"COMPREHENSIVE ANALYSIS OF REFORMS NEEDED IN INDIAN CRIMINAL JUSTICE SYSTEM"

A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS

SUBMITTED BY

[SHIVANGI SINGH]
[1220997038]
SCHOOL OF LEGAL STUDIES

UNDER THE GUIDANCE
OF

[DR. VATSLA SHARMA]
[ASSISTANT PROFESSOR]
SCHOOL OF LEGAL STUDIES

SESSION 2022-23

CERTIFICATE

This is to certify that the dissertation titled, **,"COMPREHENSIVE ANALYSIS OF REFORMS NEEDED IN INDIAN CRIMINAL JUSTICE SYSTEM"** is the work done by **Shivangi Singh** under my guidance and supervision for the partial fulfilment of the requirement for the Degree of **Master of Laws** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

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Date -------------- **Dr. VATSLA SHARMA**
Place- Lucknow (Assistant Professor)

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SHIVANGI SINGH

1220997038

LL.M. (2022-23)

(CRIMINAL AND SECURITY LAW)

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LIST OF ABBREVIATIONS

1.	Cr. PC	Criminal Procedure Code
2.	FIR	First Information Report
3.	IPC	Indian Penal code
4.	S.C.	Supreme Court
5.	H.C.	High Court
6.	UDHR	The Universal Declaration of Human Rights
7.	IEA	Indian Evidence Act
8.	SEC.	Section
9.	Acc.	According
10.	AIR	All India Reporter
11.	UD	Unnatural Death (used in FIR)
12.	v.	Versus
13.	Cr.LJ.	Criminal Law Journal
14.	UN	United Nations
15.	COI	Constitution Of India
16.	CBI	Central Bureau Of Investigation
17.	J.	Justice
18.	C.J.	Chief Justice
19.	PUDR	The People's Union for Democratic Rights
20.	NHRC	National Human Rights Commission
21.	UNO	United Nations Organization
22.	GD	General Diary
23.	A.I.	Artificial Intelligence
24.	ECHR	The European Convention on Human Rights
25.	B.O.P.	Burden Of Proof
26.	PCR	Police Custody Remand
27.	SCC	Supreme Court Citation

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CHAPTER 1

"COMPREHENSIVE ANALYSIS OF REFORMS NEEDED IN INDIAN CRIMINAL JUSTICE SYSTEM"

1.1. INTRODUCTION

India's criminal justice system[1] is based on the Indian Penal Code (IPC), which was enacted in 1860. This code lays down the laws and procedures that govern criminal activities in the country. The criminal justice system is responsible for ensuring that offenders are brought to justice and that victims are provided with justice. The system also ensures that those accused of criminal activities are treated fairly and are given their due rights.

The criminal justice system in India is composed of the police, the judiciary, and the correctional system. The police are the first point of contact for those affected by crime, and are responsible for investigating and apprehending criminals. The judiciary is responsible for delivering justice through trials and sentencing, while the correctional system is responsible for rehabilitating offenders and ensuring that they do not re-offend.

The criminal justice system in India is a system having a court for criminals to fight for their trails. The system ensures a fair trial for the culprits maintaining the law and order in the country. It all starts with the victim reporting the crime to the police and the police filing an **FIR**[2] or first information report. Then police begin the investigation process and based on it, arrest the suspected criminal. The police then proceed to file a charge sheet in the Magistrate's Court. The trial process starts at the court. Both the victim and accused get a fair chance to represent themselves in court. The Public Prosecutor represents the victim, while the accused can also take assistance from a lawyer to defend themselves. After the trial session gets over, the accused is either convicted or acquitted. If convicted, the accused can also appeal to a higher court for criminal justice.

[1] https://blog.ipleaders.in/criminal-justice-system-in-india/

[2] Section 154 of the Code of Criminal Procedure , 1973

The criminal justice system of any state is the set of agencies and processes established by governments for administration of criminal justice aimed at controlling crime and imposing punishment on persons who violate the law.

The Union of India is a Federal State currently consisting of the Central government and the State governments in the twenty nine states. The states have their own powers and functioning under the Constitution of India. The Police and Prison are the state subjects. However, the Federal laws are followed by the Police, Judiciary, and Correctional Institutes, which form the basic organs of the Criminal Justice System. The system followed in India for dispensation of criminal justice is the adversarial system of common law inherited from the British Colonial Rulers. In the Indian Criminal Justice Administration, the Police investigate, while the Judge's role is like a neutral umpire and a fact finder and he also imposes the sentence. The execution of the sentence is bestowed on the Correctional institutes.

The principal purpose of criminal justice administration is to preserve and defend the rule of law that is social control of law, maintenance of order, speedy trial, penalisation of offenders, rehabilitation of offenders through the judicial system, and solace to victims of crimes.

The current criminal justice system is affected by various loopholes and faults. The legal approach is time-consuming and generally geared towards the mind of the accused i.e., a system that is involved with the rights and interests of the offender instead of those of the victims. The current criminal justice system has been unsuccessful in delivering speedy and prompt justice to people and guaranteeing the certainty of penalisation justice system in the field of justice for people and regarding the increasing challenges of criminal justice reform Loopholes in the existing criminal justice system[3].

A person is surprised if he/she learns that they did not get the relief or cure that they might have expected, and gradually loses confidence in the framework of government. The process is thus disconnected from the people it was built for and nurtured over time.

[3] https://timesofindia.indiatimes.com/readersblog/lawpedia/exploring-the-components-of-indias-criminal-justice-system-a-comprehensive-look-at-the-punishment-system

1.2. Reforms and Initiatives:

Over the years, efforts have been made to reform the criminal justice system. Initiatives include the establishment of fast-track courts, the use of technology in investigations and trials, legal aid programs, and amendments to laws to address specific issues.

It is essential to delve deeper into specific aspects based on the focus of your dissertation. Historical Context: The roots of India's criminal justice system can be traced back to its colonial past under British rule. The British established a legal framework, including the Indian Penal Code (IPC)[4] and the Code of Criminal Procedure (CrPC)[5], which still form the foundation of India's criminal justice system today.

1.3. CONSTITUTIONAL FRAMEWORK:

After gaining independence in 1947, India adopted a democratic constitution in 1950 that provided fundamental rights and principles of justice. The Constitution guarantees the right to a fair trial, the presumption of innocence, and protection against self-incrimination, among other important rights.

1.3.1. Key Legislations:

The Indian Penal Code, enacted in 1860 , defines and punishes various criminal offences[6]. Other significant laws include the Code of Criminal Procedure, which lays down the procedural aspects of criminal investigations and trials, and the Indian Evidence Act[7], which governs the admissibility and evaluation of evidence in criminal cases.

[4] THE INDIAN PENAL CODE ACT NO. 45 OF 1860 , [6th October , 1860]
[5] THE CODE OF CRIMINAL PROCEDURE, 1973 ACT NO. 2 OF 1974 [25th January , 1974]
[6] Section 40 of Indian Penal Code 1860
[7] THE INDIAN EVIDENCE ACT , 1872 ACT NO. 1 OF 1872 [15TH March 1872]

1.3.2. Investigative Agencies:

Several agencies are involved in the investigation of criminal offences in India, such as the police, Central Bureau of Investigation (CBI)[8], and specialised agencies like the Narcotics Control Bureau (NCB)[9] and the Enforcement Directorate (ED)[10].

1.3.3. Adjudicatory Structure:

The judiciary plays a crucial role in India's criminal justice system. The hierarchy includes lower courts (Magistrates and Sessions Courts), High Courts in each state, and the Supreme Court of India. The judiciary interprets laws, conducts trials, and ensures the protection of individual rights.

1.3.4. Challenges and Issues:

India's criminal justice system faces various challenges, including a large backlog of cases, delays in the disposal of cases, limited access to justice for marginalised communities, inadequate forensic infrastructure, and a lack of coordination between investigative agencies.

1.4. Structure of Criminal Justice System

The structure of Criminal Justice system consists of the four main pillars namely, investigation by Police, Prosecution of case by the Prosecutors, determination of guilt by the Courts and finally the correction through prisons system. Article 246[11] of the Constitution of India places the police, public order, courts, prisons, reformatories, borstal and other allied institutions in the State List.

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[8] The CBI was established as the Special Police Establishment in 1941, to investigate cases of corruption in the procurement during the Second World War.

[9] The Government of India constituted the NARCOTICS CONTROL BUREAU on the 17th of March, 1986.

[10] The Directorate of Enforcement was established in the year 1956 with its Headquarters at New Delhi.

[11] Subject-matter of laws made by Parliament and by the Legislatures of States

The Indian criminal justice system is a complex framework that encompasses the investigation, prosecution, and adjudication of criminal offences in India. It is primarily governed by the Criminal Procedure Code (CrPC) and various other laws, including the Indian Penal Code (IPC) and the Indian Evidence Act.

Investigation: Crimes are typically reported to the police, who are responsible for conducting the initial investigation. The police gather evidence, interview witnesses, and collect statements to build a case. In serious crimes, specialised agencies like the Central Bureau of Investigation (CBI) or the state-level equivalents may take over the investigation[12].

Arrest and Detention: If the police find sufficient evidence against a suspect, they may make an arrest. Upon arrest, the accused has the right to be informed of the grounds for arrest and must be produced before a magistrate within 24 hours[13]. The magistrate decides whether to grant bail or remand the accused to custody during the trial.

Prosecution: The public prosecutor represents the state and presents the case against the accused in court. The prosecutor examines witnesses, presents evidence, and argues for the conviction of the accused. The accused has the right to legal representation and can also hire a defense lawyer.

Trial: In India, trials can be conducted by either a magistrate or a judge, depending on the seriousness of the offence. In more serious cases, trials are conducted in higher courts. Trials are generally conducted in open court, and the accused is presumed innocent until proven guilty. The prosecution must establish the guilt of the accused beyond a reasonable doubt.

[12] Sec. 156 Police officer's power to investigate cognizable case; Sec. 157 Procedure for investigation
[13]Subs. by Act 5 of 2009, s. 5, for cls. (a) and (b) (w.e.f. 1-11-2010)

Appeals: If the accused is convicted, they have the right to appeal[14] the decision in higher courts. India has a multi-tiered appellate system, which includes the High Courts and the Supreme Court. The appellate courts review the evidence and the legal aspects of the case to determine if any errors were made during the trial.

Challenges: The Indian criminal justice system faces several challenges. There are issues of delays in the disposal of cases, leading to a significant backlog of pending cases. The system also faces criticism for inefficiency, corruption, and inadequate resources. Additionally, there have been concerns about the fairness of the system, including allegations of police misconduct and custodial torture[15].

Reforms: Over the years, there have been ongoing efforts to reform the criminal justice system in India. These include measures to expedite trials, improve police investigations, and enhance the rights of the accused. Initiatives such as the introduction of fast-track courts and the use of technology in the legal process aim to address some of the challenges faced by the system.

It's important to note that the information provided here is a general overview and may not capture all the intricacies and variations within the Indian criminal justice system, as it is a vast and diverse system that operates at both the federal and state levels.

1.5. CONSTITUTIONAL PROVISION

Criminal law, including all matters included in the Indian Penal Code, Criminal procedure, including all matters included in the Code of Criminal Procedure feature under the concurrent list of the 7th Schedule[16] as entries-1, and respectively.

Certain exceptions are also provided under these two provisions(Entry-1, and 2) of the 7th Schedule.

For example, offences against laws with respect to the matters specified in List-I or List-II of the 7th Schedule of the constitution, excluding the use of naval, military or air forces or any other armed forces come under this category. Constitutions are intended to preserve practical and substantial rights, not to maintain theories

[14] Section 374 CrPC

[15] Journal of the Indian Law Institute Vol. 36, No. 2 (April-June 1994),

[16] Article 246 deals with the 7th Schedule of the Indian Constitution

In a democratic country the Constitution guarantees certain basic rights and liberties to the people while criminal justice administration protects them by enforcing laws and 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. Harmonious efforts of all these four agencies are essential for moving the Constitution towards its goal of establishing a just society in India.

The Constitution of India was framed by the Constituent Assembly which comprised members elected through Provincial Legislative Assemblies and representatives of Indian Princely States and Chief Commissioner's provinces. The framers of the Constitution were committed to bringing about a social change by removing social disabilities and providing every citizen opportunities for his all round development.

The core of this commitment lies in Part Ill[17] and Part IV[18] of the Constitution which deal with the Fundamental Rights of the people and Directive Principles of State Policy. In the Directive Principles of State Policy, the Constitution envisions profound social and economic change to be ushered into through state intervention. Most of the Fundamental Rights are protection against arbitrary and prejudicial State action while some aim at protecting the individual against the actions of private citizens.

Constitutional rights without a remedy for their enforcement do not serve the intended purpose.

Therefore, the framers decided to provide the remedy in the Constitution itself. The remedy for enforcement of Fundamental Rights or, to put in other words, against violation of Fundamental Rights, may be divided into two parts, namely:

• approaching the Supreme Court and High Courts under articles 32[19] and 226 [20]respectively;

• approaching the police or subordinate courts.

Since the Constitution declares violation of some of the Fundamental Rights offence under articles 17[21] and 23 [22]punishable under law, the criminal justice administration has a direct responsibility to enforce these rights and curb their violation. Contravention of some other Fundamental Rights such as right to life and personal

[17] Deal with Fundamental Rights
[18]Deal with Directive Principles of our State Policy
[19] Article 32, the Supreme Court has the authority to issue writs across India.
[20] Article 226, allows the High Court to issue a writ exclusively in its own local jurisdiction.
[21] states that "Untouchability" is abolished and its practice in any form is forbidden.
[22] Prohibition of traffic in human beings and forced labour.

liberty is offence under existing criminal laws the enforcement of which is the responsibility of the criminal justice administration.

While granting rights and liberties to the people, the framers also envisaged adequate provisions for maintaining public order, morality, decency, security of the State, etc. They empowered the State, which includes the authorities of the criminal justice administration as defined under Article 12, to impose reasonable restrictions on some of the Fundamental Rights for ensuring protection of these national interests.

To put the Constitution in the category of criminal laws may not sound well, but, it being the source of all criminal laws of the country, may be reckoned as the supreme criminal law.

The Constitution under Articles 17[23] and 23[24] declares certain acts as offences punishable in accordance with law.

It deals with many matters which have a direct bearing on the criminal justice administration, protection in respect of conviction for offences (article 20)[25], protection of life and personal liberty (article 21), protection against arrest and detention (article 22)[26], appeal to Supreme Court in criminal matters (article 134), and powers of President and Governor to pardon, suspend, remit sentences (articles 72[27] and 161)[28].

The Constitution provides for a federal polity where Parliament as well as the State Legislatures share the powers to frame laws. Articles 245[29] to 255[30] and Seventh Schedule of the Constitution deal with the distribution of Legislative powers. The subjects have been divided into three categories,

- **Union List**
- **State List**
- **Concurrent List**

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[23] Abolition of Untouchability
[24] Prohibition of traffic in human beings and forced labour
[25] Protection in respect of conviction for offences
[26] On the commencement of s. 3 of the Constitution (Forty-fourth Amendment) Act, 1978, art. 22 shall stand amended as directed in s. 3 of that Act. For the text of s. 3 of that Act, see Appendix III.
[27] Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases
[28] Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases
[29] Extent of laws made by Parliament and by the Legislatures of States
[30] Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only

1.5.1 Union List

- Central Bureau of Intelligence and Investigation.
- Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention.
- Constitution, organisation, jurisdiction and powers of the Supreme Court[31] (including contempt of such Court) and fees taken therein; persons entitled to practice before the Supreme Court.
- Constitution and organisation including vacations of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practice before the High Courts.
- Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union Territory.
- Extension of the powers and jurisdiction of members of a police force belonging to any state to any area outside that state, but not so as to enable the police of one state to exercise powers and jurisdiction in any area outside that state without the consent of the government of the state in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any state to railway areas outside that state.
- Offences against laws with respect to any of the matters in this List.
- Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this list; admiralty jurisdiction.

1.5.2. State List

- Public order but not including the use of any naval, military or air force or any other armed force of the Union or any other force subject to the control of the Union and contingent or unit thereof in aid of the civil power.
- Police including railway and village police subject to the provisions of entry 2A of List-I[32]
- Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

[31] Article 136 of the Constitution
[32] Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 57 (w.e.f. 3-1-1977).

- Prisons, reformatories, Borstal institutions and institutions of a like nature and persons detained therein; arrangements with other states for the use of prisons and other institutions.
- Offences against laws with respect to any of the matters in this List.
- Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

1.5.3. Concurrent List:

- Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List Il and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.
- Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.
- Preventive detention for reasons connected with the security of a state, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.
- Removal from one state to another state of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.
- Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.
- Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.
- Legal, medical and other professions.
- Jurisdiction and powers of all courts, except the Supreme Court with respect to any of the matters in this List.

1.5.4. EVIDENCE LAW & INDIAN CRIMINAL JUSTICE SYSTEM

The law of evidence is crucial for criminal procedures in India. Arguments in courts require something to prove what is being argued. The Indian Evidence Act provides particulars of evidence produced and admissible in courts, and the things that can or can not be presumed in a case.

Forensic evidence plays a crucial role in criminal investigations in India. It helps to identify suspects, establish the facts of a case, and link suspects to the crime scene. Forensic evidence can also be used to support or refute witness testimony and to establish the cause of death in cases of homicide.

Evidence is used to establish proof that a crime was committed or that a particular person committed that crime. To prove something is to eliminate uncertainty, or to eliminate some degree of uncertainty, regarding the truthfulness of the conclusion.

Forensic evidence plays a crucial role in the criminal justice system in India. It provides an objective and scientific basis for establishing the guilt or innocence of a suspect, which is essential for ensuring justice and fairness in criminal trials. Forensic evidence is also important in identifying perpetrators of crime and establishing the facts of a case. This article will discuss the role of forensic evidence in the criminal justice system in India, its importance, and the challenges it faces.

Forensic evidence includes any physical or digital evidence that can be used to solve a crime. This evidence can be gathered from crime scenes, victims, suspects, or witnesses. Forensic science covers a range of disciplines, including DNA analysis[33], ballistics, toxicology, digital forensics, and fingerprint analysis. The collection, analysis, and interpretation of forensic evidence require specialised training and expertise, which is provided by forensic experts and forensic laboratories.

The use of forensic evidence in the criminal justice system in India has increased significantly in recent years. This is due to the increasing awareness of the importance of scientific evidence in criminal investigations and the establishment of specialised forensic laboratories across the country. The Central Forensic Science Laboratory (CFSL)[34] is the premier forensic laboratory in India, and it has regional branches in different parts of the country.

Forensic evidence plays a crucial role in criminal investigations in India. It helps to identify suspects, establish the facts of a case, and link suspects to the crime scene. Forensic evidence can also be used to support or refute witness testimony and to establish the cause of death in cases of homicide. The use of forensic evidence in criminal trials has been crucial in ensuring that the guilty are convicted and the innocent are acquitted.

The importance of forensic evidence in the criminal justice system in India cannot be overstated. Forensic evidence is objective, unbiased, and based on scientific principles. It provides a level of certainty and accuracy that other forms of evidence cannot match. The use of forensic evidence in criminal trials also promotes

[33] DNA profiling is the determination of a DNA profile for legal and investigative purposes.

[34] The Central Forensic Science Laboratory, was established in the Year 1968 as a scientific department to provide scientific support and services to the investigation of crime.

transparency and accountability in the criminal justice system. It helps to ensure that justice is served and that the rights of the accused and the victims are protected.

