

## **Lapse in the Indian Criminal Justice System**

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*Criminal law has been in existence since time immemorial. The objective of criminal law was to ensure justice to the victim by punishing the wrongdoer and also to have a deterrent effect on the society. In order to realise the objective these laws should be implemented effectively. Unfortunately, Indian criminal justice system has been marred by various problems like judicial vacancies, case overloads, prolonged hearings, large number of under trial prisoners, inadequate facilities etc. Such problems lead to delay in justice, as it is commonly said justice delayed is justice denied. The criminal justice system in India has become a slow functioning high maintenance body that draws the ire of many people. The corruption and lack of work ethics in the system has made the system hollow from within and that is why there is a need for radical changes in the system that will help to improve these conditions and remove any injustice done to the society. The criminal justice system is particularly flawed due to the improper implementation of procedure at all levels of the system. This paper discusses the inefficiencies in the criminal justice system in India and its consequences. It also suggests ways to enhance the system so that sustainability of the legal mechanisms is upheld. The paper aims to be a tool for reforms which will promote the transparency and accountability in the system.*

Keywords: Criminal law, Delay in justice, Injustice, Legal mechanisms, Sustainability.

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## **Introduction**

The criminal law in India comprises of multiple sources like IPC, CrPC, The Indian Evidence Act, Protection of Civil Rights Act together with other local and special laws. The nature of the system is complicated as many legislations and common law principles come into picture. In such a scenario the judges are free to interpret the laws and may give certain legal principles a higher pedestal when a particular legislative piece fails to protect the wronged person. This method is used by the judges when law is silent on the particular matter. Justice is served when laws are implemented effectively. The entire system rests on four pillars. They are - the courts, the prosecution, the police and the incarceration system.

The police are the primary players in the investigation aspect of the criminal proceedings. They help the prosecution gather sufficient evidence to make their case.

The prosecution is the second pillar and all the evidences collected by the police is scrutinised by the prosecution lawyer. Then the prosecutor arranges and presents the evidence to the courts in such a manner that the guilt of the accused can be proved.

The courts then examine the evidence presented by the prosecutor to determine whether or not the accused is guilty of the crime. If the court finds the accused guilty, then the accused is sent to jail to be reformed.

The incarceration system of the country is based on reformist ideology that helps the criminal become a law-abiding citizen of the country. The penalty is harsher in case of heinous crimes such as the death penalty which may be awarded for the offence of murder. It is a very well laid out system that clearly defines the role of each of its wings.

The system however has multiple drawbacks that have reduced the efficiency of the system in the day to day working of the criminal administration in the country. The problems such as judicial vacancies, case overloads, prolonged hearings, large number of under trial prisoners, inadequate facilities etc. have marred the system for a long time which calls for a change in the system to tackle such problems. The criminal justice process in the country is painstakingly slow and it takes years for the first hearing of the case to happen and then establishing the further proceedings. In a particular instance, an under trial prisoner has died in the time taken to decide the case. This paper analyses these problems within the system and proposes few suggestions to improve the system.

## **Research methodology**

The methodology adopted for this paper is of doctrinal research. Data has been collected from various sources like judicial decisions, law commission reports, articles, publications, books etc.

## **Research objectives**

The main objective of this paper is to analyse the criminal justice system in India and identify the various problems existing in the current system. It also provides suggestions to tackle these problems and make the system more efficient.

## **The system and its drawbacks**

### *1. The Delay in deciding cases*

This is a major drawback in the system. The snail-paced working of the system has translated into huge pendency of cases in courts for years together. India has one of the highest numbers of pendency in cases in the world today. The proportion of judge to population is lowest in India and in such a scenario speedy disposal of cases should be the agenda of the judiciary. However, the Indian courts are making things worse by delaying it further. Unnecessary delay in cases has made people lose faith in the judicial system. This also raises question against the integrity of the Indian judiciary. These delays in the system are caused due the inefficiency in the working of the police and the prosecution. The prosecution lawyers keep asking time to collect evidence and prepare arguments whereas the police also have long inordinate process of collecting evidence which causes the trial to get delayed for very long period of time. This delay in time is what becomes a major issue for the inefficiency of the judiciary.

The classic example of this is the *Uphaar cinema case*<sup>3</sup> where it took nearly two decades for the courts to decide the punishment for an accused in a tragedy in which 59 people had lost their lives. The courts awarded only one-year jail term to only one of the accused which is cited by many to be the biggest example of justice denied in the Indian system.

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<sup>3</sup> Assn. Of Victims of Uphaar Tragedy v. Union of India, II (2003) A.C.C. 114. (India)

2. The plight of under trial prisoners

A major problem existing today is the problem of the under trial prisoners. These people are confined in jails for years together awaiting trial. In many cases they end up serving more years than the formal sentence if convicted. This is a violation of the right to life and personal liberties of these prisoners. The under trial prisoners comprise primarily of the underprivileged class of the society since these people generally cannot afford to pay the bail amount through sureties or personal bonds.

The country also lacks adequate mechanisms for providing speedy trial to such under trial prisoners. Since the under trial prisoners spend a long time in jails, they are adversely affected and often tend to take up a life of crime upon release. According to the national crime records bureau 67.2% of the total prisoners in India in 2015 were under trials. The highest number of under trial prisoners were in Uttar Pradesh, Maharashtra and Bihar.<sup>4</sup> In the case of *Hussainara Khatoon & Ors vs Home Secretary, State of Bihar*<sup>5</sup> The supreme court recognised the plight of the under trial prisoners. The right of life and personal liberty included a right to free legal representation the courts also recognised the right to speedy trial to be a constitutional obligation on the courts.

