



SPEEDING UP OF CRIMINAL JUSTICE SYSTEM IN INDIA*

Abstract

Justice is taken to mean 'fairness', 'rightness' or simply as that which is 'morally correct'. But, along with it, justice is about distribution. Different principles of justice may therefore be appropriate in different areas of life. Legal justice is concerned with the way in which law distributes penalties for wrong doing or allocates compensation. Justice in other sense is grant of expeditious and inexpensive relief to the persons who approached to the court with their problems. Also, delay in justice is considered as denial of justice. Even in our constitution i.e. Constitution of India talks about the justice that is speedy and fair trial under article 21(Right to life and personal liberty) and legal aid under article 39-A. As a stable and systematic society needs a speedy criminal justice system which can punish the culprits and deliver the justice to the aggrieved party, it makes it important to study the criminal justice system of the society. In this essay we begin with an introduction to the criminal justice system followed by history and evolution of the criminal justice system in India and then we talk about the present criminal justice system. Then we analyse the contemporary system of criminal justice and correlate it with the provisions envisaged in Indian Constitution. Also, we critically analyse the system and mention some measures that government had taken to boost up the speed of criminal justice. After this we have suggested our views and methods to get over from the barriers that intervenes the speed of criminal justice system. This work will facilitate to those who are interested to understand the criminal justice system of India and also we have tried to give some suggestions to the government and judiciary to increase the efficiency and speed of the criminal justice system. We have relied heavily upon governmental and official reports, research work by scholars, news articles, internet source, writings of individuals and also in some statutes and case laws.

Introduction

'Criminal justice system' refers to the structure, functions, and decision processes of agencies that deal with the crime prevention, investigation, prosecution, punishment and correction¹. Crime and its punishment are the problem which we have been facing from years. The basic question is why do we need a criminal justice system? Since Crime and fear of crime are the massive social problems and to overcome from this problem we need to have an efficient and flawless criminal justice system which could protect the liberty and freedom of every individual and restrict everybody to not interfere with other's rights. Obviously every society wants to stabilize it with the help of law and order, so every society adopted a system called criminal justice system to regulate the law and order of the society, which punishes the criminals for their wrongs and give justice to every individual. The main principle that has been behind the every criminal justice system is "*It is better that ten guilty persons escape than that one innocent suffer*"², justice to all is the concept that has travelled through the ages. In order to follow these principles every criminal justice system has two categories of laws that are substantive laws and procedural laws. Substantive law is the statutory or written law that defines rights and duties, such as crimes and punishments (in the criminal law), civil rights and responsibilities in civil law. It is codified in legislated statutes or can be enacted

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¹DalbirBharti, *The Constitution and Criminal Justice Administration*, chapter 5, 76, (2002).

²WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, 1760.

through the initiative process. While procedural law that establishes the rules of the court and the methods used to ensure the rights of individuals in the court system. In particular, laws that provide how the business of the court is to be conducted. In order to follow every procedure of law it's not easy to dispose the cases which are pending in the courts easily, because country like India follows the rule of law, so criminal justice system within the territory of India has to follow the procedures of law. But it is not so easy to follow the procedures and that result low efficiency and delay in justice, which is equals to denial of justice because an old English maxim is "*Justice delayed is justice denied*"³. So to remove the defects in criminal justice system a separate field of study has emerged.

For the functioning of criminal justice system in India we have many statutes passed by the parliament of India and state legislatures which are in accordance with the provisions of Constitution of India like Indian Penal Code, 1860, Criminal Procedure Code, 1973, Indian Evidence Act, 1872, these are general laws which are applicable to all. The Indian Penal Code, 1860 (IPC) is the main criminal code of India. It is a comprehensive code intended to cover all substantive aspects of criminal law. The Code of Criminal Procedure, 1973 (Cr.P.C.) is the main legislation on procedure for administration of substantive criminal law in India. It provides the machinery for the investigation of crime, apprehension of suspected criminals, collection of evidence, determination of guilt or innocence of the accused person and the determination of punishment of the guilty. Additionally, it also deals with public nuisance, prevention of offences and maintenance of wife, child and parents. The enactment and adoption of the Indian Evidence Act was a judicial measure introduced in India, which changed the entire system of concepts pertaining to admissibility of evidences in the Indian courts of law. Until then, the rules of evidences were based on the traditional legal systems of different social groups and communities of India and were different for different people depending on caste, religious faith and social position. The Indian Evidence Act introduced a standard set of law applicable to all Indians.