Despite the importance of forensic evidence in the criminal justice system in India, there are several challenges that it faces. One of the main challenges is the lack of resources and infrastructure. Many forensic laboratories in India are under-resourced and understaffed, which can lead to delays in the processing of evidence and mistakes in analysis. Another challenge is the lack of standardisation in forensic procedures and protocols. This can lead to inconsistencies in the analysis and interpretation of evidence.

1.6. INDIAN CRIMINAL JUSTICE SYSTEM UNDER CRPC

The primary purpose of the criminal justice system is to ensure that justice is served . It is also responsible for protecting the rights of the accused and providing victims with justice. The criminal justice system also serves a a deterrent to crime, as offenders are held accountable for their actions The criminal justice system can also be described as a tool that a government makes use of to ensure that those who are subject to its authority meet the administration's standards of conduct. It refers to a system of formal control that has been introduced to ensure that there's not a lot of scope for misconduct and to manage the same, the framework addresses a series of five separate but related subsystems: police, courts, prosecution, defence and correctional authorities, each with its own set of duties, functions, and powers.

The Indian Criminal justice system is one among the well-established ones in the world.

The procedural aspects dealing with setting up of functionaries to perform various functions in order to uphold the law are contained under the Code of Criminal Procedure, 1970. It can be reasonably inferred from various definitions pertaining to functionaries, that the term refers to an individual, body of individuals or an authority established by the law to execute certain functions.

The paramount object of CRPC is to ensure that the accused receives a fair trial in accordance with the principles of justice. These functionaries are therefore appointed mainly to uphold the procedure as referred to in the Code. And thus, the code of criminal procedure contains five main functionaries[35] for the efficient functioning of the code. These functionaries form an integral part of the criminal justice system.

[35] Police, Courts, Prosecution, defence and correctional authorities

Chapter Il of CRPC[36] elucidates the provisions with respect to establishing courts, and section 6 specifically highlights the different categories of criminal courts.

The hierarchy of Criminal Courts[37] are distinguished based on the district level and metropolitan areas. At the lowest level, the subordinate courts include the Judicial Magistrate (IM) of 1st and 2nd class or the Metropolitan Magistrate and the Special Magistrate court. The level above that includes the courts of sessions and special courts.

The top most level consists of the Supreme court and High Courts (HC), having appellate jurisdiction[38] pertaining to criminal offences.

1.7. CRIMINAL JUSTICE SYSTEM UNDER INDIAN PENAL CODE

India's criminal justice system is based on the Indian Penal Code PC), which was enacted in 1860. This code lays down the laws and procedures that govern criminal activities in the country. The criminal justice system is responsible for ensuring that offenders are brought to justice and that victims are provided with justice. The system also ensures that those accused of criminal activities are treated fairly and are given their due rights. The Indian Penal Code (IPC) is the main document which governs all criminal acts and the punishments they ought to be charged with. The objective of enacting the IPC was to provide a general and exhaustive penal code for crime in India. However, there are several other penal statutes that govern various other offences in addition to the IPC. In animal law, a notable such statute is the Prevention of Cruelty Against Animals Act. In order to be held liable under the IPC, the accused must possess both mens rea (guilty mind) and actus reus (guilty act).

The IPC extends to the whole of India. Punishments under the IPC can be extended both to offences committed within India as well as offences committed beyond, but which by law may be tried, within India. The provisions of IPC apply also to any offence committed by any citizen of India in any place without and beyond India and by any person on any ship or aircraft registered in India wherever it may be.

[36] Constitution of Criminal Courts And Offices
[37] Section 11(1) of CrPC
[38] Appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court concerned under Article 132(1), 133(1) or 134 of the Constitution in respect of any judgement, decree or final order of a High Court in both civil and criminal cases

1.8. HISTORICAL BACKGROUND

The jurisprudence of Ancient India, which was shaped by the concept of 'Dharma', prescribing various rules of right conduct. The codes or rules of conduct can be traced to various manuals that explained the Vedic scriptures, such as 'Puranas' and 'Smritis' The King had no independent authority but derived his powers from 'Dharma' which he was expected to uphold. The distinction between a civil wrong and a criminal offence was clear. While civil wrongs related mainly to disputes arising over wealth, the concept of sin was the standard against which crime was to be defined.

1.8.1 Evolution of Criminal Justice System of India

The Mauryas had a system of rigorous penal system which prescribed mutilation as well as the death penalty for even trivial offences. Dharmasastra of Manu, recognised assault and other bodily injuries and property offences such as theft and robbery. During the Gupta's era, the judiciary consisted of the guild, the folk assembly or the council and the king himself.

Judicial decisions conformed to legal texts, social usage and the edict of the king, who was prohibited from violating the decisions.

- The ancient Indian jurisprudence is based on the concept of 'Dharma.' It involves the rules of right conduct.
- Various ancient scriptures such as 'Smritis,' 'Puranas,' 'Ramayana,' 'Mahabharata,' etc., explain these conduct codes.
- In ancient times, Kings had to uphold their authority based on 'Dharma.' They did not have free jurisdiction to do anything they wanted.
- The distinction between a criminal offence and a civil wrong was clearly defined.
- Pataka[39] or sin was a criminal offence over which punishment was defined. While a civil wrong mainly included disputes such as disputes over wealth, etc.
- The Dharmashastra of King Manu had recognised giving bodily injuries to someone, theft, robbery, and other offences related to property, etc., as offences.

[39] Patakas were basically festoons used as an adornment of an army.

- The Mauryan administration had an elaborate Criminal Justice System. The punishments included mutilations and death penalties. These were given for even trivial offences.
- During the Gupta administration, the Judicial system consisted of folk assemblies or councils, Guilds, and the King.
- The Judicial orders of the King were in line with the 'Dharma Shastras' (legal texts), social norms, and the edicts of the Kings. Even the King was not allowed to violate the decisions.
- During the Medieval period, India suffered several invasions from the 8th century CE till the end of the 15th century CE.
- The arrival of the Mughals stabilised the system.
- The criminal law and the system of punishments were based on the principles of retribution (an eye for an eye), discretionary punishments, and specific penalties for offences such as robbery and theft.
- The modern Criminal Justice System is based on the system of the British administration. This was based on the English Criminal Legal system.
- The First Law Commission of India gave up an Indian Penal Code for the first time in 1860. It defined crimes and prescribed penalties for them.
- The Code of Criminal Procedure was brought in 1861 and amended in 1973. It defined the rules and procedures that must be followed in all trial stages.
- In 1993, the N.N. Vohra Committee[40] was set up to suggest reforms in India's Criminal Justice System.
- It pointed out the increasing problem of criminalisation of politics.
- In 2000, a committee was set up by the Government of India under the chairmanship of Justice V.S. Malimath[41], who had served as Chief Justice of the High Courts of Karnataka and Kerala. It was tasked with suggesting reforms in the Indian Criminal Justice System.
- It submitted its report in 2003, which contained 158 recommendations.
- The committee concluded that the Criminal Justice System in India "does not adequately focus on the justice to the victims, and weighted in favour of the accused."

[40] The committee consisted of pioneers in the healthcare field who met frequently for two years and submitted their report in 1946.
[41] Principal goal was to investigate the fundamental foundations of criminal law in order to reestablish public confidence in the criminal.

1.8.2. Indian Criminal Justice During Medieval Times

- India was subjected to a series of invasions, beginning in the 8th Century A.D. and ending in the 15th century, stabilising by the time of Mughal Rule.
- Followed a criminal law that classified all offences on the basis of the penalty which each merited, including retaliation (blood for blood), specific penalties for theft and robbery and discretionary penalties.

1.8.3. Criminal Justice System in its Present Form

- The Criminal Justice System in India follows the legal procedures established by the British during the pre-independence era.
- An Indian Penal Code (IPC) defining crime and prescribing appropriate punishments was adopted in 1860, prepared by the first LAW COMMISSION OF INDIA[42] .
- It was developed in line with the English criminal law.
- Code of Criminal Procedure was enacted in 1861 and established the rules to be followed in all stages. This was amended in 1973.
- The NN Vohra Committee, set up in 1993, observed increasing criminalisation of politics, talked of the unholy nexus.
- It was an effort to push the reforms in the criminal justice system.
- In 2000, the Government of India formed a panel headed by the former Chief Justice of Kerala and Karnataka, Justice V.S. Malimath, to suggest an overhaul of the century-old criminal justice system.
- In 2003, the Justice Malimath Committee submitted a report with 158 recommendations.
- The Committee opined that the existing system "weighed in favour of the accused and did not adequately focus on justice to the victims of crime."

[42] First Law Commission of independent India was established in 1955

1.9. AIM

The Indian criminal justice system faces several challenges, including delays in the disposal of cases, lack of adequate resources, and issues related to corruption and bias. To address these challenges, several reforms are needed in the Indian criminal justice system.

The aim of the Criminal Justice System is to punish the guilty and protect the innocent. Although the broad contours of the Criminal justice system are seldom codified, these can be inferred from different statutes, including the Constitution and judicial pronouncements. In a democratic civilised society, the Criminal Justice System is expected to provide the maximum sense of security to the people at large by dealing with crimes and criminals effectively, quickly and legally.

More specifically, the aim is to reduce the level of criminality in society by ensuring maximum detection of reported crimes, conviction of the accused persons without delay, awarding appropriate punishments to the convicted to meet the ends of justice and to prevent recidivism.

1.10. OBJECTIVE

The Indian criminal justice system faces several challenges, including delays in the disposal of cases, lack of adequate resources, and issues related to corruption and bias. To address these challenges, several reforms are needed in the Indian criminal justice system.

1. **Speedy justice:** One of the primary objectives of the reforms is to ensure timely disposal of cases. The introduction of technology, automation, and the strengthening of infrastructure can help in reducing the pendency of cases.
2. **Fair and impartial system:** The criminal justice system should be fair and impartial, and should not discriminate on the basis of caste, religion, or gender. The reforms should aim to eliminate biases and prejudices, and promote a more inclusive justice system.
3. **Victim-centric approach:** The reforms should focus on the needs and rights of the victims, and ensure that they are provided with support and assistance throughout the legal process.

4. **Strengthening of institutions:** The reforms should aim to strengthen the institutions of the criminal justice system, including the police, prosecution, and judiciary. This can be achieved through the recruitment of trained personnel, provision of adequate resources, and the introduction of performance-based evaluations. Reforms in laws and procedures: The reforms should also focus on the review and revision of existing laws and procedures to ensure that they are in line with contemporary standards of justice. This includes the simplification of legal procedures, decriminalization of certain offences, and the introduction of alternative dispute resolution mechanism.

1.11. RESEARCH PROBLEM

The Indian criminal justice system has been a subject of criticism due to its inefficiency and lack of accountability. The system is plagued with various problems, including delays in the trial process, poor investigative methods, corruption, and a lack of resource .The research problem of reform in the Indian criminal justice system can be framed as follows: What are the most pressing issues in the Indian criminal justice system, and how can they be addressed through reform?

Some specific research questions that could be explored in this context include

1. What are the reasons for the delays in the Indian criminal justice system, and how can they be reduced?

2. What are the challenges faced by law enforcement agencies in conducting effective investigations, and how can they be addressed?

3. What measures can be taken to reduce corruption and increase accountability in the criminal justice system?

4. How can the system be reformed to ensure that it is more accessible and equitable for all citizens, including marginalised communities?

5. What reforms are needed to improve the conditions of prisons and ensure the rehabilitation of prison?

1.12. RESEARCH HYPOTHESIS

The study could measure the number of pending cases, the time taken to dispose of cases, and the perceptions of different stakeholders, such as judges, lawyers, and the public, before and after the implementation of the reforms.

1.13. REVIEW LITERATURE

The criminal justice system in India is facing numerous challenges, including a huge backlog of cases, inadequate infrastructure, and outdated laws. In recent years, there have been calls for reforms to address these issues and ensure that justice is delivered swiftly and efficiently. This literature review aims to provide an overview of the reforms needed in the Indian criminal justice system and the current status of these reforms.

Backlog of Cases:

One of the major issues facing the Indian criminal justice system is the huge backlog of cases. According to the **National Judicial Data Grid, as of January 2021, there were over 4.4 crore pending cases across all courts in India**. This backlog has resulted in delays in the delivery of justice, and in some cases, people have spent years in jail without being convicted. To address this issue, the Indian government has taken several steps, including increasing the number of judges and introducing alternative dispute resolution mechanisms. However, there is still a long way to go.

Outdated Laws:

Another major challenge facing the Indian criminal justice system is outdated laws. Many of the laws were enacted decades ago and are no longer relevant in today's context. For example, Section 377 of the Indian Penal Code, which criminalised homosexuality, was struck down by the Supreme Court in 2018. However, there are still several other laws that need to be updated, including laws related to sedition, blasphemy, and contempt of court

Technology:

Technology can play a crucial role in improving the efficiency of the criminal justice system in India. For example, the use of video conferencing for court hearings can save time and reduce the need for physical appearances. Similarly, the use of e-filing can make the process of filing and tracking cases more efficient. However, the adoption of technology in the criminal justice system has been slow, and more needs to be done to ensure its effective implementation.

1.14. METHODOLOGY

- The researcher is used Doctrinal Research Method and Non-doctrinal Research method are used as per needs.
- Various trial cases decided by the trial courts in Maharashtra are to be studied.
- Various case laws and judgements of the Supreme Court and High Courts are to be studied.
- People's awareness, attitude of society and attitude of witnesses are to be studied.
- Various articles published by the experts are to be studied.
- Expert Advocates' opinions are to be studied.
- Various reports, journals and newspapers are to be studied.

1.15. CHAPTERISATION

CHAPTER 1 – The first chapter shall act as the introduction to the issue and would

be introducing the research issue, hypothesis, the objective and the topic in general. It would act as the base on which the other chapters are to be drawn.

CHAPTER 2 – The second chapter is a study of the provisions related to Indian criminal justice system . It is related to different components of our justice system.

CHAPTER 3 – The third chapter deals with the reforms suggested by various committees but it especially focuses on reforms suggested by Malimath committee and Madhav Menon committee[43] . It also describes the Fundamental Principles of Criminal Jurisprudence.

It narrates the **REASONS TO REFORM and the MAJOR AMENDMENTS MADE BY THE CRIMINAL LAW (AMENDMENT) ACT, 2018.**

CHAPTER 4 – The fourth chapter focuses on judicial responses to police reforms in India and their implementation.

CHAPTER 5 – The fifth chapter focuses on loopholes and the changes required in laws and statutes.

CHAPTER 6 – The sixth chapter relies on case laws related to IPC, CPC and the CRPC.

CHAPTER 7 – The final chapter would be making a conclusion by summarising the discussion above, and would be making a set of recommendation that would be the result of doctrinal research with bonafide intent to help in improving the ever growing criminal justice system of India.

[43] Malimath committee entrusted to draft the "Draft National Policy on Criminal Justice"

CHAPTER 2

PROVISIONS RELATED TO INDIAN CRIMINAL JUSTICE SYSTEM

The laws that govern criminal law in India are the Indian Penal Code, 1860 (IPC) and the Criminal Procedure Code, 1974 (CrPC). The IPC provides for the substantive law to be followed in case a crime has been committed. The CrPC provides for the procedures to be followed during investigation and trial by the police and courts.

There exist specific courts for criminal trials to held called Sessions Courts at the District level. India has adopted the adversarial system of legal procedure wherein the judge acts as a neutral party and the case is argued by the prosecutor suing the plaintiff and defence attorney who defends their plaintiff. One major distinction between India and other common law countries is that it does not follow the jury system.

2.1. Indian Penal Code (1860)

The Indian Penal Code (IPC) is the main document which governs all criminal acts and the punishments they ought to be charged with. The objective of enacting the IPC was to provide a general and exhaustive penal code for crime in India. However, there are several other penal statutes that govern various other offences in addition to the IPC. In animal law, a notable such statute is the Prevention of Cruelty Against Animals Act. In order to be held liable under the IPC, the accused must possess both mens (guilty mind) and (guilty act).

The IPC extends to the whole of India. Punishments under the IPC can be extended both to offences committed within India as well as offences committed beyond, but which by law may be tried, within India. The provisions of IPC apply also to any offence committed by any citizen of India in any place without and beyond India and by any person on any ship or aircraft registered in India wherever it may be.

2.2. Criminal Procedure Code (1974)

The Criminal Procedure Code (CrPC) is a procedural law which states how the police machinery is to function as far as investigation and procedure is to be followed by courts during investigation and trial. The CrPC classifies criminal offences into several categories such as bailable[44], non-bailable[45], cognizable[46] and non-cognizable offences[47]. The procedural treatment of different offences is different. The various steps at the time to filing a complaint such as filing a First Information Report (FIR), gathering evidence and initiating an enquiry are all governed by the CrPC. The CrPC further lays down classes of criminal courts.

A Criminal law governs crimes, including felonies and misdemeanors. Crimes are generally referred to as offences against the state. The standard of proof for crimes is beyond a reasonable doubt. For information on particular crimes or issues surrounding the criminal law.

Criminal law in India means offences against the state, it includes felonies and misdemeanors. The standard of proof for crimes is beyond a reasonable doubt. Criminal law is governed by Indian penal Code, CrPC, evidence Act etc.

A body of rules and statutes that defines conduct prohibited by the government because it threatens and harms public safety and welfare and that establishes punishment to be imposed for the commission of such acts.

The term criminal law means crimes that may establish punishments. In contrast, Criminal Procedure describes the process through which the criminal laws are enforced. For example, the law prohibiting murder is a substantive criminal law. The manner in which government enforces this substantive law through the gathering of evidence and prosecution is generally considered a procedural matter.

[44] Section 2 (a) of THE CRIMINAL PROCEDURE CODE (CRPC)
[45] Section 2(a) of THE CRIMINAL PROCEDURE CODE (CRPC)
[46] Section 2(c) of THE CRIMINAL PROCEDURE CODE (CRPC)
[47] Section 2(l) of THE CRIMINAL PROCEDURE CODE (CRPC)

Crimes are usually categorised as felonies or misdemeanors based on their nature and the maximum punishment that can be imposed. A felony involves serious misconduct that is punishable by death or by imprisonment for more than one year. Most state criminal laws subdivide felonies into different classes with varying degrees of punishment. Crimes that do

not amount to felonies are misdemeanors or violations. A misdemeanour is misconduct for which the law prescribes punishment of no more than one year in prison. Lesser offences, such as traffic and parking infractions, are often called violations and are considered a part of criminal law.

2.3. COMPONENTS OF THE INDIAN CRIMINAL JUSTICE SYSTEM

The criminal justice system in India is composed of three main components:

- **the police,**
- **the judiciary,**
- **and the correctional system**.

The police are responsible for investigating and apprehending criminals, and for enforcing the law. The judiciary is responsible for making sure that trials are conducted fairly and that justice is served. The correctional system is responsible for rehabilitating offenders and preventing them from committing crimes in the future.

The police are the first point of contact for those affected by crime, and are responsible for collecting evidence and apprehending criminals. The police investigate crime scenes, collect evidence, and interrogate suspects. They are also responsible for maintaining law and order in the country. The judiciary is responsible for making sure that trials are conducted fairly and that justice is served. Judges preside over criminal trials and make sure that the accused are given their due rights. The correctional system is responsible for rehabilitating offenders and making sure that they do not re-offend.

The important components are essential to delivering justice and maintaining the law of the land. Understanding our criminal justice system notes the presence of different bodies that assist in carrying out the entire process.

Law Enforcement: The crime report in the area is prepared by law enforcement officials. They are also in charge of setting up the investigation and safeguarding the criminal evidence. These officials are important components of the criminal justice system.

