

Criminal Justice System and Legal Reforms in India

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Abstract

No asset in our cultural heritage has been more precious than the sense of justice and the methods by which we have traditionally sought to fulfill it. We have accepted the rudimentary necessity of social control for the fair testing of man's legal guilt of crime.

India saw a '*marginal increase*' in the crime rate in the first forty-five days of 2018 as compared to the corresponding period of the previous year. Thus, the need of the hour is to reform the criminal justice system to protect the innocent and prevent the crime. The three main parts of the criminal justice system are Law enforcement agencies, (usually the Police and investigative agencies); Courts (and accompanying prosecution and defense lawyers); corrections system (Agencies for detaining and supervising offenders, such as prisons and probation agencies).

The goals of the criminal justice system are to protect the citizens of the nation, with a special focus on the weaker section of the society from the uncongenial wrongs deliberately inflicted to cause harm to the vulnerable. Thus, maintaining peace and tranquility in the nation.

However unprofessional investigations, problems with FIRs, real culprits not arrested, preventive arrests, delay in Courts and various other aspects led to the failure of this system. Weak Criminal Justice System is encouraging corrupt practices in our country. Crime reduction ensures stability, security and development. Thus, reformation of criminal justice is necessary to ensure justice to all and for the development of the nation.

The objective of this paper is to analyze the administration of Criminal Justice System and understand the urgent need to review the entire system, with a special emphasis on the field of investigation of a crime by the police.

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Introduction

The Criminal Justice System in India has evolved over a period of 3000 years influenced by the socio-economic and political conditions prevailing during the different phases of history of India. The criminal justice system plays a crucial role in securing justice to the people and maintaining unity and integrity of the nation. The constitution of India has entrusted its citizens with certain rights and duties and it is the responsibility of the system to prevent its violation. Failure of criminal justice system jeopardizes the whole civil society leading it towards a chaotic situation.

In the contemporary era where there is a significant improvement in the standard of living of individuals, especially in the cities, all prosperity and progress seems insignificant if the individuals are not afforded a dignified way of life. The quality of a nation's civilization can be largely measured by the respect of its position of human rights. Criminal Justice Systems are principal sources of grave human rights violations, including extrajudicial executions, torture, arbitrary detention, and discrimination.

India follows the Common Law System, a system of jurisprudence that is based on the doctrine of judicial precedent. It is based on good conscience and equity and justice and is known for its complex nature. It follows the Adversarial System of justice where the jury or the judge do not go on fact-finding, but relies on the arguments of both the sides. The Justice Delivery System involves almost all the organs of the government to the machinery. Criminal Justice System plays an important role in maintaining people's faith in the whole of Justice Delivery System.

The Criminal Justice System is the backbone to the law and order of the society. The most important components of criminal justice system are Law enforcement, courts and corrections system. Law enforcement organizations like the police provide an organized and well-trained force with the goal of protecting everyone equally under the law. The criminal court system operates under a mindset of "innocent until proven guilty". The judge, jury or executioner finds out the facts of the case to determine whether the accused is indeed guilty and convict those who are guilty of the crime. Those accused of crimes are monitored, punished and provided with help to not re offend with the goal of creating a more productive and less dangerous society by the correction system.

People play an important role in the performance of the Criminal Justice System. Specific parts of the system would be unable to operate if the public doesn't fulfill its functions. It is essential for the public to report a crime, provide evidence to the police, and attend court as a

jury member or as witnesses. They can help the police by informing them about the designs and occurrences of the crime and their cooperation during investigation and searches and seizure operations is of immense value. People's assistance is also required in correctional staff for reformation and rehabilitation of the criminals.

The major criminal laws governed by the constitution of India are Indian Penal code,1860; Code of Criminal Procedure, 1973; Indian evidence act,1872.The purpose of the acts is to define the act and intent required for each offense, prohibit the substantial harm to individuals as well as the society and to warn people of the conduct that is subject to criminal punishment to satisfy the demands for revenge, rehabilitation and deterrence.

An effective Criminal Justice System will result in reduction of crime rate ensuring peace and harmony in the country and better standard of living.