As crimes happen in society, so it's not only criminal justice but society also has to play its role, for the proper functioning of the criminal justice system. If we take a simple example, suppose a person suffered some harm by the wrongful act of another person he/she has to lodge a F.I.R but he does not do so because of the subsequent troubles he/she might suffer in future like frequent calls from police authority, court procedure, and so on. These are the reasons why a normal citizen tries to escape from lodging a F.I.R. Also, everybody knows the difficulties in the court procedures, so nobody wants to indulge in it. So in this way people of society are not properly utilising the system of criminal justice. Further, we will see how the criminal justice system in India works and how we can remove the defects of the system.

History and Evolution

Criminal justice system has been changed time to time according to the rulers and circumstances. Object of every system has been same that is to punish the offender for his wrongs, only the techniques and methods have been changed. So this essay would be dealing, how the criminal justice system has been emerged and how different rulers had followed the different systems for the administration of state of affairs.

When there was no society and every individual was completely independent, the victim or the sufferer had himself to punish the wrongdoer by taking revenge or something. After some years the society came into existence and every individual became the part of the society. The society made agreements and made rules regarding what is wrong and what is right for the society and also decided what should be the acceptable behaviour that every member of the society had to follow. They categorize the normal and deviant acts and also they made the code of conduct also

³William E. Gladstone, BrainyQuote.com, XploreInc., 2015, <http://www.brainyquote.com/quotes/quotes/w/williameg101551.html>, accessed October 29, 2015.

called as 'Dharma' which had governed the affairs of the people. When the concept of Dharma emerged it took a proper rules and regulations with it which tells about what an individual should do or what should not, but the main point is that there was no authority to regulate this system of Dharma⁴. Every individual took care for each other and just followed the Dharma. It was like an ideal society where each member of the society respected and protected the rights of his fellow members.

But, after the certain time ideal nature of the society had gone and powerful people started to exploit weaker sections of the society for their own benefits. So, to deal with this situation of chaos and instability, system of king came into existence to protect their rights from others, they gave the authority to the king so that he can protect their property and personal rights. To regulate this system of king, king made certain laws with the help of his council, and made rules for punishment in case of the violation of the laws and this is considered as the origin of criminal justice system⁵.

Constitution of India and Criminal Justice System

Constitutions are intended to preserve practical and substantial rights, not to maintain theories.
—Oliver Wendell Holmes

In any country, Constitution provides basic rules (laws), rights, duties, liberty with reasonable restrictions to the people of the land governed by that constitution while criminal justice system defends them by enforcing laws and by punishing the offenders. "If the Constitution is a chariot then the four components of the criminal justice system, viz. the police, bar, judiciary and correctional services are its horses"⁶. All laws made by the parliament and the legislatures of the states must be in accordance with the provisions of the Constitution, and the laws inconsistent with the provisions of the constitution shall be void⁷. Also, article 245-255 and seventh schedule of the Indian Constitution deal with the distribution of legislative power between state legislature and parliament.

Also, the Indian constitution directly deals with the provisions which talk about speedy trial which comes under article 21 i.e. right to life and personal liberty⁸, equal protection before law⁹, self-incrimination under article 20, double jeopardy and illegal detention under article 22, and so on. Also, provisions of appeal would be discussed in present criminal justice system section. Also, right to self-incrimination includes right to silence is guided by the Indian Constitution.¹⁰

Present Criminal Justice System

At this time we have a system for criminal justice which has been evolving from years. From spiritual school to classical school then positive school of criminology governed the criminal justice system. With this, focus of the punishment shifted from retribution to reformation where to punish the offender is not the main objective but to change his behaviour, and prison, probation and parole constitute this reformative system. The prisons, reformatories, borstal institutions, and other institutions of like nature are included in the state list under the constitution of India¹¹.