3. Judicial vacancies and case overload

In India the judge to population ratio is the lowest. The significant rise in population and the increase in vacancies of the judges has caused a lacuna in the criminal justice system and due to this there is a severe overload of cases on the present judges. Today in the High courts a judge has to hear anywhere between a fifty to hundred cases per day causing a lot of stress on the judges.

As on the 1<sup>st</sup> of October 2018 the number of vacant seats in the high courts of the country was 434<sup>6</sup>. This clearly shows how bad the situation is that we need four hundred judges just in our high courts for the courts to work at full capacity. The lack of judges has an adverse effect on the time taken by the courts to resolve the cases. The judicial process in

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<sup>4</sup>Amnesty International, *Justice Under Trial: A Study of Pre-Trial Detention in India*, 2017, <https://amnesty.org.in/justice-trial-study-pre-trial-detention-india>

<sup>5</sup>*Hussainara Khatoon & Ors v. Home Secretary, State of Bihar*, 1979 A.I.R. 1369. (India)

<sup>6</sup>Department of Law and Justice, Government of India, Vacancy Position, available at <http://doj.gov.in/appointment-of-judges/vacancy-positions>.

the country today seems to be so slow because we do not have enough judges to hear the matters. The situation is even worse in the subordinate courts of the country.

#### 4. Inadequate facilities

In our country there is a lack of all necessary facilities that help to speed up the process of a criminal trial. Primary among these facilities are the forensic laboratories. Although the government has put funds together to improve the condition of forensic science in this country, we still are years behind the developed countries in our investigative methods due to the lack of such forensic facilities. The police are also adversely affected due to the lack of facilities. The lack of advance technology leads the police to use primitive method of evidence collection which is the main cause of the delay in cases.

There is a deficiency of prosecutors in most states that increases the workload on the existing prosecutors. Hence they are unable to focus thoroughly on one particular case. The lack of good infrastructure and advanced technology in criminal system has become a bane for the system. The fact that manual records have to be made and submitted before the courts is also responsible for a sloth like pace creeping into the system.

### **Suggestions to improve the system**

It is the duty of the state to protect the victim and punish the criminal. The system today has become flawed with many problems. An example of this is when rich escape punishment and the poor are denied justice.<sup>7</sup> The courts have become snail paced and the system is completely inefficient to solve this problem of the justice Malimath committee<sup>8</sup> had formulated a report in 2003 which discusses some of the solutions to these problems. The solutions and their probable method of implementation are discussed below

#### 1 Investigation

As clearly recommended in the committee report there is a need to separate the investigation wing of the police department from the law and order wing. This will help reduce the workload on the police department and make the investigations go faster. The committee also suggests that there should be a state security commission

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<sup>7</sup>Manu Sharma v. State (NCT of Delhi), (2010) 6 S.C.C. 1. (India)

<sup>8</sup>Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs, 2003.

and a national level security commission to try and enforce the efficiency of the police department.

Today there is an urgent need to implement these recommendations made by the committee so that there is some efficiency brought back to the system. There is also a need to improve the forensic facilities to help in the investigation.

The solution to this is that the government needs to set up state level forensic commission that ensures that there is at least one proper forensic facility available to every district that helps in reducing the investigative burden on the police department. The central government also needs to set up a national forensic commission which will have the specific objective of obtaining the latest forensic technology and other investigative techniques from the developed nations and ensure that this information reaches all parts of the country. The national forensic commission should also be in charge of formulating a budget to ensure that the forensic techniques can be up to date with the modern world.

## *2 Recruiting more judges*

The vacancies in the courts are a major cause of concern because they cause a lot of pressure to build up on the existing judges which causes the system to work ineffectively. Promoting the virtues of judgeship among the law students is one way to get more candidates for the vacant posts in the system.

The policies and qualifications required to be a judge for the higher courts is very stringent and this causes many judges to be stranded in the lower courts and even meritorious judges who deserve to be promoted to the higher courts cannot do so as they do not fit the stringent policy.

The NJSE should be recruiting more judges to the lower courts and fill more posts so that the virtuous judges stranded in lower courts can be promoted to higher courts. The government should also amend the time required to become a high court judge by a reasonable period so that judges can be promoted faster.

## *3 Speedy Trial*

The courts need to ensure that there are sufficient methods of alternate dispute resolution to the citizens so that the workload on the courts is reduced. The ADR mechanisms have proven to be very helpful in the pursuance of justice. The other methods such as the Lok Adalats have also been very popular methods to get speedier justice. The clear aim of the government should be to try and increase the number of avenues available for speedy trial. Specially cases of petty crimes where the punishments awarded are very low the speedier courts could take care of them and the other courts could focus on the more heinous crimes. The speedy trial is a fundamental right given to the people by the courts as read under Article 21 as observed in the case of Hussainara Khatoon.<sup>9</sup>

#### 4 *Prosecutors*

Reaffirming the Malimath Committee Report, there is a need for appointing better prosecutors and it is suggested as one of the solutions to improve the efficiency of the courts by increasing the number of prosecutors.

The main point is to appoint a director of prosecution for each state and assistant director under him for each district. The job of the director should be to ensure that all the prosecutors under him are well trained and ensure the efficient working of the system. The job of the assistant district director should be to do the same for all their respective districts.

### **Conclusion**

In India, the crime rate is increasing with each passing day. This indicates the failure on part of our system. Speedy disposal of cases should be the goal of the judiciary in order to ensure justice is done to the victim. The problem is not with the laws but with the misuse of it. Courts should play an active role in ensuring that investigation processes are not delayed unnecessarily. The need of the hour is to implement the above suggestions to bring about a reformation in the system. This is the only way to restore faith of the society in the Judicial system.

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<sup>9</sup>Supranote 7.