Research Methodology

The research starts with studying the literature relative to criminal justice system and law enforcement agencies to understand the concept in-depth, to provide a fair view regarding the problems associated with the topic. Law enforcement agencies play a crucial role in maintaining law and order in the country. Reduction in crime rate will result in the development of the country. The research has been done based on reports by various commissions, statistical data and case laws pertaining to police and investigations to understand the scenario prevailing in the society. Various socio-legal aspects have been taken into consideration while providing recommendations to the pertaining problems, which might be beneficial for the society.

Objective

Crime rate measures the quality of peace and governance in a country. Because of the failure of the Criminal Justice System, the crime rate in our country is always increasing. There is an urgent need of overhaul in the entire system. The objective of this paper is to analyze the administration of law enforcement agencies to detect the flaws in it. This research aims to provide necessary solutions for the flaws detected, by finding out ways and means to gear up the police system and investigations, for its better administration.

Law Enforcement Agency

A civilized society consists of a legal system constituting legal norms and principles to provide security to its citizens. Legal rights and duties are imposed upon the citizens to protect and promote a secured living to all its subjects. It became the duty of the government to protect the rights of the people and maintain law and order in the society. This led to the

implementation of Law enforcement agencies, with a duty to ensure crime prevention and maintain tranquility between the conflicting parties.

Law Enforcement agencies are of various forms, police and investigating agencies being two of them. They are responsible for enforcing statutes, laws and regulations designed to protect life and property. They spend much of their time collecting evidence, apprehending fugitives and criminals, interviewing witnesses and suspects, and providing testimony in court. According to Section 22 of the Police Act, 1861, police officers are expected to exercise their authority whenever necessary, whether on or off duty.

During the evolution of Criminal Justice System in the period of Modern India, the organization of Police turned out to be clumsy. Finally, Indian Police Act, 1861 was constituted as recommended by the commission appointed in 1860. This act is still in force with no significant changes.

India was made a federal system of the government, i.e. Union of States. Part XI of the India Constitution provides for a division of powers between the Union and the States that divides all the subjects into three lists: Union list, State list and Concurrent list. The law enforcement agencies at the Union level are a part of the Union Ministry of the Home Affairs that supports the states in their duties. The bulk of the policing lies with the respective states and territories of India. However, the Union can always recommend the state to make reforms when required.

The subject of police has been placed in 7th schedule, state list (2) of the constitution. State police forces are primarily in charge of the local issues while the central police forces are specialized in dealing with more intense internal security challenges. The Centre is responsible for policing in the seven union territories and also extends intelligence and financial support to the state police forces.

Crime investigation is the core function of the Central and State Police forces. After the registration of FIR, Investigation can be done either by police himself or on the orders of the magistrate.² The duty of the Investigative officer is to find the offender associated with the crime and bring them to justice. Investigative process includes maintaining case diaries in a chronological order mentioning significant fact of the case, spot visit to conduct investigation of the case, collection of evidence: physical, documentary and circumstantial, Oral Testimonies or Examination of Witnesses and their role in investigation, search and seizure

²State of West Bengal v. Manindra Nath Das, AIR 1960 Cal 183; 1960 Cr LJ 338; Jamuna Chaudary v. State of Bihar, AIR 1974 SC 1822, 1826; 1974 Cr LJ 896; Khalaksingh v. State of M.P., 1992 Cr LJ 1150 (MP); Saraj As/am v. State of UP, 1992 Cr LJ 2244 (A11). See Ratanlal and Dhirajlal's The Code of Criminal Procedure, *ibid*, p. 224

and test identification parade.

Analysis of the Problems

Indian Police Act, 1861

The legislations made by states for policing is based on the principles of the Indian Police Act, 1861 that is the base for all the problems. The Act is outdated and does not meet the present requirements of the society of curbing, controlling and detecting crime and criminal activities.

The police system is completely politicized. The superintendence of police is under the state government, politicians. The Chief Minister appoints the Police Chief and the Head of the Police is appointed in a very secretive way. According to Second Administrative Reforms Commission, the Politicians use them for self-interest and political reasons, leaving the public in jeopardy. They have no functional responsibility and their internal management system is not fair and transparent. Hence, there is an urgent need to reform the act for the safety and betterment of the not only the society, but the police as well.

Non-registration of FIR

The foremost step in a Criminal Justice System is reporting a crime. FIR is filed in the case of a cognizable offence while a police complaint can be filed for both cognizable and non-cognizable offences. Sec.154 of CrPC lays down the definition of FIR.