Judiciary

⁴Bharti, *supra* note 1, chapter 2, at 12.

⁵Bharti, *supra* note 1, chapter 2, at 13, para. 1.

⁶Bharti, *supra* note 1, chapter 4, at 51.

⁷THE CONSTITUTION OF INDIA, art.13 (2).

⁸*Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369, *Kartar Singh v. State of Punjab*, (1994) SCC (3) 569.

⁹*Supra* note 7, art. 14.

¹⁰*Nandini Satpathy v. P.L. Dani*, AIR 1978 SC 1025.

¹¹*Supra* note 7, 9th Schedule, list-II, entry 4.

Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts¹², namely:-

- (i) Courts of Session;
- (ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates;
- (iii) Judicial Magistrates of the second class; and
- (iv) Executive Magistrates.

In our present criminal justice system, if someone files a criminal suit against someone he has to follow certain procedure which is not an easy task. So, it starts with police complaint that is F.I.R. then police starts investigation and police officer then submits his or her report to judicial magistrate. Then judicial magistrate decides the charges against the accused and makes charge sheet, and then he decides whether the matter would go like in the magistrate's court or the district court/ session's court. Session's court is the final court for the disposal of any criminal matter and the district or the metropolitan area comes under its jurisdiction. But, even after the decision of the session's court a person may further appeal to the higher courts. This all take lot of time.

After session's court person may appeal to the high court or to the Supreme Court. Article 134 provides that an appeal may lie to the Supreme Court in any criminal case if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution¹³. While article 136 contained the provision of appeal to the Supreme Court if the Court, in its discretion, granted special leave to appeal¹⁴, but, all persons cannot enjoy the rights equally, judicial procedure and complaint filing are very complex and costly which a poor and normal person cannot afford.

In India, we have a Supreme Court, and then every state has high courts, so we have 24 high courts in total and every district has at least one district court or session's court. The maximum strength of the judges in the Supreme Court is 31 (30judges+1 Chief Justice of India) currently there are 28 judges are working including CJI and 3 seats are still vacant. Every high court has its own number of posts for judges, which vary from high court to high court. In present, total required number of judges is 1017 but still there are 406 posts of high court judges are vacant in all over India¹⁵. Also, it has been observed that countries like Australia, Canada, America and U.K. comparatively have speedy criminal justice than India. There are 13.5 judges per million people in India as against Australia's 58 per million, Canada's 75, U.K's. 100 and USA 130 judges per million¹⁶.

Police

Police has always been and remains the central agency of criminal justice system¹⁷. Practically police is an enforcement agency which maintains the order and stability in the society and also enforces the law made by legislature. Police station is the first place where any individual go for the want of justice. But it has been observed that individual do not get any redress from the police authority.

Also it is the obligation on the part of the police officer who made an arrest of any person that an entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest

¹²The Code of Criminal Procedure, section 6, (1973).

¹³*Supra* note 7, art.134.

¹⁴*Supra* note 7, art.136.

¹⁵ [http://doj.gov.in/sites/default/files/userfiles/Vacancy_\(1.10.2015\).pdf](http://doj.gov.in/sites/default/files/userfiles/Vacancy_(1.10.2015).pdf), last visited 28.10.2015.

¹⁶R.D.Sharma, *Justice Barred*, THE TRIBUNE, March 13, 2012, atp.9.

¹⁷*Supra* note 1, chapter 5, 83 (2002).

and the names and particulars of the police officials in whose custody the arrestee is so that detained person can get legal aid¹⁸.

