court enjoy enormous discretionary powers despite the procedural laws in place. In other words, subjectivity pervades the system and judge's professionalism, training and appellate court decisions are the only moderating influences on their decision-making power.

Judges, after all, are human beings subject to frailties that human beings succumb under different circumstances, though they are trained to behave unbiased when they sit on the judicial chair. This is a subjective judgment prone to different findings.

There are also unnecessary case backlogs. Due to this, there were enormous delays in the adjudication, increases in litigation costs, loss or diminished reliability of evidence by the time of trial, and unevenness and inconsistency in the verdicts that ultimately are reached at trial. In many cases, the detention under trial even exceed beyond the maximum periods to which they could be sentenced if convicted. Justice delayed is of course justice denied. Such incapability of the judiciary in delivering justice on time has the danger of reduction of faith in the justice system among the people. This has resulted in huge under trails and overcrowding of prisons, which in turn, has significantly brought down the deterrence value of the criminal justice system.

### **The Adversarial System**

The Adversarial system has more negative connotations than being advantageous to a democratic country. The system carries certain unwritten principles evolved in a different era which have been followed unquestioningly by criminal courts which work in favor of criminals under the adversarial processes. These principles include “proof beyond reasonable doubt”, “the benefit of the doubt to the accused”, “burden of proof on the prosecution”, “right to silence of the accused” and confession to police not accepted as evidence. The Criminal Procedure Code and the Evidence Act do contain provisions to offset the unequal impact of these principles in an adversarial trial by empowering the presiding judge to seek the truth beyond the set procedures.

The weakness in investigation can seldom be overcome by the prosecution during trial. The total separation of the investigative (executive) and prosecutive (judicial) functions also militates against coordinated efforts to put the prosecution side effectively. Public interest is least protected in the adversarial system where the entire burden of proof is vested in the prosecution and the benefit of the doubt is always given to the accused.

Simultaneously, a number of judicial and legal bottlenecks must be removed to improve India’s enforcement regime. In addition to electronic filing systems, India’s courts need more judges, higher filing costs (to discourage frivolous litigation), improved tracking of cases, more alternative options for dispute resolution, pre-litigation measures and plea bargaining. Specialized courts should be set up to replace civil courts in the appeals process. Lawyers are also to a large extent responsible for the lax enforcement regime. Most of the times lawyers not only fail to fix an ailing system but nurture and exploit it.

### **The Prison Reforms**

Prison Reforms are mainly overlooked by both the Legislature and The Judiciary owing to various reasons. The Legislature’s unwillingness to constitute a separate organization for prison administration and allocate fund for the purpose may be the main reason for the failure of non-reformation of various prison standards. Many reforms are made in jail administration, especially the open prison system has come as a very modern and effective alternative to the system of closed imprisonment.

In Central Administered Jails and many jails, inmates including hardcore criminals and women had joined various courses offered by IGNOU and their respective State Universities. Courses mainly offered by them are BA, MA, MBA & other post-graduation courses. The inmates can also join the classes of 10th and +2 for basic guidance. In many jails with a view

of imparting vocational training a fully-fledged computer training centers has been established.

The inmates are also provided training in carpentry and fabric painting. Many jails have also initiated programs for women empowerment by training them in weaving, making toys, stitching and making embroidery items. Various seminars are organized by jail authorities to enlighten the prisoners on their legal rights, health and sanitation problems, HIV/AIDS and issues of mental health, juveniles, minorities and steps to reduce the violence in prisons.

### **The Coeval Scenario**

The Criminal justice system of Indian society in the 20th century has traversed a long democratic path. Some of these democratic processes are just irreversible. The regulatory administration of revenue, law and order and justice has remained quite impervious to these democratic changes in the name of continuity and stability in society.

Victimology as a new approach to criminal justice system offers new concepts in the light of which conventional procedures like FIR, evidence-collection, witness arrangement, bail granting, cross-examination system and sentencing policies need purposive operationalisation. Procedures though important cannot be the goals of a system. The end means synthesis has to be worked out in terms of the ends.

The criminal justice administration in India is one area where the politics of vested interests has perverted the means by taking advantage of history, professional expertise and popular ignorance. It is high time when legislators, policemen, learned persons of law and administrators of prison houses in India should pool their experiences to put their respective houses in order.

### **Important Case Studies**

#### **Prakash Singh & Others v. Union of India**

On 22nd September, 2005, the Supreme Court of India delivered its historic judgment in *Prakash Singh & Others v. Union of India*, instructing the Central and the State Governments to comply with a set of seven directives that laid down practical mechanism to start reforms of police. The seven directives are;

1. Constitute a State Security mechanism- This is to ensure that the State Government does not exercise unwarranted influence or pressure on the State Police.
2. Selection and Minimum Tenure of the Director General of Police- Compelled for promotion to that rank by the UPSC on the basis of their length of their service, very good record and range of experience for heading the police force. And, once he has

been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuating.

3. Minimum Tenure of the Inspector General of Police and Other Officers- Police officers on operational duties like the IG, DIG, SP, SHO shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely.
4. Separation of investigation- The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people.
5. Police Establishment Board- There shall be a Police Establishment Board in each state which shall decide transfers, postings, promotions.
6. Police Complaints Authority- There shall be a Police Complaints Authority at the District and State level to look into complaints against police officers.
7. National Security Commission- The Central Government shall also set up a National Security Commission at the Union level for selection and placement of Chiefs of the Central Police Organizations, who should also be given minimum tenure of two years.

#### **Re-inhuman conditions in 1382 prisons**

1. Compensation to the family members of the prisoners who are of unnatural deaths in between 2012 to 2015 as revealed by the NCRB.
2. All efforts be made as suggested by the National Human Rights Commission
3. Ask the NCRB to distinguish between natural and unnatural deaths
4. The State Governments should conduct training and sensitization programmes for senior police officials.
5. The State Government is directed to appoint counselors and support persons for prisoners.
6. Providing medical assistance and facilities to the prisoners
7. The constitution of a board of visitors where eminent members of the society can also take initiative in prison reforms

#### **Suggestions**

While working autonomously, better rapport between police and prosecutors could certainly improve the condition<sup>2</sup>.

---

<sup>2</sup>R. K. Raghavan, *Reforming criminal justice systems*, 20 Frontline, 18-31 (Jan. 2003).

Present Adversarial System is not only insensitive to the victims' plight and rights. As suggested by the Criminal Justice Commission, some of the good features of the Inquisitorial System can be adopted to strengthen the present Adversarial System of common law to increase the rate of conviction.

The prison system in India needs a comprehensive national legislation. A Union agency may be created to supervise and provide administrative funding to the prison organization in the states. Participative management may be tried in prison administration and a massive research effort should be launched to identify local problems and experiment with solutions of viable nature.

### **The Conclusion**

Improving law and order requires cooperation across all rule-of-law institutions. Despite all these considerations, any move to make substantive changes in the way criminal justice is administered will have to be done with great circumspection, lest vital constitutional safeguards against abuse of police and judicial powers are violated in the process. In the name of revamping the law, investigation and trial should not be altered in a way that undermines the principles on which the justice system was founded.