In the case of *T.T.Antony vs. State of Kerala & Ors*,³

“Information given under sub-section (1) of Section 154 of CrPC. is commonly known as the First Information Report (FIR), though this term is not used in the Code.... And as its nick name suggests, it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station”

It is compulsory for the Police to lodge an FIR without any preliminary inquiry, unless the information does not disclose to be a cognizable offence and indicates the necessity of inquiry. In the case of a cognizable offence, the Police can investigate the case only after lodging the complaint. In the present scenario, there is an increase in the percentage of non-registration of FIR by the Police, which happens due to various reasons, mainly lack of adequate man power and heavy workload in police stations and inadequacy of resources for police working.

³T.T.Antony vs. State of Kerala &Ors, (2001) 6 SCC 181.

1. Lack of Adequate man power and heavy workload in police stations

The standard recommendation made by the United Nations is 222 police per lakh persons. In 2016, the strength of the State police forces was 137 police as compared to the sanctioned police strength of 181 police per lakh population.

There were about 5.5 lakh vacancies, i.e., 24%. Many police stations also lack basic facilities like Vehicles, phones and wireless.

Due to this, the personnel have to work for longer hours to meet the unending demands of the society. This leads to heavy workload, which prompts them to avoid more work by not registering the crimes. This also leads to bad behavior of the police towards the complainant due to which people lose faith in the police system.

2. Inadequacy of resources for police working:

State spends only 3% of the total budget on policing. They have been ranked low in Government funding priority. This is not sufficient to cover the salaries, weaponry, infrastructure, transport or the other aspects. This leads to poor condition of the police and impacts crime registration and investigation process.

In the case of *Aleque Padamsee v. Union of India*,⁴ “Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score.”

Misuse of Power of Arrest

The power of the police to arrest is wrongly and illegally exercised. It is one of the chief sources of corruption, as mentioned by the National Police Commission in its third report. It suggests that 60% of the expenses were unjustified and constituted to 43.2% of the jail expenditure. There is no in-house mechanism to govern the police officers.

In the case of *Bhim Singh v. State of Jammu and Kashmir*,⁵ the police unlawfully arrested Bhim Singh. He was a member of the legislative Assembly of Jammu and Kashmir. The arrest was to prevent him from attending the assembly session. When his wife filed a petition in the Supreme Court, the court observed it to be a case of illegal detention and ordered the state to pay him compensation of 50,000Rs/-.

Crime Investigation

The case diary in crime investigating has to be submitted by the investigative officers to the circle inspector everyday. But most of the investigative officers maintain the case diary

⁴Writ Petition (crl.)11-15 of 2003.

⁵AIR 1986 SC 494.

haphazardly and fail to submit the dairy. Due to existing conditions and lack of availability of resources, the police officers fail to cross the barrier of physical conditions for spot-investigation. Also, collection of evidence becomes a challenge due to lack of equipment. A budget constraint inevitably harms the effectiveness of police. It leads to lack of skills due to insufficient training, low motivation of the police due to low pay, and in certain cases, it leads to corruption. Due to lack of police staff, the duty of the police officers is overburdened with maintaining order and investigation.

Precedents and Judicial Decisions

In the case of *Lalita Kumari v. Government of UP & Ors*,⁶ the court issued the following directions,

1. According to Section 154 of the code, it is mandatory to register an FIR in case of a cognizable offence with no preliminary inquiry.
2. Preliminary inquiry may be conducted when the information does not disclose to be a cognizable offence.
3. A copy of entry of closure must be given to the complainant if the complaint is closed after the preliminary inquiry, within a week, disclosing the reasons for doing the same.
4. If a cognizable offence is not registered, action can be taken against such an officer.
5. Preliminary enquiry must not exceed 7 days. The cause and the fact of such delay must be mentioned in the General Diary Entry.
6. All the cognizable offences must be mandatorily reflected in the diary.

In the case of *Prakash Singh & Ors vs. Union of India & Ors*,⁷ the apex issued the following guidelines for the reformation of police:

1. Constitution of state security commission
2. Merit-based transparent appointment of DGP with a minimum tenure of 2 years.
3. Minimum tenure of two years for other police officers on operational duties.
4. Separation of investigation and functions of police
5. Setting up of Police Establishment Board.
6. Setting up of Police Complaints Authority.
7. Setting up of National Security Commission.