Problems and Its Causes in the Present Scenario

Even after so much development and evolution, still there are many flaws and problems in the present criminal justice system. Reasons for this are countless, some of them are inadequate physical infrastructure, the failure in criminal procedures, also, and some of the provisions which were made to make this criminal justice more justified and fair became the reasons for the slowdown of the speed of the system like right to silence and accused must be punished after establishment of guilty beyond all reasonable doubts. The followings are the problems and the causes for the delay in criminal justice system:

- *Pendency of cases*: it is a major problem in delaying the criminal justice system. With nearly three crore cases pending in Indian courts, in an conference of Chief Justices of 24 High Courts and Chief Ministers in Delhi, Justice Dattu told reporters "We have taken a decision that we will try our best to see that there is no case pending beyond five years. Five years will be the maximum for the old case. Beyond that no. We are trying our best...",¹⁹. But will it follow? But it is a good step to short out this problem.
- *Less number of judges*: As in India the ratio between judge and the population of the country is 13.5 per million people, this shows that we have very little number of judges to dispose the cases brought before the court. Here, the main problem is that there are about 40% seats of judges vacant in the Supreme and the High Courts. With limited number of approved strength of judges, still we have 409 (3-SC+ 406-HC) vacant seats for the judges.
- *Poverty and cost of litigation*: Practically it's not very easy for a person to go through the procedures of the court. It is very costly to file a case before a court for the demand of justice. So, when it comes to a poor person, it becomes very difficult for him to go to the court and file a case with the help of a lawyer because it needs a lot of money to go through all the procedures that are required to file a suit.
- *Population*: Because of more population, lack of social and cultural as well as economic control would disappear from the society and that would lead delinquent activities. This way, crime rate increases and the burden on the courts because of more criminal cases would increase and this would fracture the whole system. More will be the cases before the court more will be the required time to dispose the cases because that will decrease the efficiency of the courts by distributing the focus of the court on every case, and in this way arties would suffer and that is how the whole system collapses.
- *Proven guilty beyond all reasonable doubt*: This is a common law principle that says that accused should not be held guilty before he is proven guilty beyond all reasonable doubts. "An Accused cannot be prosecuted and held guilty beyond reasonable doubt"²⁰. Basically our criminal justice system is based on evidences majorly and if there is even a minimal way to escape after of being having all evidences, normally court grant relief to the accused.
- *Provisions of adjournments of court proceeding*: Code of criminal procedure grants the provision for the adjournment of the court whenever it is necessary²¹. It is on the discretion of the court. But, this provision has now been misused by even sitting judges of the court, which nullifies the object of speedy trial.

¹⁸Government of India, 2003. Report: *Committee on Reforms of Criminal Justice System*, Ministry of Home Affairs.

¹⁹*The Indian Express*, dated 05.04.2015.

²⁰*N.S. Gandiwal S/o GopalSwarupBhatnagarv State through Anti-corruption Dept.*, (1961) CriLJ670.

²¹Code of Criminal Procedure, section 309, (1973).