Prosecution: The prosecution lawyer aims to defend the state or federal government by being a representative of the victim. They review all pieces of evidence that are collected by the law enforcement body. Now, it’s up to them to press all the charges or drop the case.

Defence Attorney: Defence attorneys are lawyers whose duty is to represent the defendant in the court against the state. The defendant usually hires lawyers for trial courts. The criminal justice system provides adequate rights to both the accused and the victim party.

Courts: The highest body of justice in the courts is the judge. They are responsible for making decisions and passing judgements in court. They get the right to decide whether to release the offenders before the trail, reject or accept plea agreements, oversee trials, and sentence convicted offenders.

Correction Officer: The correction officers are in charge of ensuring the security and safety of the facilities where the offenders are kept. They look after the day to day custody of inmates. They also administer the release process of the offenders and give notifications regarding the status of the offender to the victim party important Components About Our Criminal Justice System

2.4. COMPONENTS OF THE CRIMINAL JUSTICE SYSTEM: PRESENT SCENARIO

2.4.1. POLICE

Police, being a front- line segment of the criminal justice system, have a very vital role in administration of the justice. Therefore, for understanding the criminal justice system is a prelude to understanding the police. Under Article 246[48] .The Constitution of India places the police, public order, courts, prisons, reformatories, and other allied institutions in the State List.

Accountability of police

Indian police Act of 1861, is outdated law which, made in regime of the colonial system with the aim of suppressing the people. Unfortunately, instead of the continuous demand of The National Police Commission[49], Indian government is unwilling to do any change in this colonial law. Further, in the Police Act, 1861 there is no as such provision of the accountability of the police unlike in the UK, in which the Independent Police Complaints Commission[50] (IPCC) supervises and investigates public complaints against the police and can take over the supervision or investigation of any complaints case. Whereas in Indian Police Act Is lacking in this aspect. It can be clearly evident from the matters involving the atrocities of the police often come before the court some are as

people, and not break the law themselves. If the protector becomes the predator civilised society will cease to exist. As the Bible says, “If the salt has lost its flavour, wherewith shall it be follow ;

Hence, the police are supposed to protect the people and uphold the law, but if they themselves become criminals, then it’s a difficult task to ensure the protection of the human rights.

Mehboob Batcha and others v. state represented by superintendent of police Judges Markandey Katju and Gyan Sudha Mishra .

[48] Subject-matter of laws made by Parliament and by the Legislatures of States
[49] Subject-matter of laws made by Parliament and by the Legislatures of States
shed in 1977
[50] IPCC was endorsed by UN General Assembly in 1988.

In instant case Supreme Court held that, as murder by policemen in police custody is rarest of rare case. They deserve for death penalty and we give a warning to all country that this will not be tolerated. Further, court upheld that custodial violence in police custody is in violation of this court's directive issued in D. K. Basu v. State of WB

• A.S. Mohammed Rafi v. state of the Tamilnadu

There are numbers of the cases where Apex Court directed various guide lines regarding the arrest for example in **D.K Basu v. State of West Bengal**[51] in instant case court streamlined the procedure relating to the arrest.

The Supreme Court in **Joginder Kumar v. State of the U.P.**[52] has put clear restrictions on the powers of police to make arbitrary arrests.

The above cases are really, a path breaking judgments. Therefore, it is high time to look into the power of the President provided in Art. 372 (2)9 of the India Constitution.

2.4.2. JUDICIARY

The judiciary has a very vital role in implementation of rule of law. The primary and most important duty of the courts is to protect and enforce the human rights, as well as provide the relief to the victim. Such duty and obligation is indispensable for a democratic country. The present criminal justice system in Indians courts is to give more attention to the accused and try to protect all his/her rights i.e. Presumption of the innocence, legal right against arrest, and double Jeopardy etc. no doubt accused are entitled of all these rights but now in changing situation, it is also expected from the courts focus upon the Victim as well as witness.

[51] D.K. Basu Versus State of West Bengal (1997 (1) SCC 416)
[52] Joginder Kumar v. State of U.P. and Others, 1994 Cr L.J. 1981

- **Offences against Human Body**

The Chapter XVI[53] of the IPC, 1860, contains offences against human body from Section 299 to 376, which are as under:

- **Culpable Homicide (Section 299)**

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

- **Murder (Section 300)**

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, bodily injury etc.

- **Punishment for Murder (Section 302)**

Whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine.

- **Dowry Death (Section 304 B)**

Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

[53] Of Offences Affecting The Human Body

2.4.3. Essential Ingredients or Elements of Dowry Death – Section 304B, IPC

The Supreme Court has outlined the essential elements of dowry death (section 304B, IPC) in the case of **Kamesh Panjiyar vs State of Bihar, 2005**[54] as:

- The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.
- Such a death should have occurred within seven years of her marriage.
- She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- Such cruelty or harassment should be for or in connection with the demand of dowry.
- It must be shown that such cruelty or harassment has been suffered by the woman soon before her death.

Judgement of the case

- During the trial of the Sessions Court, it was observed that it was not the case of natural death. And, the court recorded the conviction under section 304B of IPC, and the punishment for ten years of imprisonment was granted to her husband. He then appealed to the High Court.
- The High Court upheld the conviction. However, it reduced the sentence to seven years. He then appealed to the Supreme Court. The Supreme Court held that the collected reading of section 113B of the Indian Evidence Act and Section 304B of the Indian Penal Code ascertains that there must be some material or proof to show that soon before the victim's death, she has suffered cruelty or harassment.
- Also, the court stated that in the cases of dowry death, the presumption is that direct

evidence is not necessarily required. Also, nothing was brought by the defence on record to explain the injuries on the neck of the deceased. And, hence the conviction of the husband under section 304B was justified.

[54] Kamlesh Panjiyar vs. State of. Bihar [(2005) 2 SCC 388]

- **Abetment of Suicide of Child or Insane Person (Section 305)**

If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

- **Attempt to Murder (Section 307)**

Whoever does any act with such intention or knowledge and under such circumstances that, if he by that acts causing death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine and is hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

- **Thug (Section 310)**

Whoever, at any time after the passing of this act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

- **Causing Miscarriage (Section 312)**

Whoever voluntarily causes a woman with child to miscarry, shall if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

- **Concealment of Birth by Secret Disposal of Dead Body (Section 318)**

Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

- **Hurt (Section 319)**

Whoever causes bodily pain, disease or infirmity to a person is said to cause hurt.

- **Grievous Hurt (Section 320)**

The following kinds of hurt only are designated as 'grievous' like emasculation, permanent privation of the sight of eye and ear, etc, privation of any member or joint, destruction or permanent impairing of the powers of any member or joint, permanent disfiguration of the head or face, fracture dislocation of a bone or tooth, any hurt which endangers if or which causes the sufferer to be during the space of twenty (20) days in severe bodily pain, or unable to follow his ordinary pursuits.

- **Voluntarily Causing Hurt (Section 321)**

Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said voluntarily to cause hurt.

- **Voluntarily Causing Grievous Hurt (Section 322)**

Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said voluntarily to cause grievous hurt.

CHAPTER 3

REFORMS SUGGESTED BY VARIOUS COMMITTEES

3.1. Malimath Committee Recommendations

The Home Ministry of India set up a committee in 2000 to revamp India's age-old Criminal Justice System. The committee was chaired by Justice V.S. Malimath, who had served as the Chief Justice of the High Courts of Karnataka and Kerala. It reviewed the Criminal Justice System of India, especially the Indian Penal Code (IPC) of 1860, the Indian Evidence Act of 1872, and the Code of Criminal Procedure (CrPC) of 1973.

Malimath Committee report recommends making confessions made to a senior police officer (SP rank or above) admissible as evidence. Confessions to police have repeatedly come under scrutiny because of allegations of custodial torture, instances of custodial deaths, fake encounters and tampering with evidence. The report recommends diluting the standard of proof lower than the current 'beyond reasonable doubt' standard. It means that if a proof is enough to convince the court that something is true, then it can be considered as a standard proof. Such a measure would have adverse implications on suspects and requires considerable deliberation.

The committee submitted 158 recommendations in 2003. Some of its important recommendations are as follows:

- The committee recognised the need for reforms in India's Criminal Justice System as it has become ineffective. Several guilty go unpunished, and the justice system has lost the deterrent effect on the criminals.
- It suggested that some of the better features of the Inquisitorial System should be taken up in the Adversarial system of India to make it more efficient.
- The Inquisitorial System[55] is followed in Germany, France, etc. In this system, the investigation is supervised by the Magistrate himself. This leads to a better rate of conviction.

[55] An inquisitorial system is a legal system in which the court, or a part of the court, is actively involved in investigating the facts of the case

- The committee advised the Court and the Judges to have a proactive role in the case and they should actively search for the truth.

- The court should give directions in investigation matters to the prosecution agencies and the Investigating officers.

- Section 311 of the Code of Criminal Procedure (CrPC) of 1973 be amended so that the Courts can summon anyone for questioning irrespective of whether they are designated witnesses.

- The Right to Silence available as a Fundamental Right to the accused under Article 20(3) should be balanced with the court's power to elicit the necessary information from him.

- The committee recommended drawing adverse inferences against the accused if he refused to cooperate and answer.

- The committee recommended that all the rights available to the accused, as per the Constitution, several Legislations, and various Judicial pronouncements, should be collected and placed as a schedule to the Criminal Procedure Code.

- The committee concluded that the concept of 'Proof beyond reasonable doubt' should be eliminated. It recommended that in its place, a standard of Proof should be placed which is lesser than the Proof beyond reasonable doubt and higher than 'the Proof on the preponderance of probabilities.

- The committee recommended that the State should ensure Justice for the victims. For this, it should provide a lawyer and bear its cost if the Victim can't afford it.

- Compensation to victims is an obligation of the State. For this purpose, a victim compensation fund can be established.

- Ensure the Victim's right[56] to participate in the criminal trial through:

- Allowing him to produce oral[57] or documentary evidence[58] with the court's permission.

- Allow him to ask questions from the witness and suggest questions to the court.

- To be heard in case of grant of bail to the accused.

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[56] https://blog.ipleaders.in/victims-rights-under-the-indian-criminal-law-system
[57] Section 60 Oral Evidence Must Be Direct
[58] Section 3 of the Indian Evidence Act

- In some cases, psychiatric and other medical help should be included as a part of legal services.
- Separating the Investigation wing and Law & Order wing. Setting up a Police Establishment Board to deal with the transfers, postings, etc. Establishing the National Security Commission and the State Security Commissions.
- Establishing a separate criminal division in the higher courts in which judges who specialise in Criminal law should be included.
- Imparting state-of-the-art training to the officials. The training infrastructure should be strengthened at the Central and State levels. Moreover, hand-picked and efficient officials should be posted at such institutions with adequate monetary incentives.
- The use of modern technology and forensic science should be encouraged in the investigation right from the start.
- The network of Forensic labs in the country needs to be strengthened.
- The National Police Act of 1861 has become obsolete. The National Police Commission must prepare a new Police act.
- Use tape/video recording, especially in cases where the sentence is over seven years.
- To strengthen prosecution, a post of Director of Prosecution should be created in every State.
- Appropriate officers of the Director General of Police rank should fill this post.
- The Advocate General of the State should be consulted before making the appointment.
- A National Judicial Commission should be constituted to deal with the appointment and cases of misconduct relating to the Supreme Court and High Court Judges.

3.2. Madhav Menon Committee

N.R. Madhav Menon was the head of the 4 member committee entrusted to draft the "Draft National Policy on Criminal Justice". The committee submitted its report in the year of 2007, advocating a complete overhaul of the whole criminal justice system of India. The draft contained some provisions that are recommended by the V.S. Malimath Committee as well in 2003, like re-categorisation of offences within IPC; creation of National Security Commission, and matters related to rights of the victims among others.

The re-classification of offences as per this report should be on the basis of the following criteria:

1. Social Welfare Offences Code: Punishment should not be the focus here, rather reparation and/or restitution be.

2. Correctional Offences Code: Involving crimes that have the provision of imprisonment of up to 3 years and/or fines.

3. Grave Offences Code: Involving crimes that have the provision of imprisonment of beyond 3 years and/or death.

4. Economic Offences Code: For crimes that are related to economic security and other financial laws.

3.3. SC JUDGEMENT ON POLICE REFORMS

The Supreme Court of India in the year 2006, in the Prakash Singh v/s the Union of India case, gave 7 directives to all the States and Union Territories for carrying out police reforms. The major aim of the directives was to free the police system from the unwarranted interference and pressure from the political rulers and do their duty with full self- accountability. The Public Interest Litigation (PIL)[59] was filed by a retired DGP (Director General of Police) having served in UP Police and Assam Police in the year 1996 seeking police reforms.

The case took a decade to conclude into what is considered as to be one of the most important judgments ever given by the Supreme Court after the Kesavananda Bharati case of 1973.

Following were the 7 Directives for Police Reforms propounded by the Supreme Court in 2006:

1. Create a State Security Commission (SSC) for ensuring no unwarranted pressure or interference is exercised on the police by the respective state government. The SSC will also be responsible for evaluation of the performance of the state police and to institute broad policy guidelines.

2. The DGP must have a minimum tenure of 2 years and should be appointed via a transparent merit based process.

3. Superintendents of Police (SP) of a district, the Station House Officers (SHOs) of each police station and other police officials on operational duty must also have a minimum 2 years of tenure.

4. Hive off the prosecution, investigation, law and order, and other functions of the police.

5. **Setup Police Establishment Board (PEB) for:**

1. Giving decisions on the matters related to police officials below the rank of Deputy Superintendent of Police (DSP), such as transfers, postings, promotions among other service-related matters.

2. For police officers above the rank of Deputy Superintendent of Police (DSP), recommend upon the matters such as postings, and transfers.

6. **Create Police Complaints Authority (PCA) at:**

[59] Hussainara Khatoon v. State of Bihar

1. **State Level:** To enquire into and deal with public complaints against officers above the rank of Deputy Superintendent of Police (DSP) including the DSP itself, in matters of serious misconduct such as rape in police custody, grievous hurt, custodial death, etc.

2. **District level:** With the same provisions and powers as above but for the police personnel who are below the Deputy Superintendent of Police (DSP) rank.

7. For the purpose of selection and placement of Chiefs of CPOs (Central Police Organisations) with a minimum tenure of 2 years, create a National Security Commission (NSC) for constituting a panel for the said purpose.[60]

3.4. Judicial responses to police reforms in India and their implementation

Several attempts to implement serious police reforms have been made over the past thirty years. The National Policing Committee published eight findings between 1978 and 1981, making various recommendations but taking no steps to put them into effect. In "Vineet Narain v. Union of India", the Supreme Court acknowledged that there is serious need to implement those reforms, and the Ribeiro Committee[61] published two reports: 1998 and 1999, 2000 and 2002 reports of the Central Government on the Padmanabhaiah Committee[62], and 2002 report of the Malimath Committee. These conclusions were reached as a result of the Supreme Court's decision in "Prakash Singh Union".

3.5. Need for Reform

The Prisons Act of 1894 tried to bring uniformity to the workings of prisons in the country. It laid down that the provinces must have their own rules to regulate the administration of prisons. The Act classified the prisoners, and the conditions for every prisoner were different. It also abolished the punishment of whipping. Despite these changes, there was no improvement in prison conditions. The Indian Jail Reforms Committee in 1919-20 suggested measures to reform the prisons. It suggested fixing the capacity of each jail. After independence, the Constitution of India placed "jail" along with "police and law and order" in the State list under the Seventh Schedule. Unfortunately, no priority was given to the administration of prisons.

[60] Prakash Singh & Ors vs Union Of India And Ors on 22 September, 2006
[61] Ribeiro Committee on Police Reforms (1998)
[62] Padmanabhaiah Committee on Police Reforms (2000)

The Hon'ble Supreme Court in the case of Rama Murthy v. State of Karnataka (1997), identified specific problems and issues faced by prisons and prisoners in India. These issues made the government realise that there was a need to reform jails and prisons in the country. The issues are as follows:

- **Overcrowdeness in the jail**
- **Delay in trial**
- **Inhuman and ill-treatment of prisoners**
- **Neglected health and hygiene**
- **Deficiency in communication**
- **Streamlined jail visits**
- **Need to manage open air prisons**

There are many reasons to overhaul the current criminal justice system, this is admitted by the Union Government of India itself. The major reasons are listed below:

- **Complex Process**: The process is so cumbersome and complex that it is very difficult for common men to understand it. Keeping a large section of society unaware of the justice system makes way for the misuse of the innocence of the people and complexity of the system by law practitioners and police.
- **Colonial Foundation**: The laws have not undergone any major changes since India gained its independence.
- **Delayed Delivery of Justice**: Indian judiciary is overburdened with huge piles of pending cases.
- **Status of Undertrials**: More than 63% of accused are undertrials in Indian prisons.
- **Corruption:** Lack of transparency, at all levels but especially at lower levels, compromises with the justice delivery.
- **No Fixed Accountability**: Police officials in India are not provided with enough freedom to take up the matter and investigate when the cases are high profile, in such scenarios, they are required to function at the will of the political class.

3.6. POLICE CUSTODY AND JUDICIAL CUSTODY

Police Custody:

When a person is arrested by police for charges of committing a heinous crime or on suspicion, he is detained in police custody[63]. The rule to produce a person before a magistrate within 24 hours of arrest is given under Section167[64] of Criminal Procedure Code, 1973.

- According to this Section, when the accused is produced before the magistrate and he believes that there is a need for further investigation or interrogation, he can order the person to police custody for the next 15 days which can be extended to 30 days in certain cases depending on nature, gravity, and circumstances of each case.

When following to the receipt of an information/complaint/report by police about a crime, an officer of police arrests the suspect involved in the crime reported, to prevent him from committing the offensive acts further, such officer brings that suspect to police station, it's called Police Custody.

In police custody, the detainee is held for not more than 24 hours in jail at a police station and during this time the officer-in-charge interrogates the suspect. Police officers must produce the suspect before the judge within 24 hours of detention.[65]

Police Custody with permission to interrogate - During Judicial Custody, the police officer in charge of the case is not allowed to interrogate the suspect. However, the court may allow the interrogations to be conducted if it opines the interrogation being necessary under the facts produced before the court.

Judicial Custody

In Police custody, the accused is kept in the physical custody of police but in judicial custody, the accused is kept in the custody of the magistrate of the concerned area. As opposed to police custody, where the suspect is kept in police lock-up; in judicial custody, the accused is kept in jail. The police officer in charge is not allowed to investigate the suspect in judicial custody unless the court opines that the interrogation is necessary under the facts produced before the court.[66]

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[63] https://legalserviceindia.com
[64] Section 167 Procedure when investigation cannot be completed in twenty-four hours
[65] Chadayam Makki Nandanan v. State of Kerala, 1980 Cri LJ I195, I196 (Ker).
[66] www.ipleaders.article/on/police/and/judicial/custody

Difference between Police Custody and Judicial Custody in Criminal Procedure code. How long can a accused be detained under police or Judicial Custody.

When a person accused of a cognizable offence is arrested and detained by the police and produced within 24 hours(excluding travelling time from the place of arrest),or he himself surrenders before the nearest Magistrate. Then the Magistrate can either release him on bail or he can either send him to judicial custody or to police custody. If the accused is juvenile, his age is to be ascertained and if he finds that he is juvenile, then he be directed to be produced before Juvenile Justice Board.

• A suspect under Police Custody or Judicial Custody is assumed to be a suspect. A suspect becomes a criminal only after the court finds him/her guilty and convicts him/her for the crime reported of.

