

# **Futility in Criminal Justice System and Prison Reforms**

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## **Abstract**

**"Justice delayed is justice denied "-William Ewart Gladstone**

*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 fulfil 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, the failure of the system is that it creates a threat of a punishment of wrong doing which serves as a deterrent to criminals, believing that only rigorous isolation and custodial measures would reform believing that only rigorous isolation and custodial measures would reform the offenders. Thus, reformation of criminal justice is necessary to ensure justice to all. 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 under trial prisoners.*

Keywords- Criminal justice, prisoners, custodial measures

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## **Introduction**

India is the world's largest democracy with a population of 1.3 billion people<sup>2</sup>. It is a country of varied cultures, languages, castes, and creed. For such a heterogeneous society to function in the best possible way, a certain level of law and order is a mandate. But unfortunately, over a period of time its shine and the hope of justice is diminishing because of the defective criminal justice system. Therefore, we are in a critical era, there is a need to rethink and reformulate the criminal justice system to address the present-day challenges, as there is a strong spur in demand of justice. There are some lacunae which necessitate the development of various strategies and techniques that should efficiently and effectively be incorporated into the policy framework. Hence, to understand the criminal justice system it is worth examining the objectives of the justice system.

## **Object of the 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 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. Criminal law consists of both substantive and procedural law. Substantive criminal law defines the offences and prescribes punishment whereas procedural law administers the substantive law. 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, to render public justice, the trial is concluded expeditiously before the memory of the accused fades out. The criminal trial needs to do justice not only to the accused but also the victim and the society. The main objective is to maintain law and order. A judge does not preside over a criminal trial merely to see that no innocent man is punished, but also to see that the guilty man does not escape. Both are the public duty which the judge has to perform.<sup>3</sup> Therefore the criminal justice system needs to maintain the public faith in the admiration of justice by ensuring the concept of human rights.

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<sup>2</sup>India Population (2018-09-24), Retrieved from <http://worldpopulationreview.com/countries/india/>.

<sup>3</sup> Justice PalokBasu, Law relating to protection of Human Rights under the Indian Constitution and allied laws, Allahabad: Modern Law publication, 2011.

## **Need to reform in criminal justice system**

In today's era, we live in a dynamic society where change is constant but yet the change in the criminal justice system need to improve. Firstly, the state has constituted the CJS to protect the rights of the innocent and punish the guilty but the system, based on century-old outdated laws, also put pressure on the judiciary. Secondly, the system takes years to bring justice and has ceased to deter criminals. There is a lack of coaction among the judiciary, the prosecution and the police, a large number of guilty go unpunished. On the contrary, many innocent people remain as under trial prisoners as well. As per NCRB data, 67.2% of our total prison population comprises of under trials prisoners.<sup>4</sup> Thirdly, Crime has increased rapidly and the nature of crimes are becoming more and more complex due to technological innovations. It led to delay in or haphazard investigation of crimes which greatly contribute to the delay in dispensing prompt justice. Lastly, the rich and the powerful hardly get convicted, even in cases of serious crimes. Also, the growing connection between crime and politics has added a new dimension to the crime scenario. The judicial procedures have become complicated and expensive. Hence, due to this the common man has started to lose his confidence in the justice system and its time to bring reformation in the lack of accountability, ineffective enforcement of the law, and delay in disposal of the cases, lack of trained police, an overburdened court system and Poor prison conditions.<sup>5</sup>

## **Delay in disposal of cases**

Justice is defined as a set of ideas, values and social practices to ensure that all persons and groups enjoy economic security, can participate effectively in democratic decision-making, exercise mutual respect and caring for one another and live their lives in ways that protect and sustain the natural environment for future generations. The delay in judgement and delay in pendency are two separate problems but are related to each other. Indian judicial system has always been praised for its remarkable and independent judgements but with a backlog of almost 3.3 crore cases. While 2.84 crore cases are pending in the subordinate courts, the backlog clogging the High Courts and Supreme Court (SC) is 43 lakh and 57,987 cases,

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<sup>4</sup>Prison statistics India 2015, National Crime Records Bureau, Ministry of Home Affairs, Government of India, <http://ncrb.gov.in/statpublications/psi/Prison2015/Full/PSI-2015-%2018-11-2016.pdf>.