- *Less skilled investigation agencies:* Lack of skill in the team of investigation directly affects the speed of any trial, because it would take time to find facts and evidences with less skilled investigation agency. The problem of adjournment occurs due to inefficiency of the investigation work.
- *Political influence:* Most of the high profile cases are related directly or indirectly with the politicians and to just get away from the punishment they slow down the investigation process by informally commanding the police and by bribing. In that way it fractures the speed of criminal justice system.
- *Old laws:* As most of the criminal laws are made by the British people to control the Indian population but not to administer justice, and we are following the same with certain amendments. Some of them cannot be correlated with the present society and it makes very difficult for the judiciary to provide justice in present time in accordance to the old provisions, which causes delay in the administration of the justice.
- *Risk to reform provisions:* Other countries, even UK have been reforming its provisions of criminal laws according to the needs of present society. But Indian government is not ready to take risk of that because of the fear that change would worse off the whole system.
- *Perjury of witnesses:* another problem is of hostile witnesses. Sometime it happens that because of the fear or bribe or some personal interest witnesses become hostile or give false statements before court that misleads the court and causes inordinate delay in the delivery of criminal justice. There are certain provisions of giving punishment to those who give false information under sections 182, 193 to 195, 203, etc. of the I.P.C.
- *Judges' personal interest:* In some cases it happens that sitting judges themselves have some personal interest and to fulfil it they stretch the time for the disposal of the cases. Some judge has threat for their promotion while some intend to be fame among all. A very common example is A. D. M. Jabalpur case which is called black day of Indian Judiciary.
- *Less co-ordination among organs of government:* For the administration of justice it requires not only the decision of court but also its implementation by the executive. Also, law should be made in accordance with the needs of the present society. But it has been seen that all three organs judiciary, legislature and executive does not work with co-operation this is the reason for the non-administration of justice.
- *Lengthy and strict procedures:* Procedures to get the justice are not easy and are very long. Also, for a common man the word 'court' itself is very traumatic that's why people hesitate to go to the court for want of justice. Appeal system provided by the Indian constitution gives the accused many opportunities to get the justice by appealing in higher courts, but this procedure takes long time and that's how the delivery of justice gets delayed. A person who have to give a death penalty but delayed can be taken as an example.
- *Unawareness:* Unawareness among people is one of the main problems for the delay. Because it gives the opportunity to the investigating agencies and lawyers to make money out of the unawareness of the aggrieved party. Usually people don't know even what is law and many lawyers make them fool. Mr. Ranganath Mishra, former Chief Justice of India quoted in the *The Times of India*, "The Indian judicial system has failed to win confidence of the people in past 50 years... If some people remain above law, faith in the judiciary will naturally erode.... Advocates seek frequent adjournments and oppose arbitration and LokAdalat settlements. Instead of focusing only on making money, lawyers must have a clear understanding of their social role"²².
- *No personal benefit of the runners of the system and Inactivity:* Also, the crime that happened already does not affect the persons who are the parts of criminal justice and they do not want to put an extra effort to dispose the cases speedily. Sometimes they considered it as a formality only.
- *Increase in crime rates:* In modern society crime rate is very high mainly because of property, and this increases the number of cases before courts and divides the focus of the court on particular cases that reduces the efficiency of the courts to dispose of the cases.

²²The Times of India, dated 07.03.1999.

- *Intervention of human rights agencies.* When courts give serious punishments to the criminal to deter them from doing future crimes it is the human rights and human rights agencies tries to intervene the decision for the benefit of the offender that creates lot of delay in justice

Suggestions to Overcome these Problems

As the problems are listed above by which we can analyse the present condition of Indian criminal justice system and say that there is a lot of effort needed to boost up the system and Justice delivery system in India is bursting at the seams and may collapse unless immediate remedial measures are adopted not only by the judiciary but also by the legislature and the executive.²³ Sometimes legislature or executive or even judiciary make faults in their duties therefore the active and impartial participation of all of the three organs is needed. An efficient and effective administration of criminal justice contributes more than any other circumstance to impressing the minds of the people and earning their affection and reverence towards the government.²⁴ For the correction of the faults in the system there are some suggestions which may create awareness among the people of the country. Also, government should consider the following suggestions in the law making process.

- *Disposal of pending cases.* In all over India there are around three crore cases pending before Indian courts.²⁵ The reason may be inefficiency in infrastructures and techniques of judiciary, executive or may be the increasing rates of crimes drastically or may be the less strength of judges who are carrying the burden of three crore cases on their head. Article 130 of Indian constitution specifically states that “*The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint*”²⁶. But this provision is not applied till now. If Supreme Court has seats on other states then there will be some relief from the huge burden of cases and delivery of justice will become easy and fast. It will also help to save the time and litigation cost. Working hours of the Supreme Court should also be increase and government should encourage the people for outside court settlement.
- *Management in cost of litigation.* In a litigation process most of the officers of the system are not less any money maker. If anyone approaches the judiciary for his/her solution, at every single step he will definitely face “*the scheme of bribe*”, corruption and mostly rural people easily get trapped in this web. The law must function in such a way that all the people have access to justice in spite of economic disparities. The expression “*access to justice*” focuses on the following two basic purposes of the legal system:
 1. The system must be equally accessible to all.
 2. It must lead to results that are individually and socially just.²⁷
 The court fee should not be highly imposed on the poor people as it is already a settled principle but still is not being followed by judiciary. The main cause of this problem is unawareness of the common people. Thus this is to be reached to every single door of the country. NALSA²⁸ should work efficiently because its reach is not to that extent where it should be.
- *Speedy trial:* Speedy trial is the best relief to overcome the burden on the judiciary. The speedy justice was recognised in the law commission of India in 1958²⁹ but neither government nor judiciary had shown much concern about it. Finally in the year of 1978 Justice Krishna Iyer

²³Justice S.B. Sinha, *Courts and Alternatives*,<http://www.delhimediationcentre.gov.in/articles.htm>, site visited on 29.10.2015.