• These types of custodies are preventive measures.

• A police officer in charge of a suspect may treat the suspect arbitrarily. In case of arrests by police and pending the investigation, the lawyer of a suspect generally prays for Bail or Judicial Custody. In Judicial Custody, suspect becomes responsibility of Court.

3.7. Fundamental Principles Of Criminal Jurisprudence[67]

Though it is nowhere expressly provided for either in our statutes or the Constitution, the following principles have for a century been considered as fundamental to our criminal jurisprudence :-

1. The accused shall be presumed to be innocent till his guilt is proved in a court of law.

2. The burden of proof is on the prosecution to prove the guilt of the accused and not on the accused to prove his innocence.

3. The prosecution must prove its case "beyond all reasonable doubt".

4. If, there is any doubt regarding prosecution case, the benefit of doubt must go to the accused and he must be acquitted. The provisions for holding a person in custody for the purpose of furthering investigation, in India

[67] https://district.ecourts.gov.in

are governed by Section 167 of the Code of Criminal Procedure. Section 167 of the Code allows that a person may be held in the custody of the police for a period of 15 days on the orders of a Magistrate.[68]

5. While the onus of proving any general or special exception in his favour is on the accused, he has to satisfy the test of preponderance of probabilities only and not the rigorous test of proof beyond all reasonable doubt.

6. Let nine criminals go unpunished, but let not one innocent person suffer.

3.8. MAJOR AMENDMENTS MADE BY THE CRIMINAL LAW (AMENDMENT) ACT, 2018

In 2018, after the nationwide anger and agitation with regard to Kathua and Unnao rape cases, the Government passed the Criminal Law (Amendment) Act, 2018, to amend certain provisions of the Indian Penal Code (1860), Indian Evidence Act (1872), the Code of Criminal Procedure (1973), and the Protection of Children from Sexual Offences Act (2012). The provisions concerning which the amendments were to be made dealt with sexual assault and rape.

3.8.1. Major Amendments to IPC

These are the major amendments made in the Indian Penal Code due to the Criminal Law (Amendment) Act, 2018:

Amendments to section 376 (Punishment for rape)

- The minimum punishment for rape of a woman increased from 7 years to 10 years.
- Rape of a girl below the age of 16 years will carry the minimum punishment of 20 years, which can be extended to life imprisonment.
- Rape of a girl below the age of 12 years will carry the minimum punishment of 20 years, which can be extended to life imprisonment or capital punishment. (Section 376AB inserted)

[68] State (Delhi Admn.) V. Dharam Pal, 1982 Cri LJ 1103, IIIO (Del). See Also, CBI V. Anupam Kulkarni, (1992) 3 SCC 14I: 1992 SCC (Cri) 554: 1992 Cri L] 2768

• In case of gang rape of a girl below the age of 16 years, the punishment will be life sentence. (Section 376DA inserted)

• In case of gang rape of a girl below the age of 12 years, the punishment will be life sentence or death. (Section 376DB inserted)

Provision regarding the fine to be payable to the victim has also been added through the amendment. This fine should be just and reasonable, which could meet the medical expenses and rehabilitation of the victim.

• Section 376DA and section 376DB are thus the extensions of section 376D, that is, gang rape.

• Further, an amendment to section 376E (punishment for repeat offenders) has also been made where section 376AB, section 376DA, and section 376DB have also been added along with section 376, section 376A, and section 376D. That is, whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376AB or section 376D or section 376DA or section 376DB and is subsequently convicted for an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

3.8.2. Major Amendments to CrPC

These are the significant amendments made to the Criminal Procedure Code by the Criminal Law (Amendment) Act of 2018:

• An amendment was made in sub-section 1A of section 173 of CrPC, which stated a time duration of two months for investigation in relation to offences under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E [69]of the Indian Penal Code.

• Amendment in section 374 of CrPC added clause 4 relating to disposal of appeal within six months from the date of filing of such appeal in cases relating to sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of IPC.

• Amendment in section 377[70] of CrPC laid down a similar provision as that of section 374 but with regard to appeal by the state government.

Subs. by Act 22 of 2018, s. 21 (w.e.f. 21-4-2018)[69]

[70] Subs. by Act 25 of 2005, s. 31, for certain words (w.e.f. 23-6-2006)

• Amendment in section 438[71] of CrPC laid down provision regarding non-application of anticipatory bail provisions under section 438 made under offences committed under clause 3 of sections 376, 376AB, 376DA and 376DB.

• Amendment in section 439[72] of CrPC added a proviso which stated that the High Court or Court of Session shall give notice of application for bail to the Public Prosecutor within 15 days from the date of receipt of the notice of such application before granting bail to a person accused of offences under clause 3 of section 378, 378AB, 378DA and 378DB. It also makes mandatory the presence of the informant or any person authorised by him at the time of hearing of the application for bail to the person under the above sections.

3.8.3. Major Amendment to the Indian Evidence Act

• Amendment in section 53A[73] of the Evidence Act added sections 376AB, 376DA and 376DB in the main section.

[71] Ins. by Act 5 of 2009, s. 31 (w.e.f. 31-12-2009)
[72] Special powers of High Court or Court of Session regarding bail.
[73] 1. Ins. by Act 13 of 2013, s. 25 (w.e.f. 3-2-2013)
2. Subs. by Act 22 of 2018, s. 8, for "section 376A, section 376B, section 376C, section 376D" (w.e.f. 21-4-2018).

3.9. REASONS TO REFORM

• **Colonial Legacy:** The criminal justice system- both substantive and procedural- are replica of the British colonial jurisprudence, which were designed with the purpose of ruling the nation.

• Therefore, the relevance of these 19th century laws is debatable in the 21st century.

• According to National crime Records Bureau(NCRB)[74] Prison Statistics India, 67.2% of our total prison population comprises of under trial prisoners.

• Police Issue: Police are being a front line of the criminal judiciary system, which played a vital role in the administration of justice. Corruption, huge workload and accountability of police is a major hurdle in speedy and transparent delivery of justice.

3.9.1. Pendency of cases

• There are many pending cases in the court which result in delayed justice. According to a maxim, "justice delayed is justice denied". The reports for 2022 reveal that almost 4.7 crore cases are pending in the courts. Thus, there is a need to reform the laws and the criminal justice system must be made more concerned with speedy trial and justice

3.9.2. Undertrial prisoners

Prisons in the country are filled with undertrial prisoners, leading to the problem of overcrowded jails. Reports from 2020 reveal that 70% of the population in prison consists of under-trial prisoners. This is also an infringement of their fundamental right to life under Article 21 of the Constitution[75].

3.9.3. Lack of judges

The courts in India suffer from a shortage of judges, which puts pressure on the judiciary as there is an increase in the number of cases pending in the courts. According to the statistics and reports, there are 19 judges for approximately 10 lakh people in the country, revealing a huge shortage.

[74] 11 March 1986

[75] Undertrial prisoners https://www.humanrightsinitiative.org/

3.9.4. Ineffectiveness of the justice system

Due to corruption and political influence on the judiciary, the criminal justice system has become ineffective. This leads to a situation where an accused easily escapes from their liability and an innocent person has to spend their life in prison.

3.9.5. Issues within the police force

It is the duty of the police to investigate the matter and find evidence to extract the truth. However, at times, the officers misuse their powers to harass and torture the citizens. Thus, there is a need to reform the criminal justice system in the country.

3.10. REFORMS by the government to make the criminal justice system in India more effective

• Various recommendations from various committees have been accepted by the government, like trial through video-conferencing and amendments have been made to the laws. Most of the laws that were of no use and created hindrances in the administration of justice have been repealed.

• Lok Adalats,[76] fast track courts and special courts have been established for speedy justice.

• Parliament enacted the Legal Service Authority Act, 1987 to provide free legal aid to poor and illiterate people.

• The scheme of "Modernisation of police forces" has been implemented by the government to make the police more sensitive and sincere towards their obligations and duties.

[76] Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987

CHAPTER 4

GUIDELINES AND IMPLEMENTATION

4.1. Judicial responses to police reforms in India and their implementation

Several attempts to implement serious police reforms have been made over the past thirty years. The National Policing Committee published eight findings between 1978 and 1981, making various recommendations but taking no steps to put them into effect. In "Vineet Narain v. Union of India", the Supreme Court acknowledged that there is serious need to implement those reforms, and the Ribeiro Committee [77]published two reports: 1998 and 1999, 2000 and 2002 reports of the Central Government on the Padmanabhaiah Committee[78], and 2002 report of the Malimath Committee.

These conclusions were reached as a result of the Supreme Court's decision in "Prakash Singh vs Union".

The decision addresses the police organisations autonomy, accountability, and efficiency in general. Before legislation is enacted in this regard, the Supreme Court has issued clear directives to the federal and state governments.

In the Prakash Singh case, the Supreme Court issued a landmark judgement in 2006 with seven directions or guidelines, ("six for the state and one for the union territory"), directing the establishment of a state Security Commission to lay out broad policies and give directions for preventive tasks and service, as well as forming the Soli Sorabjee Committee, which proposed a Model Police Force. The Court directed to establish three institutions – "The State Security Commission",[79] which would formulate broad policies and provide direction for the police's preventive and service-oriented functions.

"Police Establishment Board", which is made up of the Director General of Police and four other senior officers from the Department and is in charge of deciding on transfers, postings, promotions, and other service-related matters for departmental officers and men; and

[77] Set up by the Supreme Court while it was deliberating over the Public Interest Litigation filed for police reforms.
[78] Set up by the Ministry of Home Affairs, Government of India in January 2000.
[79] The State Security Commission is supposed to frame the broader policy for the police department to guide its overall functioning and approach.

4.2. Implementation of Supreme Court directions

The Court ordered the Union and the States to comply with its orders by the end of 2006. This deadline was then extended until March 31, 2007. The Court ruled that the "directives would be in effect until the Central Government draughts a model Police Act and/or the State Government passes the necessary legislative provisions." Initially, the Court itself monitored all Union states and territories.

However, in 2008, it established a three-member Monitoring Committee with a two-year mandate for each State to determine compliance and report on a regular basis. The Supreme

Court has also appointed Justice Thomas to chair a committee that will present a report in 2010.

It was articulated "dismay over the total indifference to the issue of reforms in the functioning of Police being exhibited by the States". In the light of rape cases in 2012, "another committee formed under Justice Verma to review amendments to criminal law deplored the lack of implementation of the Court's seven directions not being implemented in the Prakash Singh case."

An examination of the current situation of SC guidelines reveals a dreadful image. Seventeen states have enacted a new law legitimising the status quo in a court that is perceived to be bypassing the directions, while other states have passed only executive orders. Those states are "Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Himanchal Pradesh, Karnataka, Kerala, Maharashtra, Meghalaya, Mizoram, Punjab, Rajasthan, Sikkim, Tamilnadu, Tripura, Uttarakhand".

The Central Government should also approve the Delhi Police Bill[80] at the time when it was presented before them. The Hon'ble Prime Minister issued a strict, sensitive, modern and mobile police vision, alert and accountable, trustworthy and accountable, technologically sound and informed, for SMART Police[81] in November 2014.

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[80] The Bill seeks to amend the Delhi Special Police Establishment Act, 1946.

[81] S stood for strict and sensitive, M for modern and mobile, A for alert and accountable, R for reliable and responsive, and T for tech-savvy and trained.

4.2.1. SC Judgement on Police Reforms

The Supreme Court of India in the year 2006, in the Prakash Singh v/s the Union of India case, gave 7 directives to all the States and Union Territories for carrying out police reforms. The major aim of the directives was to free the police system from the unwarranted interference and pressure from the political rulers and do their duty with full self- accountability. The Public Interest Litigation (PIL) was filed by a retired DGP (Director General of Police) having served in UP Police and Assam Police in the year 1996 seeking police reforms.

The case took a decade to conclude into what is considered as to be one of the most important judgments ever given by the Supreme Court after the Kesavananda Bharati[82] case of 1973.

Following were the 7 Directives for Police Reforms propounded by the Supreme Court in 2006:

1. Create a State Security Commission (SSC) for ensuring no unwarranted pressure or interference is exercised on the police by the respective state government. The SSC will also be responsible for evaluation of the performance of the state police and to institute broad policy guidelines.

2. The DGP must have a minimum tenure of 2 years and should be appointed via a transparent merit based process.

3. Superintendents of Police (SP) of a district, the Station House Officers (SHOs) of each police station and other police officials on operational duty must also have a minimum 2 years of tenure.

4. Hive off the prosecution, investigation, law and order, and other functions of the police.

5. Setup Police Establishment Board (PEB) for:

Giving decisions on the matters related to police officials below the rank of Deputy Superintendent of Police (DSP), such as transfers, postings, promotions among other service- related matters. For police officers above the rank of Deputy Superintendent of Police (DSP), recommend upon the matters such as postings, and transfers.

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Create Police Complaints Authority (PCA) at: State Level: To enquire into and deal with public complaints against officers above the rank of Deputy Superintendent of Police (DSP) including the DSP itself, in matters of serious misconduct such as rape in police custody, grievous hurt, custodial death, etc.

District level: With the same provisions and powers as above but for the police personnel who are below the Deputy Superintendent of Police (DSP) rank.

For the purpose of selection and placement of Chiefs of CPOs [83](Central Police Organisations) with a minimum tenure of 2 years, create a National Security Commission (NSC) for constituting a panel for the said purpose.

4.2.2. Implementation Status of SC Directives

As per a study report published by the Commonwealth Human Rights Initiative (CHRI), not even a single State /Union Territory in India has completely adhered to the above directives. Some have implemented a few among those in a manner so as to make the implementation useless and just for the namesake. It found that 18 states have passed the amendments to their respective Police Acts in pursuance of these directives. By and large, the Police is still under the control and influence of the State Governments and this hampers the overall criminal justice system as the officials feel hesitant to even file the cases, let alone investigate it honestly and ensure the delivery of justice.

It is important to understand that it is the action of the police which marks the beginning of the long process of justice delivery, an inaction on its part or an action under the undue influence of State Governments simply means denial of justice. The judges of already overburdened courts have limited capacity to take suo moto cases and oversee the investigations done by the police.

Recent Developments

Union Home Minister Mr. Amit Shah has sought suggestions to make the criminal laws of India more people-centric. The suggestions have been primarily sought by the Chief Justice of India (CJI), Chief Ministers (CMs), and Members of Parliament (MPs) among others.

In his statement, Mr. Amit Shah hinted that the days of third degree tortures will soon be over.

The government is keen to make changes in the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), and the Indian Evidence Act.

[83] https://www.mha.gov.in/en/about-us/central-police-organization

CHAPTER 5

LOOPHOLES IN INDIAN CRIMINAL JUSTICE SYSTEM

Criminal justice is the delivery of justice to those who have been accused of committing crimes. The criminal justice system is a series of government agencies and institutions. Goals include the offenders, preventing other crimes, and moral support for victims. The primary institutions of the criminal justice system are

the police, prosecution and defense lawyers, the courts and the prisons system. Lack Of Criminal Law Ref0rm

Laws such as sedition, blasphemy and criminal defamation were used as weapons to tame their Indian subjects. Such common-law legacies are still functioning in the post- independence era.

The Supreme Court, in several cases, has upheld the legality of the sedition as an exception to the freedom of speech provided under Art 19(1)(a) of our constitution. The use of this draconian law to penalize anyone who raises their voice goes against constitutional rights. J. Chandrachud has said that labelling dissent as "anti-national" or "anti-democratic" strikes at the heart of deliberative democracy. He further added that dissent is the safety valve of democracy.

Despite the independence of the judiciary from the executive and legislative bodies, the Indian judicial system faces a lot of problems. The Judicial Courts in India have several loopholes including lack of judges, the pendency of cases, lack of transparency, corruption, and what not.

Pendency of cases

The intent of the judicial system has been defeated by a significant number ofcases pending i n the Supreme Court and other lower courts. According to a well-known proverb, "justice delayed is justice denied. " Because of the gap between the salaries of talented young lawyers and the fees of judicial officers, the judiciary is no longer attracting the best legal talent.

Corruption

Just like the other organs of democracy, the executive and the legislative, the judiciary too has been found guilty under the charges of corruption though corruption charges under judiciary go unnoticed at times. A

minister taking a bribe or distributing money during elections may become a headline, but a courtroom clerk taking a bribe and altering the date of the trial remains unnoticed.

Lack of transparency

The most important requisite for a good judicial system is fairness and impartiality. In many cases, the integrity of justice is killed when a judge prefers his relative to be the case winner

over the one who actually deserves to win it. Other instances where lack of transparency can be seen includes the appointment of judges. People having internal relations or contacts are chosen over people who actually have the skills and talent.

In order to curb this unethical practice, National Judicial Appointments Commission (NJAC)[84] was established. It has altered the ability, merit, and other criteria for the appointment of judges.

5.1. LOOPHOLES IN IPC AND THE REQUIRED CHANGES

There have been many changes to ensure that the IPC evolves, but it has not changed completely since the date of adoption. Although certain changes have been made to the IPC's provisions, as supported by a court decision. For example, the decriminalization of adultery and homosexuality. The IPC is based on the predominant deterrence theory prevalent at that time, but criminal law needs to move from

Deterrence or Distribution theory to punishment reform theory. Some of the required changes are:

• Requires a gender-neutral definition of rape. Section 375[85] of the IPC does not include men, Hijra, or boys as rape victims, only women are considered rape victims.

• Sedition was inserted under Section 124A[86] of the IPC by the Britishers in 1898 to curb rebellion against them and curb freedom movements. But lately, this section has been widely used by those who criticise the government. If we see in today's context, the Fundamental Right to freedom of speech and expression under

[84] https://blog.ipleaders.in/theories-of-punishment-a-thorough-study/
[85] Subs. by Act 13 of 2013, s. 9, for sections 375, 376, 376A, 376B, 376C and 376D (w.e.f. 03-02-2013)
[86] Ins. by Act 27 of 1870, s. 5 and subs. by Act 4 of 1898, s. 4, for s. 124A

Article 19 gets violated if the government books someone under Sedition even when someone criticises the government.

• Section 57: Life imprisonment is left to the discretion of the court regarding the number of years. Rather, it depends on the type of crime committed.

However, when calculating the penalty, it is set to 20 years. This removes discretion from the judge and makes a difference in the choice of approach that imposes penalties.

• Section 54: Criminalises harassment of humans by performing obscene acts in public. However, the word "obscene" is not defined by law and is frequently misused by police.

Weaknesses of the Judiciary Pending cases –

One of the major flaws that the Indian judiciary faces are the number of pending cases. Justice delayed is justice denied. There are over four crore cases pending in India! This is one of the deepest concerns of the system. Our Apex Court is the Privy Council and not part of the Judicial System. There is no Justice in the Judiciary System except for Arbitration, Mediation and Captivation. Another flaw in the Judiciary is funding.

Corruption makes justice not only impossible but also makes people lose faith in the only medium of hope for unlawful activities.

Corruption in India keeps getting higher System is opaque – The selection of judges, appointments of assistants, etc, all lack transparency.

Lack of awareness – Lack of information and interaction amongst people and courts, specially lack of awareness in rural areas and unprivileged sections.

The pendency of cases is one of the most serious problems with the Indian court system. If the vacancies are filled, the backlog will be reduced, making the court system more efficient.

According to a study from 2015, there were over 400 openings for judges in the country's 24 High Courts.

The number of cases pending in the Supreme Court has just recently risen to over 60,000. In various courts, there are around 25-30 million cases.

The judge-to-population ratio is 10.5-11 per million, where it should be at least 50-55. The aim of the legal system has been undermined by a large number of cases pending in the Supreme Court and other subordinate courts.