<sup>5</sup>Anita Yadav, (2013), "Criminal Justice Reform in India: Need of the Hour" published in Criminal Law Journal, Vol. 119, Part 1358, February 2013, page no. 29-32, Criminal Law Journal, 119. 29-32.

respectively<sup>6</sup>. The major reasons for the delay is, firstly the inadequate number of judges and also courts in the country. Our Hon'ble supreme court has 31 judges and there are about 56,320 cases<sup>7</sup> pending. If number of judges as well as the courts do not increase, then the number of pending cases will drastically increase. Also, the desired level of competence, efficiency and effectiveness in judges have fallen there are number of law colleges where students don't attend classes teachers need not deliver lectures and syllabus need not be followed. The legal education is a very important aspect as it provides a judge with the legal knowledge to give the apt decision according to the case. Secondly, the endless amendment of laws is another reason behind delay. According to Late Mr. Nani A. Palkhivala, the tragedy of India is the tragedy of wastage of national time, energy and manpower for grappling with torrential countless amendments.<sup>8</sup> Solutions for the delay in justice are-

- E-filing in district court and digital transcripts
- Videoconferencing for oral arguments
- Reduction in granting extensions
- Appointment of qualified judges and building more courts
- Creating awareness about arbitration, mediation and cancellation

The landmark judgement that that has given the LGBT community a recognition concerning the validity of Section 377 of the Indian Penal Code, Naz Foundation case<sup>9</sup> the judgement was delivered 624 days later, or more than 20 months after being reserved. The horrific rape case that shook India, the Nirbhaya rape case<sup>10</sup>, the verdict was granted after 4 years.

### **Prison reforms**

*“Imprisonment should not deprive prisoners of the basic rights which the ordinary citizens enjoy”.*

Prior to independence, India citizens were deprived of their basic fundamental rights. As a result, it wasn't feasible to ponder about the prisoners' rights. But today, India is an independent domain having adopted a constitution which guarantees its people only a few

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<sup>6</sup>National Judicial Data Grid (District and Taluka Courts of India), retrieved from [https://njdg.ecourts.gov.in/njdgnew/?p=main/pend\\_dashboard](https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard).

<sup>7</sup>Supreme Court of India, Monthly Pending Cases - Types of matters pending in Supreme Court of India retrieved from <https://www.sci.gov.in/statistics>.

<sup>8</sup>Pradip Kumar Das, *Justice Delayed is Justice Denied*, <http://www.legalserviceindia.com/article/l1317-Justice-Delayed-is-Justice-Denied.html>.

<sup>9</sup>Navtej Singh Johar & Ors. v. Union of India, WRIT PETITION (CRIMINAL) NO. 76 OF 2016, [https://www.sci.gov.in/supremecourt/2016/14961/14961\\_2016\\_Judgement\\_06-Sep-2018.pdf](https://www.sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf).

<sup>10</sup>Mukesh & Anr. v. State for NCT of Delhi & Ors., 2017 (3) S.C.C. 719 retrieved from <https://www.thehindu.com/news/national/article18390998.ece/binary/SupremeCourtverdict>.

fundamental rights. Consecutively, the prisoners' rights began to grab everyone's attention, including the jurists and the judges of the Indian courts.

The concept of prison discipline has undergone a drastic change in the modern administration of criminal justice system. The trend shows a shift from the deterrent aspect to reformative and rehabilitative one. However, this is only a virtual shift.

A prisoner is not deemed to be a person whose rights are subjected to the whims of the prison administration. No state shall exist by surpassing the natural rights of individuals. Human dignity is not to be bartered away for mere apprehension entertained by jail officials.