⁶(2008) 7 SCC 164.

⁷2006 (8) SCC 1.

The process of investigation as laid down by the Supreme Court in the case of *H.N.Risbud vs. State of Delhi*,⁸

1. Spot-visit
2. Ascertain the facts of the case
3. Discover the suspected offender and arrest him
4. Collection of evidence
5. Examination of witnesses and their role in investigation
6. Search and seizure operations
7. Take necessary steps to file a charge sheet if there is a case against the accused.

Impact and Implications

1. Formation of State Security Commission in sixteen states. However, only in few states is the commission actually functioning. In most cases, it has been reduced to advisory bodies, thus removing the mandate envisaged for them.
2. Police Establishment Board was formed with an objective to decide service matters of the officers of and below the rank of the Deputy Superintendent of Police. However, government retains grip on transfer by setting aside the recommendations made by board.
3. Police Complaint's Authority has been formed in various states in response to the complaints, to make them accountable and for the creation of a dedicated police force. But the acts governing the authority are flawed and not independent of governments, providing them ample scope to interfere with their functioning.
4. Section 23 of the Kerala Police Act, 2011⁹ separates Investigation from law and order. However, the said provision remains in the statute book and no significant changes has been witnessed.

Possible Outcomes and Solutions

1. Steps must be taken to solve the problem of illegitimate political interference in the police system. This will ensure effective policing, one free from corruption.
2. The directive of the Supreme Court to bind the recommendations of State Security Commission on the state government must be strictly implemented.

⁸N. Rishud v. State of Delhi, AIR 1955 SC 196: 1955 Cr LJ 526. See R. Deb, Police and Law Enforcement, S.C. Sarkar & Sons Pvt. Ltd., Calcutta, 1982, p. 62; Syed M. Afzal Qadri, Police and Law: A Socio-Legal Analysis, Gulshan Publishers, Srinagar, 1989, pp. 54-55, 59, 128-29; David H. Bayley, op. cit., p. 151.

3. Second Administrative Reforms Commission recommended that the power of the political executive over superintendence of police must be limited to the extent of ensuring that the police are working in accordance with the law and promoting professional efficiency.
4. The parameter of the government's role in police administration must be well defined in the police legislation of 1861, giving a clear delineation of roles, responsibilities and relationship between the police and the executive. This will ensure minimization of unfettered political interference in policing matters that influences its functioning.
5. Rationalizing of working hours for the police force must be done, including providing a day off in a week or compensatory benefits.
6. There is an urgent requirement to fill the vacant police strength and improve the service conditions of the police force. One way to achieve this is by redistributing or outsourcing some of the functions of the police to private agencies or other government departments who may act as force multipliers. Second Administrative Reforms Commission recommended this, as certain functions of police like traffic management, disaster rescue and relief, and issuing of court summons do not require special knowledge or skills. The constitution of Private agencies can be done under a statute of Government of India.
7. Overhaul of infrastructure and modernization of the facilities like control room, providing adequate vehicles and equipment, and providing housing facilities and incentives to the constables can help improve the conditions of the police. This will give them motivation to work effectively.
8. The annual expenditure spent on 13 lakh personnel across the nation is only Rs.4, 29,000 crores. India should spend more since there is a close link between security and national development.
9. Provisions need to be made to safeguard the rights of the innocent from wrongful arrests that violate Article 21 and Article 22(1) of the Indian Constitution.
10. Sentry Relief Book must be maintained by all the police officers recording details of every arrest, with the facts and the reasons for the same.
11. No person should be arrested in case of a bailable or non-cognizable offence, i.e., change in the expression "bailable offence" is necessary.
12. Proper legal provisions should be made incorporating the guidelines given by the courts and making changes necessary to prevent misuse of power of arrest.

Solutions to reform Crime investigation

1. Separation of investigative wing and the police wing must be performed diligently, as directed in the case of Prakash Singh.
2. Government should provide more funds for investigation to provide better training, technological facilities and improve conditions of the investigative officers.
3. Proper counseling should be provided to witnesses to ensure they stand up for the victim. All the investigative officers must carry proper investigative kit.