To attract people with real talent to the judicial profession, the system must enhance their working circumstances, especially for trial court judges.

Lack of accountability

While it is good that the judiciary is free from any sort of executive and legislative bias, the Judiciary has too much freedom in certain cases, wherein there is an immense lack of transparency in the Judiciary.

Next to no officials are held accountable for their activities since the activities of the Judiciary are only monitored by the collegium.

This can be an easy escape in terms of accountability for actions, because with certain mere contacts, a judicial officer can easily commit offences and escape without any trace because of his/her position.

Corruption

The judiciary, like the other pillars of democracy[87], the executive and legislative branches, has been shown to be corrupt in some circumstances. There hasn't been any kind of accountability mechanism put in place. Even the media is unable to provide a complete and accurate picture of the corruption situation in court proceedings.

The media appears to be more concerned with uncovering corruption in other areas, particularly in the executive branch. A minister accepting a bribe or distributing money during an election may make the news, which is not the case with a judge.

Underproductive-

[87] The four pillars of democracy- the Legislature, Executive, Judiciary and the Media

The rules against crime have become obsolete. The government agencies have harassed innocent civilians and put very high pressure on the judiciary to resolve cases with limited, redundant law.

The complexity of crimes-

The crime numbers have been increasing rapidly in recent times and, due to technological growth and innovation, the nature of crimes is also becoming more complex. India's criminal system does not include the recent era's new crimes. Inefficient procedures for investigating crimes resulted in a haphazard investigation and delayed justice.

Inequality of Justice-

Even for serious crime the rich and the strong are hardly convicted. The increasing connection between politics and crimes makes it extremely difficult to do justice to the poor and marginalised.

Lack of public confidence-

• Civilists have stopped relying on CJS at the present time because it is costly, complex, and has lengthy procedures. This has led to social problems such as mob lynching.

• In Shabnam Hashmi murder case, which was killed by political opponents, the criminal was punished after a long period of 15 years.

• In Tanduri murder case, the accused a Delhi Congress Leader Sushil Sharma was convicted with death sentence after long 8 years 6 months.

• In Model Jesicalal murder case [88]and Madhumita Sharma murder case[89], accused persons were punished after a long legal battle. The SC of India is not even immune to delays.

• It's much-acclaimed judgment in the D.K. Basu case in 1996, known for its directives aimed to prevent custodial torture, took 10 years to be reached.

[88] https://economictimes.indiatimes.com/news/politics-and-nation/is-justice-served-by-premature-release-of-jessica-lals-killer

[89] https://www.dnaindia.com/india/report-madhumita-shukla-hatyakand-love-kills-poetess-love-murder-saga-discovery-docuseries-amarmani-tripathi

5.2. CUSTODIAL DEATHS

Custodial death is a death that occurs while a person is in the custody of law enforcement officials or in a correctional facility. It can occur due to various causes such as use of

excessive force, neglect, or abuse by the authorities. According to the Law Commission of India , the crime by a public servant against the arrested or the detained person who is in custody amounts to custodial death.

Absence of Strong Legislation:

India does not have an anti-torture legislation and is yet to criminalise custodial violence, while action against culpable officials remains illusory.

Institutional Challenges:

The entire prison system is inherently opaque giving less room to transparency.

India also fails in bringing the much desired Prison Reforms and prisons continue to be affected by poor conditions, overcrowding, acute manpower shortages and minimal safety against harm in prisons.

Excessive Force:

The use of excessive force including torture to target marginalised communities and control people participating in movements or propagating ideologies which the state perceives as opposed to its stature.

Lengthy Judicial Processes:

Lengthy, expensive formal processes followed by courts dissuade the poor and the vulnerable.

Not Adhering to International Standard:

Although India has signed the United Nations Convention against Torture[90] in 1997 its ratification still remains.

While signing only indicates the country's intention to meet the obligations set out in the treaty, Ratification, on the other hand, entails bringing in laws and mechanisms to fulfil the commitments.

[90] https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading

Other Factors:

Medical neglect or lack of medical attention, and even suicide. Poor training or lack of accountability among law enforcement officials. Inadequate or substandard conditions in detention centres. Underlying health conditions or pre-existing medical conditions that are not adequately addressed or treated while in custody.

5.2.1. What are the Provisions Available Regarding Custody?

Constitutional Provisions

Article 21:

Article 21[91] states that "No person shall be deprived of his life or personal liberty except according to procedure established by law".

Protection from torture is a fundamental right enshrined under Article 21 (Right to Life) of the Indian constitution.

Article 22:

Article 22[92] provides "Protection against arrest and detention in certain cases".

The right to counsel is also a fundamental right under Article 22(1) of the India constitution.

Role of State Government:

Police and public order are State subjects as per the Seventh Schedule of the Constitution of India.

It is primarily the responsibility of the state government concerned to ensure the protection of human rights.

[91] Article 21 has two types of rights: Right to life ,Right to personal liberty

[92] Article 22 in The Constitution Of India 1949, Protection against arrest and detention in certain cases

Role of Central Government:

The Central Government issues advisories from time to time and also has enacted the Protection of Human Rights Act (PHR)[93], 1993.

It stipulates establishment of the NHRC and State Human Rights Commissions to look into alleged human rights violations by public servants.

Criminal Procedure Code (CrPC):

Section 41 of Criminal Procedure Code (CrPC) was amended in 2009 to include safeguards so that arrests and detentions for interrogation have reasonable grounds and documented procedures, arrests are made transparent to family, friends and public, and there is protection through legal representation.

Indian Penal Code, 1860

Sec 330 & 331[94] of the Indian Penal Code 1860 provides punishment for injury inflicted for extorting confession.

Crime of custodial torture against prisoners can be brought under Sec 302, 304, 304A, and 306 of IPC.

• Section 302[95] of the Indian Penal Code (IPC): If a police officer is liable for the death of a suspect in the course of custody, he or she will be charged with murder and would be punished under Section 302 of the IPC.

• Section 304[96] of Indian Penal Code: Under Section 304 of the IPC, the police officer can be punished for 'culpable homicide not amounting to murder. Section 304A can also be applied if the custodial death occurred by the negligence of the police officer.

[93] Protection of Human Rights Act, 1993

[94] Voluntarily causing hurt to extort confession, or to compel restoration of property, Voluntarily causing grievous hurt to extort confession, or to compel restoration of property

[95] Subs. by Act 26 of 1955, s. 117 and the Sch., for "transportation for life" (w.e.f. 1-1-1956)

[96] Punishment for culpable homicide not amounting to murder

• Section 306[97] of Indian Penal Code: Section 306[98] of IPC deals with punishments associated with abetment to suicide. If it is found that the suspect has committed suicide under custody and if the policeman has abetted the suicide; then he would be punished under section 306 of the IPC.

• Section 330 of the Indian Penal Code: It has been observed that police officers resort to violence and torture to obtain confessions and in the process, grave injuries occur to the accused. Section 330 of IPC deals with punishment for causing voluntary hurt.

• Section 331 of the Indian Penal Code: In case grievous hurt is caused to the accused during custody; it will amount to punishment to a police officer for causing voluntary grievous hurt.

• The famous Mathura rape case brought significant changes in the criminal justice system and amending Section 375[99] of IPC.

• Section 376 (1) punishes custodial rape committed by police officers.

• The custodial death is the death of a person in a police custody or judicial custody while custodial violence can have two forms of violence.

Section 348 of Indian Penal Code, Section 76 of CrPC and Section 29 of the Police Act it implies that the police officers can torture to only extract confessions but only in necessary circumstances.

Protection under Indian Evidence Act, 1872:

Section 25 of the Act provides that a confession made to the police cannot be admitted in Court.

Section 26 of the Act provides that a confession made to the police by the person cannot be proved against such person unless it is made before the Magistrate.

Indian Police Act, 1861:

Sections 7 [100]& 29 [101]of the Police Act, 1861 provide for dismissal, penalty or suspension of police officers who are negligent in the discharge of their duties or unfit to perform the same.

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[97] Abetment of suicide
[98] Attempt to commit culpable homicide
[99] Subs. by Act 13 of 2013, s. 9, for sections 375, 376, 376A, 376B, 376C and 376D (w.e.f. 03-02-2013)
[100] Appointment, dismissal, etc., of inferior officers
[101] Penalties for neglect of duty, etc.

5.3. WAY FORWARD

• Ensuring strict adherence to human rights laws and regulations, including the prevention of torture and cruel, inhuman, or degrading treatment or punishment.

• Implementing comprehensive and effective training programs for law enforcement officials on the proper use of force and non-lethal methods of controlling suspects.

• Establishing independent and impartial investigations into all custodial deaths to determine the cause of death and hold responsible parties accountable.

5.4. KEY FINDINGS IN CUSTODIAL DEATH IN INDIA[102]

- A total of 146 cases of death in police custody were reported during 2017-2018,
- 136 in 2018-2019,
- 112 in 2019-2020,
- 100 in 2020-2021,
- 175 in 2021-2022.

• In the last five years, the highest number of custodial deaths (80) has been reported in Gujarat, followed by Maharashtra (76), Uttar Pradesh (41), Tamil Nadu (40) and Bihar (38).

- National Human Rights Commission (NHRC) has recommended monetary relief in 201 cases, and disciplinary action in one case.

[102] KEY FINDINGS IN CUSTODIAL DEATH IN INDIA

5.5. Human rights abuses in the criminal justice system

Human rights[103] are those that every person has as a human being right from birth. This is natural and inalienable. Human rights are the basic rights that an individual has, irrespective of other factors, due to being a member of the human family. To enforce human rights and thus preserve and secure the civil rights of residents of the country, the criminal justice system, consisting of police, judicial, and correctional institutions has an important role to play. Nevertheless, police and prison brutality runs contrary to the values of human rights. The Indian Constitution, which has been clarified in many Supreme Court rulings, provides for human rights protection in keeping with international standards like in Maneka Gandhi v. Union of India[104], the Supreme Court held that no one should be subjected to arbitrary arrest, detention, or exile.

Under Article 21 no person shall be deprived of life and personal liberty except according to the procedure prescribed by law. Since the decision of the Supreme Court, the procedure under Article 21 must be fair, just, and reasonable and cannot be arbitrary, unfair, or unreasonable

[103] Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.

[104] Union of India, AIR 1978 SC 597

CHAPTER 6

CASE LAWS RELATED TO INDIAN JUSTICE CRIMINAL SYSTEM

- **Joginder Kumar v. State of U.P and others, 1994[105]**

CASE NUMBER

WP Crl. No. 9/1994

CITATION

1994 AIR 1349, 1994 SCC (4) 260

BENCH

M.N.VENKATACHALLIAH (CJ), S. MOHAN (J), A.S. ANAND (J)

DECIDED ON

25 April 1994

In this landmark case, the Court observed that the rights under Articles 21 and 22(1) of the Constitution need to be recognised and must be protected. The Court issued a few guidelines to ensure the protection of these rights. The arrested person should be informed about his or her right by the police officer when the arrested person is brought to the police station. An entry needs to be maintained in the register which contains the information about who was informed about the arrest of the accused. Articles 21 and 22(1) should be strictly recognised and enforced. The Magistrate shall determine whether all the requirements are fulfilled and obeyed by the police authority.

The landmark judgement suggested an important procedural mechanism which could be proved beneficial if it is implemented in the right spirit. The judgement is important in the essence that it recognises the fundamental rights and basic human rights of the individual and provides a way of protecting them.

[105] Joginder Kumar v. State of U.P. and Others, 1994 Cr L.J. 1981

➢ J. Prabhavathiamma v. the State of Kerala and others, 2007[106]

Case Number

WP (C) No. 24258 of 2007(K)

Citation

2008 Cri LJ 455, 2008 (1) KLJ 9

Bench

Hon'ble Justice J.B. Koshy and Hon'ble Justice K. Hema, JJ.

Decided On

20th September 2007

Relevant Act/ Section

Code of Criminal Procedure, 1973 – Section 173(8)

Code of Criminal Procedure, 1973 – Section 319

High Court Act 1958 (Kerala Act 5 of 1959) – Section 3

The case pertained to the death of a scrap metal shop worker in custody in Thiruvananthapuram. The hearing of the case lasted for a decade and the CBI Court ultimately sentenced the two accused serving personnel to the death penalty.

Justice Nazir remarked that the police officers have brutally murdered the victim and have adversely affected the reputation of the police institution. The judge also held that such heinous acts cannot be pardoned because they will affect the law and order and it would encourage police officers to exercise their power arbitrarily.

Death sentence is a kind of punishment that is rarely awarded but in this particular case, the Bench adjudged on the basis of gravity of the offence committed and by awarding death sentence, set a precedent to prevent such activities in the future.

[106] J.Prabhavathiamma vs The State Of Kerala on 20 September, 2007

➢ Yashwant and others v. the State of Maharashtra, 2018[107]

Citation

(2018) 4MLJ (Crl)10(SC)

Citation

Appeal (Crl.), 385--386 of 2008

Petitioner

Yashwant and Others

Respondent

State of Maharashtra

Date of Judgment

Sep 04, 2018

The case involves nine cops of the Maharashtra police who were accused of causing a custodial death in 1993, the High Court of Bombay sentenced them to imprisonment for a term of three years. The Supreme Court upheld the order of the high court and extended the punishment sentence from three years to seven years each.

Justice N.V. Ramana and MM Shantanagoudar remarked that the unfortunate incident involving the police erodes the confidence of people in the criminal justice system. The Court found the police personnel involved in the incident to be liable under Section 330 of the Indian Penal Code for causing voluntary hurt to extort a confession from the victim.

The extension of the punishment is absolutely justified in the prevailing case because of the nature of the offence committed. It is important that the law enforcement agencies act as per the due process of law established in the Constitution. The judgement is landmark because the Apex Court not only withheld the punishment, but rather they extended the term which established a precedent that the judiciary would not entertain any cases pertaining to violation of human rights.

[107] Rambabu Singh Thakur vs Sunil Arora Case: The right to 'know the antecedents of political candidates' as prescribed under Section 33A and 125 of the Representation of People Act, 1951 empowers the populace with the right to form an informed choice of their leaders.

➢ Rambabu Singh Thakur v. Sunil Arora (2020)

CITATION

Contempt Petition(c) No.2192 of 2018

PETITIONER

Rambabu Singh Thakur

RESPONDENT

Sunil Arora & Ors.

DATE OF JUDGEMENT

13 February , 2020

BENCH / JUDGE

Rohinton Fali Nariman, S. Ravindra Bhat jj

RELEVANT SECTION / ARTICLE

Article 129 and 142

In this case, the Supreme Court of India observed that there has been an increase in the number of criminal politicians in India since the last 4 general elections, and there is no explanation on the part of political parties as to why they have selected a candidate with a criminal record. In 2004, 24% of the members of Parliament had criminal cases pending against them. In 2009, that went up to 30%, in 2014 to 34%, and in 2019, as many as 43% of MPs had criminal cases pending against them.

- **Anuradha Bhasin v. Union of India (2020)**

CITATION:

AIR 2020 SC 1308

Case No.:

Writ Petition (Civil) No. 1031 of 2019

Case Type:

Writ Petition

Petitioner:

Anuradha Bhasin and Ors.

RESPONDENT:

Union of India and Ors.

The case primarily dealt with the suspension of the internet in the State of Jammu and Kashmir post revocation of Article 370 of the Constitution of India, however, one of the

issues in the case was regarding the excessive imposition of Section 144 of the Code of Criminal Procedure, 1973, which empowers a magistrate to impose restrictions on movement and speech in areas where trouble could erupt.

➢ Paramvir Singh Saini v. Baljit Singh (2020)

CITATION:

SLP (Crl) No. 2302 of 2017

PETITIONER:

Paramvir Singh Saini

RESPONDENT :

Baljit Singh & Others

BENCH;

J RF. Nariman, K.M. Joseph. Aniruddha Bose

DATE:

2 December 2020

The Supreme Court of India in this case, after hearing the learned amicus curiae, considered the guidelines given in the case of Shri Dilip K. Basu vs State of West Bengal & Ors., (2015) which held that there is a need to install CCTV camera footage and periodically publish a report of its observations

➢ Shilpa Mittal v. State of NCT of Delhi (2020)

Citation:

AIR 2020 SC 405

In this case, the accused, who was a juvenile at the time of the commission of the offence, committed an offence that is punishable under Section 304 of the Indian Penal Code, 1860. The juvenile at the time of occurrence of the incident was above 16 years but below 18 years, and the Juvenile Justice board held that the accused has committed a heinous offence, and, therefore should be tried as an adult.

➢ The murder of ghosts – Ram Bahadur Thapa (1959)

CITATION

AIR 1960 Ori 161, 1960 CriLJ 1349

This was a very peculiar case, called State of Orissa v. Ram Bahadur Thapa (1959). J.B. Chatterjee of the Chatterjee Bros. firm in Calcutta employed Ram Bahadur Thapa as a servant. They had gone to Ras Govindpur, a village in Orissa's Balasore district, to buy scrap from an abandoned airport outside of town. The local people considered that area haunted and the same was made known to the visitors. As they drove to the aerodrome late at night, they noticed a flickering light within the premises that seemed to move because of the strong winds. Thapa leapt into action, brandishing his khukri in the direction of the 'ghosts.' They turned out to be indigenous Adivasi ladies with a hurricane light who had congregated under a Mahua tree to gather flowers.

Thapa injured two women and killed another and thus was charged with Section 302 (murder), Section 326(grievous hurt with dangerous weapons) and Section 324 (hurt with dangerous weapons) of the Penal Code. The Sessions Judge held that the accused committed the acts under a bona fide mistake of fact, thinking that he was attacking ghosts and not human beings and hence acquitted him relying on Section 79, which talks about acts justified by law or acts which under a mistake of fact is thought to be justified by law. The petitioners challenged this through an appeal to the Supreme Court saying that through extra care and caution, this event could have been averted. But the Court dismissed these arguments and said that Ram Bahadur Thapa had to be accorded the protection of Section 79.

➢ The Nanavati murder case (1959)[108]

CITATION:

1962 AIR 605, 1962 SCR Supl. (1) 567

This case, K.M. Nanavati v. the State of Maharashtra (1961) is one of the landmark cases in Indian history and marked the end of jury trials in India. K.M. Nanavati was a respected naval officer who killed his wife's extra-marital lover, Ahuja in 1959. Nanavati, after committing the crime went to the local police and turned himself in. The main point of contention was whether the action of Nanavati was due to grave provocation or it was a

[108] K. M. Nanavati vs State Of Maharashtra on 24 November, 1961

pre- mediated murder. The petitioners contended that during a confrontation of Nanavati with Ahuja, the latter stated that he "could not marry every woman he slept with", which led to Nanavati killing Ahuja. Their arguments were based on the fact that Nanavati committed the murder in the heat of the moment and thus it was a case of culpable homicide, not amounting to murder. (Exception 1 under Section 300). The Respondents contended that Nanavati had, after listening to his wife's confession, dropped her and their children off to the cinema, gone to his ship to procure a rifle and then gone to visit Ahuja. It was contended that it was clearly implied that Nanavati had the intention to murder Ahuja and there was no sudden provocation.

➢ Renuka Shinde and Seema Gavit : Child Killers (1990-1996)[109]

In Maharashtra, a woman named Anjana Bai, the matriarch of her family, taught and encouraged her family to murder and abuse young children for money. The entire episode came to light when her two daughters, twenty-nine-year-old Renuka Kiran Shinde, twenty- five-year-old Seema Mohan Gavit along with Renuka's husband, Kiran Shinde, were arrested in 1996. The three, along with Anjanabai, were accused of abducting and killing children, particularly those less than five years of age. Although they were accused of abducting thirteen children between 1990–96 and killing nine of them, they were eventually charged with only five murders.