Since time immemorial, the agony suffered by the prisoners has become a normal and legitimate practice all over the country as it went unopposed and limitless. In the name of investigating crimes, extracting confessions and punishing individuals by the law enforcement agencies, torture is perpetrated not only upon the accused but also on bona fide petitioners, complainants or informants. Torture is inflicted on women in the form of custody rape, molestation and the other forms of sexual torture.

In the case of **Joginder Kumar v. State of UP and Ors.**<sup>11</sup>, the Hon'ble Supreme Court of India said that the "the quality of the nation's civilization can be largely measured by the methods it uses into the enforcement of criminal law. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. The court has been receiving complaints about violation of human rights because of indiscriminate arrests. A realistic approach should be made in this direction. The law of arrest is one of the balancing individual rights, liberties and privileges, on one hand and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first- the criminal or society, the law violator or the law abider".

### **Remedies to restore the inmates' rights**

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<sup>11</sup>Joginder Kumar v. State of UP and Ors, 1994 A.I.R. 1349. (India)

The rights of the inmates can be restored by adopting some measures. Firstly, treatment towards the women prisoners should be more generous and they should be allowed to meet their children frequently. This is because mothers represent a child's bond to the world and the understanding of it. As a child grows and matures, the mother plays an important role in her child's development, character and attitude.

Secondly, the prisoners belonging to agricultural sector, during harvesting season, should be afforded an opportunity to go to their fields by taking a temporary ticket for leave so that they can look after their produce.

Thirdly, provisions must be made by the prison legislation to provide a remedy, maybe in the form of compensation, to prisoner who are wrongfully detained or suffer injuries to callous or negligent acts of the prison recruits. It is gratifying to note that in recent decades the Supreme Court has shown deep concern for prisoners right to justice and fair treatment. The prison officers should be required to initiate measures so that prisoners' basic right are not violated and they are not subjected to harassment and inhuman conditions of living.

The core international treaty on the protection of the rights of prisoners is the **International Covenant on Civil and Political Rights (ICCPR)**<sup>12</sup>. India ratified the Covenant in 1979 and is bound to incorporate its provisions into domestic law and state practice. The **International Covenant on Economic, Social and Cultural Rights (ICESR)**<sup>13</sup> states that prisoners have a right to the highest attainable standard of physical and mental health. Apart from civil and political rights, the so called second generation economic and social human rights as set down in the ICESR also apply to the prisoners.

On the issue of prison offences and punishment, the standard minimum rules are very clear. The rules state that no prisoner shall be punished unless he or she has been informed of the offences alleged against him/her and given a proper opportunity of presenting his/her defence. It recommends that corporal punishment, by placing in a dark cell and all cruel, in-

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<sup>12</sup> The United Nations General Assembly (1966), International Covenant on Civil and Political Rights. Treaty series, 999, 171.

<sup>13</sup> The United Nations General Assembly (1966), International Covenant on Economic, Social, and Cultural Rights. Treaty Series, 999, 171.

human or degrading punishments, shall be completely prohibited as a mode of punishment and disciplinary action in the jails.

Last but not the least, there is dire need to bring about a transformation in the thinking process of the public towards the prison institutions and their management. This can be made possible through an intensive publicity programmes using the media of press, platform and propaganda will.

### **Conclusion and suggestions**

Suggestions to help in the reformation of the criminal justice system-

1. There is need of periodical inspection of Courts.
2. The cases must be assigned according to the specialization of person. It also recommended by the Malimath Committee (24th November 2000) that assigning cases without considering specialization result in delay in deciding the cases.
3. Human rights should be included in cases<sup>14</sup>
4. The delay in justice, qualified judges should be appointed

Its 2018, India is at a point where reformation in the criminal justice system is the “need of the hour”.

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<sup>14</sup>Supranote 5.