²⁴PEAK, KENNETH J., JUSTICE ADMINISTRATION,p.2, (2007).

²⁵*Supra* note 19.

²⁶*Supra* note 7, art. 130.

²⁷Law Commission of India, 2009. Report: 222nd Reporton *Need for Justice-dispensation through ADR etc..*

²⁸National Legal Services Authority.

²⁹Law Commission of India, 14th Report, 1958, Vol. 1, p. 129.

while dealing with the bail petition in *Babu Singh v. State of UP*, 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 proceedings³⁰." There are many causes of delay in trial may be by the judge or the investigation department. The provision of adjournment is bad practiced by the judiciary and lack of training is also the other reason. There should be special focus on police training because most of the cases are delayed due to poor investigation process. LokAdalat should work frequently as it is very effective, last year on December 2014 The Second National LokAdalat held across the country that amicably settled about 1.25 crore pending and pre-litigation cases and brought financial relief of over Rs. 3,000 crore to ordinary litigants in a single day³¹.

- *Change in the Criminal laws*: In India we are still applying the British made criminal codes. British imposed these laws to control the people of the country and not for the benefit of people. The processes are also very complex. There is need to add some acts as offence or eliminate some from the codes because the society is changing. For example, the marital rape should be considered as offence. The reading of section 375 doesn't consider rape of a wife of age more than 15. Also, many rules are very vague which have to be specific in their interpretation.
- *Changes relating Police system*: The police system in India is not very efficient and there is the need of change. As the police comes under the state list and controlled by the state government and it happens that police works for them only instead to protect the society. So police has much political influence which shouldn't be the case. To overcome from this problem some new agency should be formed for recruitment process, transfer and promotion process so that the control of the state government over police would minimal and police could work honestly.
- *Avoid over-crowding in jail*: The jails in India are full of prisoners even more than full. This over-crowding results in inefficiency in supervision and the purpose of jails. The gravity of the problem can be gauged from the remarks of Justice M.N. Venkatchaliah, the former Chief Justice of India, he said, "Indian prisons are reduced to being penal dustbins."³² It is serious problem so, there should be more prisons and should be more reformatory method to be accepted by the prison system rather than retributive method, therefore, by giving them parole or probation the crowd of the jails can be reduced and also the purpose of rehabilitation would be fulfilled. The system of probation and parole are not keep in working in an efficient manner hence there is the need to implement frequently the system of probation and parole.

Conclusion

"Justice delayed is justice denied" is the principle which triggers the issue of speeding up of criminal justice system. After the analysis of the present criminal justice system, it can be concluded that the present criminal justice system is not that much efficient and there is a need to reform the system. Government should include some part of inquisitorial when required that would save a lot of time in the trials. Also, police should be free from control of the state governments. Judicial procedures should be made cheap for the poor and also government should reform the laws so that the complex procedure would change into easy one. Also, judiciary should exercise its power to give probation to the small offenders; it would reduce the crowd of jails as well as it would be easy to rehabilitate the offenders by the method of probation. Also, a law should be made by the legislature which defines specific different time limit for the different types of offences to dispose of the cases. Also, working hours of the courts and the number of working days should be increased so that efficiency of the judiciary would increase and the rate of disposing cases would

³⁰*Babu Singh v. State of UP*, 1978 AIR 527, 1978 SCC (1) 579.

³¹KrishnadasRajagopal, *LokAdalat settles 1.25 crore cases in a day*, THE HINDU, December 7, 2014

³²Supra note 1, chapter 8, p.166 (2002), *The Times of India*, dated 21.8.2000

increase. In this way if the government or judicial system takes steps to do some reforms in the system then our criminal justice system can be an ideal system.



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