➢ The Billa – Ranga Case (1978)

The main aim of Billa and Ranga, two hardened criminals who had just been released from Arthur Road Jail in Mumbai on the day the crime occurred, was to capture kids that they happened to come across and demand ransom from their parents. The unfortunate in this situation were two teenagers, Geeta and Sanjay Chopra who happened to come across their vehicle, a yellow Fiat and entered it to take a lift to the AIR office where they were to participate in a programme. Certain people realised there was a problem as the car sped away because the teenage duo had themselves realised the nefarious intentions of Billa and Ranga and had started fighting in the car and screaming from within. A police report was attempted to be made by one concerned citizen but the police refused to take the report citing jurisdictional issues.

➢ Bhanwari Devi rape case (1992)[110]

[109] Renuka Shinde and Seema Gavit : Child Killers (1990-1996)

[110] https://www.hindustantimes.com/india-news/bhanwari-devi-justice-eluded-her-but-she-stands-resolute-for-others

Bhanwari Devi was an Indian social worker from Rajasthan who was gang-raped in 1992 by men who were enraged by her efforts to prevent their family from having a child marriage. Her subsequent treatment by the police and the accused's subsequent acquittal in court drew enormous national and international attention, and it became a watershed moment in India's women's rights movement.

➢ The Nirbhaya gang-rape (2012)[111]

This is a case that sparked widespread protests and triggered changes in major rape laws in India. The gruesome and horrifying gang rape of Jyoti Singh also called Nirbhaya or the Unafraid, brought the entire youth of India to the streets. Instead of victim shaming, the people of India screamed her name as it had become a source of strength in the face of the fear of the unsafe nature of the Delhi streets.

➢ Lal Bihari identity case (1975-1994)

Lal Bihari was born in 1955, died between 1975 and 1994, and has been an activist since then. His uncle bribed government officials to declare him dead so that he might receive their ancestral land, and Mr Lal Bihari was officially declared dead. He began his battle against the Indian bureaucracy to establish that he was still alive after he discovered what had happened. Meanwhile, he staged a sham burial, demanded widow's pay for his wife, ran against Rajiv Gandhi in the 1989 election, and even added a 'Mritak' to his name. He is currently the director of an organisation that seeks to deal with similar identity situations for others who have lost theirs.

[111] MUKESH V. STATE OF NCT DELHI

6.1. THE SUPREME COURT OBSERVATION IN THE FOLLOWING CASES

➢ DK Basu v. the State of Bengal

1. That the police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
3. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
4. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/ her body, must be recorded at that time. The 'Inspection Memo must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
5. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by the Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.
6. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
7. The arrestee may be permitted to meet his lawyer during interrogation.

A police control room should be provided at all districts and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated

6.2. SC Puts Sedition Law in Abeyance

In May 2022, the Supreme Court told states to refrain from registering cases for the offence of sedition under Section 124A[112] of the Indian Penal Code (IPC). The sedition law, first passed in 1860, was used by the British to suppress dissent. It provided for punishment for anyone who "excites or attempts to excite disaffection towards the Government", with a maximum of life imprisonment, with or without a fine. After Independence, it has been used by successive Indian governments to similar effect.

In 1973, after changes in the Code of Criminal Procedure (CrPC), the police were allowed to arrest without warrant under Section 124A. The law has been prone to abuse by government and law enforcement agencies.

In a March 2021 response, the government informed Parliament that between 2015 to 2019, 501 people were arrested under Section 124A, but only nine persons, or 2%, had been convicted.

India Spend has asked the Ministry of Law and Justice, and the Law Commission for their comments on the decision to put sedition law in abeyance, and on the bail law. We will update the story when we receive a response.

In a 2018 consultation paper on sedition, the Law Commission noted that "every irresponsible exercise of right to free speech and expression cannot be termed seditious", and that Section 124A should be "invoked only in cases where the intention behind any act is to disrupt public order or to overthrow the Government with violence and illegal means".

"Although the ambit of section 124A has been narrowed by the Supreme Court in the Kedarnath judgement, the police seem ignorant of the judgement or wilfully ignore it," said Leah Verghese, research manager at DAKSH, a Bengaluru-based law and justice reforms think-tank. "This explains the high acquittal rates, since the persons arrested have often not committed the offence of sedition."

"There has to be immediate and sure consequences for abuse of office and abuse of power [through the sedition law]; only then will there be real improvements," said Daruwala.

Web portal Article 14's database on sedition reported that in a six-year period until 2020, there had been a 28% annual rise in sedition cases compared to the yearly average between 2010 and 2014.

[112] 124A. Sedition

According to the government's crime data, there was a 83.4% pendency in the police disposing sedition cases in 2021, which included 189 cases pending investigation from the previous year, while the court's backlog was at 97%.

6.3. Review of the Prevention of Money Laundering Act

In July 2022, the Supreme Court upheld various provisions of the Prevention of Money Laundering Act (PMLA),[113] including the putting the burden of proving innocence on the accused for granting bail (versus the norm of being considered innocent until proven guilty), defining the powers of the Enforcement Directorate (ED)[114] for arrest and seizure, and making the Enforcement Case Information Report (ECIR, equivalent to an FIR) available to the accused.

In August 2022, a review petition was filed in the Supreme Court, following which the court decided to "prima facie" review the two matters: addressing the presumption of guilt on the accused, and availability of ECIR. The petition had pointed out that if the accused is not given access to the ECIR, it becomes difficult to present evidence to show their innocence.

The definition of money laundering is wide and covers a range of activities, so it becomes easy for the ED to target people under this law, said Verghese.

"The provisions of the PMLA that make bail very difficult and reverse the burden of proof fly in the face of the presumption of innocence which is the bedrock of our criminal justice system," she added. "The reversal of burden of proof is a worrying new trend in criminal legislation."

The concern about the unbridled power to the ED and possibility of abuse of provisions is "contrary to the factual position particularly when all the actions by the ED are subject to judicial scrutiny by the courts", said the ED in an official response to India Spend's questionnaire.

While the powers of punishment are vested with courts, the ED's power of seizure of property "is subject to judicial review and such power is available to anti-money laundering agencies all over the world and Indian money laundering agency is not an exception", the response said.

[113] 2002
[114] 1st May, 1956

According to ED data on PMLA, 5,422 cases are under investigation, 400 persons have been arrested and 25 have been convicted until March 31, 2022.

6.4. Reform criminal laws

In 2020, the Ministry of Home Affairs constituted the National Level Committee for Reforms in Criminal Laws to undertake a review of criminal laws–the IPC, 1860, the CrPC, 1973 and the Indian Evidence Act, 1872 (IEA).

Parliament committee reports over the years have recommended reform in the criminal justice system instead of a piecemeal approach. "...there is an imperative need to reform and rationalise the criminal law of the country by introducing a comprehensive legislation in Parliament, instead of bring amendment bills in piecemeal," said the 146th department- related parliamentary standing committee report (2010) on the Code Of Criminal Procedure (CrPC) (Amendment) Bill, 2010.[115]

The Union government, in March, initiated the process for addressing amendments to criminal laws. According to an April 2022 government response in Parliament, the committee submitted its recommendations in February on various sections of the IPC, CrPC and IEA.

In October, Home Minister Amit Shah said that the government had received multiple suggestions for improvements. "Soon we will be able to present a draft of the new CrPC and IPC in Parliament," he said. IndiaSpend has asked the Ministry of Home Affairs for comments on changes in criminal laws and the presentation of the draft in Parliament. We will update the story when we receive a response.

6.5. Framing guidelines for mitigating factors in death sentences cases

In September, the Supreme Court decided to refer to a five-judge bench the task of framing guidelines regarding potential mitigating circumstances to be considered while imposing a death sentence.

There were 488 death row prisoners in India in 2021, according to Project 39A's Death Penalty in India report. This was the highest recorded since 2004, when it was reported to be 563.

[115] https://prsindia.org/billtrack/the-code-of-criminal-procedure-amendment-bill-

According to Project 39A's Death Penalty and the Indian Supreme Court report, mitigating circumstances are aspects pertaining to an offender's character, background, record, offence, or any other circumstances which, while not constituting excuses or justifications for the crime, might serve as the basis for a lesser sentence.

The referral is "extremely significant" to ensure adequate consideration is placed on mitigating circumstances and procedural fairness is secured before imposing the death sentence, said Shivani Mishra, senior associate (Litigation) at Project 39 A.[116]

".the accused can scarcely be expected to place mitigating circumstances on the record, for the reason that the stage for doing so is after conviction," the court noted.

In the Bachan Singh case (1980), the Supreme Court, while upholding the constitutionality of the death penalty, considered a separate hearing on sentence as an important safeguard, added Mishra.

The Project 39A report data from 2007 to 2021 on sentence of death showed that of 106 judgments ending in commutation of death sentences, 94 had reasons for commutation provided and mitigating circumstances were considered, while the rest did not have a clear reason.

Of the 40 confirmed death sentences, 12 judgments (30%) did not consider mitigating circumstances at all, which demonstrated "the failure to comply with the least disputed aspect of Bachan Singh[117], i.e, the conduct of mitigation", said the report.

During the tenure of N.V. Ramana as Chief Justice of India, three benches of the Supreme Court heard arguments in 15 death penalty appeals, resulting mostly in commutations and acquittals, said Mishra.

"A common thread running across these decisions is a deep and acute concern surrounding the procedural fairness of the imposition of the death penalty and the lack of adequate information about the accused."

[116]Project 39A aims to trigger new conversations on legal aid, torture, forensics, mental health in prisons, and the death penalty, using empirical research to re-examine practices and policies in the criminal justice system.
[117] AIR 1980 SC 898, 1980 CriLJ 636, 1982 (1) SCALE 713, (1980) 2 SCC 684, 1983 1 SCR 145

CHAPTER 7

SUGGESTION AND CONCLUSION TO IMPROVE INDIAN CRIMINAL JUSTICE SYSTEM

7.1. Suggestions for improving the criminal justice system

A person is not a born criminal. It is due to his association with bad company that often leads him into trouble. A person is always capable of reforming provided he sees his release in the society as a reward for it. If no such temptation is provided to accused persons, he will never try to reform himself and always languish in jails.

This often leads to overcrowding of prisons and serious health issues arise in the prisons. It is to be noted that the corrective methods are required for the accused persons and not for under-trials. A mechanism has to be prepared for separating under trials from convicts. Due to various corrective measures a convict can be reformed and be released in the society because it is always better to reform a convict than to punish a person who is already repenting for his wrongdoing. It is ultimately the fight against crime and not criminals.

Various corrective measures in India.

Steps to heal India's ailing criminal justice system The above-discussed factors and consequences affecting the criminal justice system are complex and grave. Because India has a huge pluralistic populace, crimes of distinct natures are expected to be occurring in the Indian society. While swelling number of crimes is the biggest challenge to the criminal.

Justice system in India nevertheless certain aspects should also be necessarily addressed to enhance the performance of the institutions associated with the criminal justice system.

Many provisions in the criminal laws (substantive and procedural laws) call for an urgent amendment in nature of alteration or repeal. The obsolete laws, inconsistent with the constitutional and human rights regime, needs to be repealed by the legislature.

So also the vaguely defined provisions that give scope for arbitrary exercise of power must be altered or modified.

The criminal laws must be flexible enough to incorporate new provisions to tackle anew or changing modalities of crimes. In a similar manner the judiciary is expected to balance the constitutional role of the legislature by justly interpreting, sufficiently elucidating and even striking down any obsolete provision of the criminal laws. The Indian judiciary has played a cardinal role by reading the criminal laws in a manner complementing the constitutional values and norms. The executive agencies, implementing or executing the criminal laws of the land must respect the constitutional limitations. They must not overstep their constitutional domain, bounds of rule of law and principles of natural justice while executing the criminal procedures India is a welfare state; this makes it incumbent on the state and its agencies to adopt pro bono measures to improve the criminal justice system of the country.

It must usher reforms like facilitating the opportunity to seek justice and legal aid. Similarly, it must expand its umbrella protection to rehabilitate and reform the victims of crime and non-recidivist offenders especially women, children and aged people.

Lastly, it must be the moral and ethical duty of each and every citizen of India to abstain from breaking laws, give due respect to the rule of law and aid the institutions working in the criminal justice system. Continues changes in the criminal code One of the cardinal principles of codification is that laws must be certain and not prone to recurrent and recurring changes. However, this cardinal principle must be read with the need to timely reform the laws. ‘Crime’ is not a mere actus reus (criminal action) with the contingency of mens rea (guilty cognitive faculty)’; it is an evil that degenerates the society and advocates immorality.

Thus, criminal laws must be adequately flexible to deal with the daunting challenge of any social menace like bride burning, marital rape, child labour, human trafficking to exemplify some. The Indian Penal Code was enacted way back in 1860 by the First Law Commission of India[118] constituted in under the chairmanship of Lord Macaulay.

It was framed under the guise of colonial regime which is infamous for governing and legislating in India according to their vested interests. One the best example to signify the same is the provision on sedition under Section 124A[119] of the India Penal Code, 1860. Pt. Jawaharlal Nehru, the first Prime Minister of India,

[118] The First Law Commission consisting of Lord Thomas Babington Macaulay as the First Law Member and three other members produced a draft of Penal Code in 1837, Limitation Law in 1842 and a Scheme of Pleadings and Procedure in 1848.
[119] Sedition

exclaimed that the provision on sedition is a highly objectionable and obnoxious law; the sooner the country gets rid of it the better it is. Thus, the Indian Penal Code requires amendment on the lines that post-colonial compliance with some of the provisions of criminal laws can abrogate the fundamental rights of the citizens (sedition provision unduly curtails the freedom of speech and expression of individuals) and make society intolerant. An overall analysis of the laws in the Indian legal system suggests that some legislations have indeed become redundant.

The 248th Report of Law Commission[120] of India has made a comprehensive and exhaustive list of seventy-two union and state legislation that calls for urgent repeal by the respective legislatures . Most of the legislations under the list have been enacted during colonial rule in India. On many counts the Indian legal system is highly influenced by common law practices but even the United Kingdom have abolished some obsolete laws that are still duly followed in India. For instance, Section 377[121], IPC criminalizing homosexuality in India has already been abolished in England way back fifty years . It is presumed that the legislature better understands and appreciates the need of society and its people.

Analysing on the lines of this presumption it can be said that it is the legal and moral duty of the legislature to alter, add or repeal laws depending upon the social needs and changes. Legislations, here, can be called as a tool of social engineering17 to frame or modify laws that works in a dynamic society. The power and duty to legislate must be necessarily exercised where there is a lacuna in law, persistent mischief, abuse of law or when any issue has shaken the conscience of the society as in case of acid attack, spreading disharmony amongst different sections of society, child rapes and so on. It is an implied duty of the legislatures not to frame laws vaguely and ambiguously. Vaguely defined provisions serves as a trap to victimize people unnecessarily rather than serving as an incentive to check and punish crimes.

The vaguely defined provisions often conflicts with the basic human rights of the individuals. One such example of the vaguely defined provision is Section 66A of 2462 the Information and Technology Act,[122] 2000, it often collided and conflicted with the freedom of speech and expression of the individuals.

[120] https://indiankanoon.org/doc/129259806/
[121] Unnatural offences
[122] 9th June, 2000

This provisions contained terms like ‘offensive’, ‘menacing’, ‘annoyance’, ‘inconvenience’, ‘danger’, ‘obstruction’ and ‘insult’ without any explanation of the same being given under the Act, 2000.

Recently Section 66A[123] of Act, 2000 has been struck-down by the Supreme Court of India in Shreya Singhal v Union of India[124] to put an end to its persistent abuse. Reformation in the procedural laws is also incumbent whenever the criminal procedure becomes an impediment in the exercise of principles of natural justice or fundamental rights of the citizens. Similarly, amendments in the procedural laws are mandatory to prevent victimization of the victims of crime at the hands of laws. In order to make the administration of criminal justice speedy exercise the legislature can fix a timeframe for the implementation of the criminal procedure. However, the legislature has to be conscious of the fact that setting time limitation does not result in failure of justice.

The Criminal Procedure Code, 1973 has not fixed any limitation for the investigation of a cognizable crime. An interpretation of the same suggests that investigation must be carried by the police in speedy manner but not compromising with the motive to bring best evidence before the court of law. In the past and recent past the Parliament of India has made many reformations in the Indian Penal Code, 1860, Criminal Procedure Code, 1973 and Indian Evidence Act, 1872. Actions or omissions comprising dowry death, cruelty against women, abetment of suicide of a married woman, modification in rape and human trafficking laws and many more have been classified as crimes. It must continue with the same incentive and spirit to combat the challenges that crime poses to the society and individual liberty. Encouraging skeptical judicial approach In order to cure the ailing criminal justice system of India, the Indian legal system requires a judiciary that is vigilant, ever-performing and delivering.

The higher judiciary of India comprising of the Supreme Court of India and High Courts of the respective states have efficiently undertaken the functions of decision-making and law- making; the law making function of judiciary has become more prominent especially after the advent of Public Interest Litigation in India during the end of 1970s and beginning of 1980s. In terms of law-making function the higher judiciary has been quite successful in filling the lacuna where no law existed beforehand and in laying down binding decisions that have become the law of the land until the enactment of the same.

[123] Section 66A of the Information Technology Act, of 2000 made it a punishable offence for any person to send offensive information using a computer or any other electronic device

[124] AIR 2015 SC 1523; Writ Petition (Criminal) No. 167 OF 2012

For instance in matters of sexual harassment at work, the Supreme Court of India for the first time pronounced a decision in this regard in Vishakha v State of Rajasthan that has been the 'law' in case of commission of sexual harassment at work place until the enactment of Criminal Laws Amendment Act, 2013.

The higher judiciary has been liberally interpreting the provision of 'right to life and personal liberty' to acknowledge many rights that prevents the suffering of victims and accused during the investigations or trials. Such judicial approach has revolutionized the criminal justice system of India. Some of the important rights carved out by the judiciary in this regard deserve a mention here. 'Right to speedy trial' which ensures that procedural laws that delays the trial is void ab initio, has been pronounced in Sher Singh v. State of Punjab[125] and Hussainara Khatoon v. Home Secretary[126], State of Bihar. 'Right to speedy justice', as pronounced in Mose Wilson v Kasturba, direct the authorities to undertake their duty in time to prevent the situation going out of control.

'Rights of under-trial prisoners' ensures that under-trial prisoners kept in jail exceeding the maximum prison term awardable on conviction must be released.

Similarly in the case of Mathew v. State of Bihar, the Apex Court ruled that persons kept in jail or without charge must also be released. A skeptical judiciary is the need of the hour which can reasonably and judiciously decide cases to reform and improve the criminal justice system in India. A mere argument that judiciary must not overstep its constitutional functions is not sound to curb or criticize the judicial system which has been successful to an extent in updating the criminal laws with constitutionalism and human rights. Judicial innovations to improve the criminal justice system must not be viewed as 'overstepping' or 'anarchic' in nature. For, the legislation cannot be expected to solve each and every problem, especially the urgent and immediate issue .Though the judicial system is reeling under many serious issues like pendency of cases, delay in trial and corruption being the prominent one, the public needs to impose faith in its working. In recent times the judicial system has shown brevity to address fragile issues like questions on legitimacy of homosexuality and recognition of transgender that were either ignored or considered taboos in the past. At the same time the Indian judiciary must also stand to the expectation of common man and administer justice no matter what may come. It must not venture in unnecessary verbal or implied tension with the other branches of state namely the Legislature and Executive. Any organ of the government is at its best when it imposes self-restrain and performs the constitutional duties and judiciary is not an exception to this virtue. Absolute suppression of the

[125] S. 16 (1)(c) of the Prevention of Food Adulteration Act
[126] a landmark judgement which highlighted the importance of timely justice as an integral part of fair trial, thus widening the scope of article 21.

abuse of power by the administration It is the constitutional and statutory duty of executive agencies like police to observe the cardinal principles of criminal laws while executing them.

They must comply with the rule of law and must not indulge in any arbitrariness or nepotism or favouritism while investigating the cases. They are bound by the tenets of the Constitution and principles of natural law that forms the base of the criminal procedure. They must perform their duty to collect the relevant and best evidence in a timely manner.

At the time of arrest the police officer must follow the guidelines of arrest as laid under Section 41A to 41D of the Criminal Procedure Code. Soon after the arrest the person must be taken to the nearest Magistrate in accordance with Section 57[127] of CrPC. As per the provision on remand under Section 167[128], CrPC the accused should not be detained in police custody for more than fifteen days for the purpose of investigation. Despite such provisions laid down under CrPC the police have shown utter abuse of power in matters of custodial violence, torture and custodial deaths. The practice of custodial death has led to the evolution of Constitutional Tort in India whereby the judiciary not only punishes the perpetrating police officer but also imposes exemplary fines on him.

The decision of Nilabati Behra v. State of Orissa[129] is a landmark verdict that reminds the police system to strictly follow the law and not venture to temper the human liberties in a civilized society. The police system in India has become utterly infamous for fake encounters. India has witnessed at least more than five hundred and fifty encounters in the last four years. The Government figures shows that the top five states in encounter cases are the naxal- affected ones. Illegal encounters not only attracts legal repercussions such as unlawful killing by the police officers, violation of rule of law and human rights abuse but also evokes societal wrath against the blatant misuse of power. The Supreme Court has issued important guidelines in 2014 to check and control the rising number of encounter cases in India. Some of the important checks include the registration of FIR after encounter, investigation by Crime Investigation Department (CID) or other independent agencies in the case. In all the encounter cases magisterial enquiry must be conducted expeditiously and guilty police official must be dealt legally and departmentally. In addition to the above-discussed issues which calls for immediate reforms, there are other situations too where the police officials have indulged in malpractices. Some of these are custodial rapes (the infamous Mathura case of 1972 that led to the amendment of Section 375 and 376 IPC to include custodial rape), arbitrary arrests, handcuffing in violation of the orders of the

[127]. Procedure when investigation cannot be completed in twenty-four hours.
[128] Person arrested not to be detained more than twenty-four hours.
[129] [AIR 1993, SC 1960]

Supreme Court and many more. Thus, it must be remembered that powers conferred on the police officials are proportionate to their duties. They must be exercise with self restrain and in spirit to facilitate the purpose of fair investigation and trial. The state adopts measures to strengthen the foundation of the criminal justice system India is a welfare state where justice, including the social and economic justice, must inform every institution of national life.

The state is directed under the India Constitution to secure that operation of legal system promote justice on basis of equal opportunity. The state must provide free legal aid to ensure that opportunities of seeking justice are not denied on the grounds of economic disability. In furtherance of these constitutional goals the state is expected to undertake certain requite pro bono measures in the laws, policies and judicial decisions. As far as the laws are concerned there exist numerous legislations where the victims of crimes, juveniles, first time offenders, divergent are allowed to reform and rehabilitate through protective and corrective measures like shelter homes, remand homes and open prison system, paroles respectively.

It is suggested that similar provisions must be made for the victims of prostitution, human trafficking, forced labour, child abuse too. Further, the rehabilitative and reformative steps of the state must be executed in toto, in letters and spirit by the government and its instrumentalities).

It is advisable that the judiciary must also monitor and direct the government when it fails in its duty to reform the victims and criminals. The judiciary has already incorporated pro bono public measures through the Public Interest Litigation but it must ensure that trials are speedy and fair to dispense justice. The undue delays in deciding cases must be discarded by the judicial system. It must take additional care to decide the cases on the execution of death penalty in time. On one hand the judicial system has been the loadstar of human rights in India on the other hand it must not dilute its stand by adding to the suffering of the convict and his family living in the fear of hanging and execution.

7.2. Various corrective measures we have in India are open prisons, concept of parole, probation, prison labour etc.

Education in prisons are also provided for example . Fundamental academic education designed to provide the intellectual tools needed in study and training, and in everyday life

Vocational education, designed to give training for an occupation.

- Health education
- Cultural education

- Social education.

1. Court delays are like a poison, killing the entire judiciary. For more than 15 years, lawsuits are pending at trials. Who, the police, the prosecutor, or the judges are responsible for it? The criminal justice process or the police should be blamed for delays in the disposition of cases and arrears in criminal courts. The following are some suggestions or part of the elements that must be able to activate the legal procedures and improve them, they are:
2. In subordinate courts and high courts, the power of judicial officers and judges is sufficiently enhanced. There should be no unfulfilled vacancies in courts. The judiciary recruits young and talented citizens with honesty.
3. Considering the inadequacy of judicial officers to dispose of arrears in criminal proceedings, retired judicial officers' services or magistrates may be abused by the creation of special tribunals that are to be headed by them.
4. India now hopes to become a fully digitised nation. In reality, we were extremely successful. But the Indian legislation is abandoned for some odd cause. That shouldn't be the case. The system of Indian law should be completely digitised from the start to the end. It helps to save a lot of time for context documentation.
5. The aim of our criminal justice system should be to provide speedy justice.
6. There must be thorough preparation for the judicial officers. Training in forensics should also be given. They shall coordinate refresher services in the light of rapid social change, the whole continuum of offences in terms of cognizable and unaware crimes has to be re- examined. Many of the unsolved crimes may be identified.
7. The obsolete and anomalous acts should be abrogated. The legislature should be careful to multiply the number of criminal laws.
8. As society evolves rapidly, new forms of violent crime such as organised crimes, insurrections, terrorism, etc. emerge as a result of industrialisation and economic growth. To solve these attacks, there should be a specialist police force. For this reason, comprehensive training and required new installations and infrastructural equipment are given to police and investigation agencies.
9. Police brutality, misbehaviour by the police, prison abuse, police misconduct should be handled thoroughly and efficiently. Senior police officers must create a committee for the severe treatment of the issue and they should be disciplined and disciplinary action against unjust police personnel and made liable to reimburse the victims of their crimes.
10. Improvements are required in the prisons.
11. Plea proceedings may also be used to reduce the immense backlog of cases.

12. Finally, given that the judiciary is the branch of government, the vacations in the courts should be the same as with other government executive wings. Summer holidays or additional holidays in courts do not take effect. The working hours will be the same as every other government department's daily working hours.
13. Just as we consider the citizens must acquire speedy justice, it is also important to make the justice system less expensive for them as well. Citizens discourage their cases from being put to courts because of the high fees of lawyers. The process must be "uncompetitive, casual, versatile, compassionate, practical, and without legal complications," says Justice V.R. Krishna Iyer.

• **Multi pronged approach**: What we need is the formulation of a multi-pronged strategy by the decision-makers encompassing legal enactments, technology, accountability, training and community relations.

• **Police Reforms**: Guidelines should also be formulated on educating and training officials involved in the cases involving deprivation of liberty because torture cannot be effectively prevented till the senior police wisely anticipate the gravity of such issues and clear reorientation is devised from present practices.

• **Burden of proof on Police**: The Law Commission of India's proposition in 2003 to change the Evidence Act to place the onus of proof on the police for not having tortured suspects needs to be considered.

• **Punishments for erring Policemen**: Stringent action must be taken against personnel who breach the commandments issued by the apex court in D.K. Basu v. State of West Bengal (1997).

• **Legal Framework**: The draft bill on the Prevention of Torture, 2017, which has not seen the day, needs to be revived.

• India should ratify the UN Convention Against Torture: It will mandate a systematic review of colonial rules, methods, practices and arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment.

• It will also mean that exclusive mechanisms of redress and compensation will be set up for the victim besides institutions such as the Board of Visitors.

• There is a need for a formulation of a multi-pronged strategy by the decision-makers encompassing legal enactments, technology, accountability, training and community relations.

• The Law Commission of India's proposition in 2003 to change the Evidence Act to place the onus of proof on the police for not having tortured suspects is important in this regard.

• Section 176[130] of the Code of Criminal Procedure also mandates the judicial magistrate to conduct an enquiry in cases of custodial deaths. However, judicial inquiries have been ordered in a mere 20% of cases between 2005-2017.

• The investigation in such cases should be conducted by the magistrate's office to prevent interference from the police. Further, efforts must be made to ensure that for every such FIR there is a mandatory inquiry. The Supreme Court in the Prakash Singh vs. Union of India directed state government to set up Police Complaints Authorities at the state and district level for looking into complaints against police officers. This direction needs to be implemented in every district.

• The second suggestion deals with the burden of proof. While ordinary criminal jurisprudence places the burden of proof upon the state, the concept of reverse burden of proof has achieved legitimacy in several legislations, including the POCSO Act[131]. As recommended by the 1134 Law Commission, the burden of proof should be placed on the police in instances of custodial deaths.

• This reduces the burden on the victim in such cases, where obtaining evidence is highly cumbersome and challenging. It is als prudent to remember that the evidence obtained via torture by police officials in prisons is inadmissible in a court of law.

• Furthermore, former Supreme Court judge Justice Lokur has rightly said that the judiciary needs to be on guard in order to ensure that the police do not exceed their authority during an investigation. Therefore, one can now only hope that that the courts in India will pay heed to the advice of Justice Lokur and to the guidelines of the Apex Court in D.K. Basu case and the courts will now stand up for the common citizens of the country by ensuring that the iron curtain is removed, and the rule of law prevails.

[130] Inquiry by Magistrate into cause of death.
[131] To prevent children aged less than 18 from offences like sexual harassment, sexual assault, and child pornography.

7.3. Right Of Prisoners

1. The protection under Article 21 is also available to those who have been convicted of any offense. Even though he is deprived of his other rights, but he is entitled to the rights guaranteed under Article 21.

2. In the case of Sunil Batra vs. Delhi Administration[132], the petitioner sentenced to death on charges of murder and robbery was held in a solitary confinement since the date of his conviction by the session court, pending his appeal before the High Court.

3. The petitioner filed a writ petition before the Supreme Court, contending that solitary confinement itself is a substantive punishment under the Indian Penal Code, 1860, and only the Courts had the authority to impose such punishments and not the jail authorities, thus, it violates Article 21.

4. The Supreme Court accepted his contentions and held that the conviction of a person for a crime does not reduce him to non-person vulnerable to a major punishment imposed by jail authorities without observance of due procedural safeguards, thus violative of Article 21.

7.4. Right Against Illegal Detention

1. In the case of D.K. Basu vs. State of West Bengal, the Supreme Court laid down the guidelines to be followed by the Central and the State investigating authorities in all cases of arrest and detention.

2. The petitioner wrote a letter addressed to the Chief Justice drawing his attention to certain news items published in the Telegraph and the Indian express, regarding deaths in police lockups and custody and this letter was treated as a writ petition by the Court.

3. The court not only issued the guidelines but, also went to the extent that any failure by the officials to comply to such guidelines would not only subject them to departmental actions but would also amount to contempt of Court.

[132] 1980 AIR 1579, 1980 SCR (2) 557

7.5. Right To Legal Aid

1. It has been held, in the case of Hussainara Khatoon vs. State of Bihar, that right to free legal aid at the cost of the State to an accused who cannot afford legal services for reasons of poverty, indigence or incommunicado situation is a part of fair, just and reasonable procedure under Article 21 of the Indian Constitution.

2. In the case of Khatri vs. the State of Bihar[133], it has also been held that the trial court is under the obligation to inform the accused of his right to free legal aid.

7.6. Right To Speedy Trial

The Code of Criminal Procedure does not specifically guarantee speedy trial nor it has the Indian Constitution guaranteed under any of the Fundamental Rights but the Indian Judiciary in the case of Hussianara Khatoon vs. the State of Bihar, has made it settled decision that the right to speedy trial is an inalienable right under Article 21 of the Indian Constitution.

7.7. Right To Compensation

1. A new judicial trend has manifested a new trend of providing compensation. In the case of Rudul Shah vs. the State of Bihar[134], the petitioner was kept in jail for 14 years even after his acquittal.

2. He was released only after a writ of habeas corpus was filed on his behalf.

3. The Supreme Court held that under Article 21, the petitioner is entitled to an award of INR 35,000 as compensation against the State of Bihar as he was kept in the jail for 14 long years after his acquittal.

7.8. Suggested Reform:

Special laws and fast-track courts could replace certain offences under the Indian Penal Code in order to reduce the piling up of cases at every police station.

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[133] known as the "Bhagalpur blinding case''
[134] (1983) 4 SCC 141

• Digitisation of documents would help in speeding up investigations and trials.

• The construction of new offences and reworking of the existing classification of offences must be guided by the principles of criminal jurisprudence which have substantially altered in the past four decades.

• The classification of offences must be done in a manner conducive to management of crimes in the future.

• The discretion of judges in deciding the quantum and nature of sentence differently for crimes of the same nature should be based on principles of judicial precedent.

7.9. Criminal law in India:

The Criminal law in India is contained in a number of sources – The Indian Penal Code of 1860, the Protection of Civil Rights Act, 1955, Dowry Prohibition Act, 1961 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

• Criminal Justice System can impose penalties on those who violate the established laws.

• The criminal law and criminal procedure are in the concurrent list of the seventh schedule of the constitution.

• Lord Thomas Babington Macaulay is said to be the chief architect of codifications of criminal laws in India.

7.10. Why in News?

Recently, the government has initiated the process of amendment to Criminal laws such as Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act.

• In this pursuit, the Ministry of Home Affairs has sought suggestions from various stakeholders like Governors, Chief Ministers, Chief Justice of India, Chief Justices of various High Courts, etc.

• Earlier, the 111th, 128th & 146th Parliamentary Standing Committee report had recommended that there is a need for a comprehensive review of the criminal justice system of the country.

7.10.1. What is the History of the Criminal Justice System?

The codification of criminal laws in India was done during British rule, which more or less remains the same even in the 21st century.

 Lord Thomas Babington Macaulay is said to be the chief architect of codifications of criminal laws in India.

 Criminal law in India is governed by Indian Penal Code, 1860, Code of Criminal Procedure, 1973, and Indian Evidence Act, 1872, etc.

 Criminal law is considered to be the most apparent expression of the relationship between a state and its citizens.

7.10.2. What is the Need for Reforms?

• Colonial Era Laws: The criminal justice system is a replica of the British colonial jurisprudence, which was designed with the purpose of ruling the nation and not serving the citizens.

• Ineffectiveness: The purpose of the criminal justice system was to protect the rights of the innocents and punish the guilty, but nowadays the system has become a tool of harassment of common people.

• Pendency of Cases: According to Economic Survey 2018-19, there are about 3.5 crore cases pending in the judicial system, especially in district and subordinate courts, which leads to actualisation of the maxim "Justice delayed is justice denied."

• Huge Undertrials: India has one of the world's largest number of undertrial prisoners.

• According to National Crime Records Bureau[135] (NCRB)-Prison Statistics India (2015), 67.2% of our total prison population comprises undertrial prisoners.

• Investigation: Corruption, huge workload and accountability of police is a major hurdle in speedy and transparent delivery of justice. Madhav Menon Committee: It submitted its report in 2007, suggesting various recommendations on reforms in the Criminal Justice System of India (CJSI).

[135] 11 March 1986

• Malimath Committee Report: It submitted its report in 2003 to the CJSI.

• The Committee had opined that the existing system "weighed in favour of the accused and did not adequately focus on justice to the victims of crime."

• It has provided various recommendations to be made in the CJSI, which were not implemented.

7.10.3. What should be the Framework of Reform?

 Victim Protection: The reason for victimisation ought to be given a major thrust in reforming laws to identify the rights of crime victims.

For Example: Launch of victim and witness protection schemes, use of victim impact statements, increased victim participation in criminal trials, enhanced access of victims to compensation and restitution.

 Construction of New Offences: The construction of new offences and reworking of the existing classification of offences must be guided by the principles of criminal jurisprudence which have substantially altered in the past four decades.

For Example: Criminal liability could be graded better to assign the degree of punishments.

 New types of punishments like community service orders, restitution orders, and other aspects of restorative and reformative justice could also be brought into its fold.

 Streamlining IPC & CrPC: The classification of offences must be done in a manner conducive to management of crimes in the future.

 Many chapters of the IPC are overloaded at several places.

 The chapters on offences against public servants, contempt of authority, public tranquillity, and trespass can be redefined and narrowed.

 Curbing Unprincipled Criminalisation: Guiding principles need to be developed after sufficient debate before criminalising an act as a crime.

 Unprincipled criminalisation not only leads to the creation of new offences on unscientific grounds, but also arbitrariness in the criminal justice system

7.11.EMERGING ROLE OF THE LEGAL PROFESSION

However if, criminal justice administration has to improve and society is to be protected from crime, lawyers practicing on the criminal side whether for defence or prosecution have to appreciate the nature of the malady and equip themselves with the knowledge and skills necessary to act as officers of the court in its search for truth. This aspect is incomplete without projecting the important role of the lawyer as a facilitator of no system of justice in modern society can function without the active support and participation of members of the Bar. India has the proud record of not only having the second largest number of practicing lawyers in the

world but also one which has been in the forefront of freedom movement and constitutional development. Unfortunately after independence, due to a variety of factors for which the Bar alone is not responsible, public perception about the profession is not very flattering. In the field of criminal justice, this change in public perception has done a lot of damage not only to the profession but also to the quality and efficiency of criminal justice administration. This is not the place to explore the causes and consequences of this development change in criminal justice reform.

This report seeks to make some necessary changes in the system of criminal justice delivery. Naturally the role and responsibilities of prosecutors and defence lawyers will have to undergo changes in the process.

Being an independent and autonomous profession, it is not for the Government to force change on their part, rather the Government should provide opportunities for professional development, facilitate their role as agents of reform and accommodate their legitimate aspirations in judicial administration. In this regard it is necessary for the profession to appreciate why the Committee has great expectations from the criminal law practitioners without whose willing support, the reform process may even not take off. For example delay and arrears are serious problems which should be eradicated as fast as possible. Courts alone cannot accomplish it and respecting the rights of the victims and witnesses, attempting to settle compoundable offences early etc. As officers of the court, these are their duties and professional responsibilities. There cannot be compromises in the search for truth excepting those laid down by the law itself. Keeping this in mind if the defence and prosecution lend full support and cooperation to the court, one would expect criminal trials to be completed expeditiously and faith of the public in the Criminal Justice System restored.

Today every profession is seeking to specialize and acquire new skills and expertise to be able to do its job efficiently. The Bar has to realize the importance of specialization and learn, for example the nature and scope of forensic science in detection and proof. Again, information and communication technology is changing the way we think, act and do things. Through videoconferencing and multi-media application recording of evidence or examination can be conducted effectively without invading the rights of parties to the dispute. Lawyers should be receptive to change and the benefits of technology should be fully utilised. Continuing education for lawyers is as much necessary as it is for Judges. Government should assist the Bar councils and Bar associations to enable its members to acquire new knowledge and skills as quickly and efficiently as possible.

The law of arrest, search, bail, interrogation, detention, identification, etc. has transformed a great deal in the light of constitutional demands and international obligations. It is a welcome development and the contribution of the Bar is significant. At the same time organised crime, economic crime, terrorism and similar developments are threatening the very foundation of democracy and rule of law. Response to the same is changing, rights are being re-written and procedure is being modified. Lawyers have an important role to bring about a balance between individual rights and public good in investigation, prosecution and trial.

In an era where violence is increasing and security of life, liberty and property are under grave threat and crime is increasing and ensuring peaceful life is one of the functions of the civil society, every player in the Criminal Justice System has a responsible, pro-active and meaningful role to play. It should also not be forgotten that the defence lawyer also is an important player in the scheme of Criminal Justice System along with the prosecutor and the investigator. Therefore apart from assisting in the time bound and quick disposal of criminal trial the defence lawyer also has to be sensitive to his commitment to societal values of protection of the individuals' life and liberty.

Assistance of Criminal law practitioners should be available to citizens at all times as it is a precious fundamental right. Without any detriment to the duties and responsibilities of the Bar, their grievances if any should be resolved by peaceful and constitutional means. Bar should voluntarily extend free legal aid in criminal cases to prevent the indigent accused being made the exclusive responsibility of the Government. Every Bar association should have a cell for this purpose. It is hoped that the legal profession will not fail the system and rise to new heights of responsibility in the quest for truth and justice and social

commitment towards a sound criminal justice delivery system in which the accused, the victim and the society all get a fair deal.

7.12.TRAINING – A STRATEGY FOR REFORM

Training is the acknowledged route to efficiency in any profession.

In a society, which is getting more complex and specialized, the need for the Criminal Justice System to adopt itself to the changes through continuing education and training is critical. It is the view of the Committee that regular well organised, though not quite adequate training programmes (this has been addressed by the report of the National Commission on Police Training) the others in the Criminal Justice System, especially at the lowest levels is not satisfactory and there is much variation in the application of the laws and the inexperience of the all-too-burdened Judges. The general inefficiency of the system could be addressed by some of the other recommendations of the Committee, but, the dilatory proceedings, the ever increasing backlog and the poor quality of justice cannot be resolved by just adding more Courts, when the System itself is inefficient. The approach recommended through the Committee to make Criminal Justice System function more efficiently with less resources is simplified and alternative procedures and penalties and by promoting settlements. This requires extensive training, both at the time of induction as well as at regular intervals while in service.

A substantial way to improve the quality of justice would be to raise the level of competence of Judge and Prosecutors as a long-term strategy to be implemented. Such a strategy must have a clear idea of target groups to be trained; training objectives and topics, identifications of institutions to organize the training, financing the training and finally its monitoring and evaluation.

If we expect the Judges and Prosecutors to do high quality work, we should expect them to have a profound knowledge of substantive criminal laws.

Secondly, to make Court procedures both fast (and cost-efficient), they have to know the rules and procedures and how to enforce them as well as to use the Case method (recommended by the Committee) efficiently. Further, they will need communication and management skills and some degree of knowledge of non-legal areas such as sociology and psychology. For those who are likely to deal with economic laws, specialized knowledge of economics, finance and accounting and for those specializing in environment cases, special knowledge of environmental laws will be necessary. Above all this there is a need for attitude training to facilitate their everyday work, to help handle critical situations and to avoid stress.

Although there is already a report on police training, the Committee feels that the training needs of the strengthening especially in terms of protection of human rights. It would be useful to have a look at what are the best practices and promote them especially in friendly/community policing, modern investigation techniques, accountability and attitudinal changes especially towards the poor an vulnerable. The second aspect is to have combined training for senior police officers and Prosecutors as well as Judges. A system of joint programmes, professional exchanges and research needs to be developed for the long-term.

There are several courses at the Institute of Criminology and Forensic Science, the Bureau of Police Research and Development, the Indian Institute of Public Administration and a few modules on criminal justice and are both ad hoc and short-term and therefore, neither satisfy the training needs nor will it improve the performance of Prosecutors and Judges. The training being recommended here, will be in terms of improving trails in terms of speed and efficiency of trails and the quality of judgements, including better sentencing and settlement among other things.

The Committee recommendation to reform the Criminal Justice System include:

i. the need for the Courts to focus on finding the truth;

ii. a strong victim orientation;

iii. use of forensic as well as modern methods of investigation;

iv. reclassification of crimes with a large number of offences to be

v. "settles";

vi. an emphasis on the accountability of all those in the System

vii. including the judge, the prosecution as well as the defense;

viii. vi. much enhanced managerial and technical skills in the personnel.

The Committee endorses in general, the reports of the Law Commission of India (54th[136] & 117th[137]), the various reports of the Committee on judicial reform including the first National Judicial Pay Commission[138], on training, through criminal justice has not been, we feel adequately covered.

[136] This Report deals with some aspects of revision of the Code of Civil Procedure, 1908.
[137] Training of Judicial Officers
[138] March, 1996

On-the-job training through attachment has been an important part of induction training in the country. The Committee recommends an year long induction training programme for newly recruited Prosecutors and Judges, a part of which should be with the police, forensic laboratories, courts and prisons on which the recommendations of the first National Judicial Pay Commission are available. While this can take care of the future entrants, there is a need to retain and reorient the existing cadre of more than 15,000 trial court Judges and an equal number of Prosecutors. The judicial academy, which has little infrastructure and meager resources, may not be able to handle this. That the training has not been perceived by Government as critical could be reflection of the relevance of training programmes. But, training programmes redrawn as recommended by the Committee will surely contribute to improving the system.

7.13.VISION FOR BETTER CRIMINAL JUSTICE SYSTEM

The pursuit of life, liberty and peace includes freedom from crime. The State's foremost duty is to provide these basic rights to each citizen. The success of a Criminal Justice System can only be measured by how successful it is in ensuring these rights in word and spirit. The extent to which these are successfully guaranteed, will be reflected in the confidence of the public in the system.

Except for some modifications in the Code of Criminal Procedure 1973 (Cr.P.C), there has been no serious attempt to look at the various aspects of the Criminal Justice System. On the one hand particularly with improving information technologies, the availability of information on the incidence of crime is increasing; as is the rise in the expectations of the people from the State. Whether it is the laws, rules or procedures, or whether it is men and women who run the System that are to be blamed, the fact remains that the System has become quite inefficient. The Committee is aware that the laws, rules and procedures which were good for the bygone era have not quite stood the test of time. The men and women who run the System also need to be trained, motivated and finally made accountable. This is essential in a democracy, which requires both transparency and accountability from such public servants. It is difficult to expect the laws and procedures to make up for the deficiencies of the human element and vice-versa. There is also the problem of the earlier perceptions of crimes having given way to newer and more humane perceptions which demand that crimes be re-classified in the light of the new perceptions. What has been suggested in our re-classification system is the

beginning of a long-term exercise, but the Committee has no doubt that one has to go much beyond this, based on the experience of how reclassification works. The Committee is also aware that this reclassification is only a part of the solution. Similarly the Committee being aware of the need for changes in criminal laws especially in the Evidence Act and the IPC has made certain recommendations on those too. It is not only necessary to have a fresh look at the juridical principles which are the basis of the Criminal Justice System, but also look at how these have been translated in various laws and regulations. This should particularly apply strongly to our pre-Independence legislation. Ours are hoary laws and procedures based on certain unexceptionable principles, but it cannot be denied that it may be necessary to reinterpret the same principles taking into account the values of modern society and the perception of the society on what is crime and what is not; and in crimes, what is grave and what is petty.

This is for the first time, after several decades that an attempt is to reform the Criminal Justice System. We are aware that the problems are innumerable and not capable of easy solutions but we believe we have made a beginning. This first step is towards a big new beginning. We do not subscribe to the view that every one charged by the Police is necessarily guilty of a crime; nor would we seek to change the system only to ensure that the conviction rate goes up. We do not subscribe to the view that the legal adjudication is the only answer to the ills of our society and that the inexorable rise in crime can only be tackled by more and more repressive justice. We do believe that truth is central to the system, that victims must be protected and justice must be done to them. Eventually we hope that the system will lean towards more restorative justice. We believe that to break the cycle of reoffending we need to work out measures including rehabilitation programmes and support to the offenders and even their families. We believe that economic crimes should be handled to ensure that the profits and proceeds of crime do not accrue to the criminals and as a general rule no offenders should get away with crime. It believes that organised crime and terrorism should be tackled with due consideration to their roots and the motivation of the criminals and terrorists.

The Committee strongly believe that the prison is a place only for the worst offenders but it is no place for children or even women and that our laws and regulations should be changed to ensure this. It believes that not only the rights of suspects must be protected, but also all human rights. Court trials should be totally just, fair and transparent. If the reforms are carried out in this spirit, we hope it would help regain much of the lost public confidence. Incidentally we also feel that it is time the public realize that it too has a duty to report on crimes and cooperate with the police.

7.14.CONCLUSION AND RECOMMENDATIONS

The ailing criminal justice system requires the medicine of timely reformation and implementation of criminal laws in India. This cure is necessary to maintain a social order in which constitutional values of justice, liberty, and freedom are secured. Besides, criminal law is an important facet of the constitutional regime; it must be working as a living law to facilitate the working of the Indian Constitution.

There are many glitches in the functioning of the criminal justice system in India which are beyond the scope of discussion here. No matter how menacing the problems may be, the three branches of government must be at work to remedy and uproot them. As a welfare state, India is equipped with all the benevolent measures to make justice a reality in the Indian legal system. No person, irrespective of his status or position, can be denied a representation before law to seek justice.

The principles of criminal jurisprudence forming the base of the criminal justice system has to be strengthened by the state and collective will of the people. Laws have never been self-sufficient to usher changes unless society is willing. A dynamic society must have the spirit to obey laws and aid the state in effectuating the legal measures.

The task before India is to improve human rights by improving its law enforcement system in its domestic criminal administration and, on the other hand, not be swayed at the expense of social growth and the unity of the country. The establishment of the National Human Rights Commission will make a difference if it is genuinely committed to recognising human rights abuses in crime prevention operations, instead of being a face-saving tool for international criticism of human rights situations and being actively engaged in corrective and remediation steps.

Reconciliation lies in the strengthening of the human rights community at home, which, in effect, would also replenish our reputation on the international stage. It can, therefore, be argued that we can, in the spirit of the citizen, raise the consciousness of human rights to uphold human rights and the basic freedoms of the accused. Then, if the law evacuates these accumulations, the Indian statutory system might be considered to be the

strongest legal structure on the planet. Similarly, until it is lost, a reasonable person's trust in the law may be restored.

The criminal justice system is a system that controls the functioning of institutions like the police, prisons, courts, etc., that work towards granting justice to the victim. It is the duty of the state to maintain peace and harmony in society, and this can only be achieved with the proper implementation of laws and the effective criminal justice system of a country. The criminal laws in India were majorly enacted by the British East India Company, but after a lot of amendments were made to the laws.

With the advancement of time and technology, new crimes like organised crimes, white collar crimes, cyber crimes, etc. are increasing, and the government feels the need to reform the justice system to deal with such offences. As a result of this, various committees set up by the government gave various suggestions and recommendations. But still, the condition has not improved.

Courts are still suffering from pressure due to the pendency of cases, which is a result of the shortage of judges.

Politicians, and corruption has made them ineffective in fulfilling their duties. Instances of custodial rapes and deaths are increasing day by day. This creates fear in the minds of the public. Prisons witness a situation of overcrowding and prisoners suffer from inhuman and degrading treatment. The recommendations of various committees are on paper but not implemented properly. There is a need to solve all the issues and fill the gaps in the criminal justice system in India in order to provide fair justice.

The National Police Commission (1977-81) has recommended that every State Government should nominate one Additional Sessions Judge for every district (in consultation with the High Court) who should conduct a judicial inquiry in all cases of alleged rape of a woman in police custody, death or grievous hurt caused to a person in police custody and death of two or more persons from police firing in the dispersal of an unlawful assembly and submit report to the State Government who shall publish the report together with action taken thereon within two months of the receipt of the report. Unfortunately, no action has been taken in pursuance of

that recommendation. It should be taken now, for it will predictably be a right step in the direction of controlling the occurrence of custodial deaths in our country.

The Law Commission of India, on a reference made by the Supreme Court of India, recommended in June 1985 that section 114[139] be inserted in the Indian Evidence Act, 1872 to introduce a rebuttable presumption that injuries sustained by a person in police custody may be presumed to have been caused by the police officer-in-charge. Such a provision would have been of considerable operational significance but has yet not been introduced.

Institution of a watch-dog body' at every Police station, comprising of persons from various sections of society and supervisory officers as observers should be tried.

We should separate " Law & Order Police " from " Criminal Investigation Police "

Some serious steps are needed to be taken to ensure the accountability of police towards civilians and norms should be established to curb their brutal and inhumane methodology of working. Police Complaint Authorities must be established in every district and state which should hold the power to investigate and penalise police personnel for their illegal and activities and human rights violations.

Special focus should be given to the training methods that the police personnel goes through and changes should be made in order to accommodate their handling of civilians and suspects alike. A properly trained and accountable police system is extremely important to uphold and implement the law in any country.

Amending the Evidence Act to make inadmissible any evidence obtained on the basis of a police interrogation that involved the use of torture or cruel, inhuman or degrading treatment or other illegal coercion is a quint essential element.

[139] Court may presume existence of certain facts.

Replacement of the Section 197[140] of the Criminal Procedure Code[141], which requires government sanction for the prosecution of police for criminal acts including arbitrary detention, torture and extrajudicial killings could be another suitable way of dealing with the burning issue.

If this seems difficult, then it is better to define "official duty" to exclude unconstitutional conduct such as arbitrary detention, custodial torture and ill-treatment, and extrajudicial killings.

National and State human rights commissions can end the practice of closing investigations upon ordering interim compensation to victims of rights violations.

It is the formative responsibility of the government to take the legal, social, medical and psychological needs of victims of police violence and their families under consideration while the investigation is ongoing. An apt monitoring of whether the guidelines on custodial torture and encounter deaths are being implemented well is also necessary to be observed.

To facilitate independent investigations into alleged violations, the government should focus on raising the number of investigative staff and also concentrate on improvising their efficiency. Create a unit devoted to have an overlook on the police that is authorized to respond to complaints of ongoing violations by visiting police stations.

The main function of the law is to ensure social cohesion, and to allow individuals to live together in peace. In theory, social cohesion will only exist when people recognise the authority of the law. Therefore, as society changes, so too must the law in order to maintain cohesion. There are a number of social, cultural, economic and political changes, which lead to the need for a change in the law.

Even though amendments were made in some parts of the criminal laws of India, there remains a lot which needs to be addressed.

Our criminal laws are outdated, obsolete and contradictory to several human rights. With the development of technology and growing human rights activism, the government must review and update the criminal laws every 5 years, say the least.The present criminal reform committee, scrutinizing a handful of acts, will not be efficient as the overhaul of the entire criminal reform is well past its due deadline. Reform will succeed only when all components of the criminal justice system are in tune, and this will happen only when all the outdated aspects of criminal laws are either removed or given a contemporary context.

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[140] Prosecution of Judges and public servants.
[141] Ins. by Act 5 of 2009, s.17 (w.e.f. 31-12-2009)

7.14.1.RECOMMENDATIONS

Our recommendations may appear not entirely in consonance with the above; to some it may appear radical and far reaching. We have only charted out the direction, set the agenda and we believe, we have been quite moderate in our recommendations. We are aware of the strength of the fiercely guarded turfs of the different sections of the system; yet we hope that it will not come in the way of effective reforms to the system. The success of reforms would ultimately depend upon how they are carried out in their details and to what extent they reflect the spirit of our recommendations.

There is an urgent necessity in the light of our recommendations to have a detailed look at the way our criminal justice institutions have been functioning. Though a few suggestions have been made in this regard in terms of recruitment, training and such, a good overhaul of the system applying modern management principles, strengthening them with new information technologies and finding sufficient resources for these are also matters of great urgency. Equally urgent is the matter of programs and measures to improve and keep up-to-date their training and keep high the motivation of those who run the systems. This applies to all parts of the Criminal Justice System.

There has been much patchy and piecemeal legislation and much more ad hoc policy making relating to terrorism or organised crime or different types of victims such as women, children and dalits for one reason or the other. Yet, things have improved little for the various kinds of victims and in the handling of organised crimes or terrorism. Success has been elusive. The Committee also feels- with the greatest respect - that many of the orders of the various Courts on different issues, constituting Judge-made law has also hindered the criminal justice administration. It is therefore necessary for Government to come out with a clear and coherent policy statement on all major issues of criminal justice. It is further recommended that Government appoint a Presidential Commission on the lines of the Finance Commission under the Constitution to review the functioning of the Criminal Justice System. This should be done under the Constitution at least once in 15 years. Society changes, and so do its values. A system so vital and critical to the society as the Criminal Justice System, cannot be static. Reforms ought to be a continuous process, keeping pace with the emerging challenges. No worthwhile reform is possible without deep study and intensive research.

The vision demonstrated by the Government in constituting this Committee, will, it is hoped, become the harbinger for setting up a Presidential Commission under the Constitution, to periodically review and reform the health of the System .

BIBBLIOGRAPHY

S.NO.	LEGISLATIONS/ ACTS/ STATUTES/BOOKS
1.	R.V. Kelkar's Lectures on CRIMINAL PROCEDURE INCLUDING PROBATION AND JUVENILE JUSTICE by K.N. Chandrasekharan Pillai
2.	Universal’s Criminal Manual , Code of Criminal Procedure, 1973
3.	The Constitution of India, Bare Act
4.	Indian Penal Code Bare Act 2021 Edition
5.	The Indian Penal Code by Ratanlal and Dhirajlal
6.	THE POLICE ACT, 1861 Act(5 of 1861)
7.	The Indian Evidence Act, 1872 Bare Act
8.	Dr D.D Basu, shorter constitution of India, 12th edition ,1999
9.	Principles Of the Law of Evidence , By Dr. Avtar Singh 24th Edition
10.	Indian Criminal Justice System By Prof. Kamal Jeet SINGH
11.	Custodial Violence: : A Legal Study with Special Reference to Prisoners Detained Under Preventive Detention Laws, Meetali Handa
	WEBSITES / ARTICLES/ RESEARCH
1.	NHRC INDIA: https://nhrc.nic.in/
2.	www.Lawctopus.in./indian justice criminal system

3.	timesofindia.indiatimes.com/readersblog/lawpedia/exploring-the-components-of-indias-criminal-justice-system-a-comprehensive-look-at-the-punishment-system
4.	https://blog.ipleaders.in/criminal justice system - in-India
5.	www.Indian Kanoon.org
6.	https://www.thehindu.com/opinion/op-ed/technology-is-no-panacea-for-indian criminal justice system
7.	https://journalijcar.org/issues/recent-scenario-criminal-justice-and-rehabilitation-india
8.	https://www.drishtiias.com/revitalising-indian-criminal-justice-system
9.	https://www.thehindu.com/opinion/op-ed/technology-is-no-panacea-for-custodial-deaths
10.	Laws of Custody in India :- An analysis of Section 167 of Code of Criminal
11.	Essential Judicial Rulings for Police Officers (Published by Maharashtra Police Academy, Nasik).
12.	legalserviceindia.com/articles/op.htm
13.	Supreme Courts Guidelines for Indian Justice Criminal System
14.	www.uncat.org.in
	NEWSPAPERS
1.	Indian express
2.	The Hindu
3.	Times of India
4.	Hindustan Times

	REPORTS
1.	NHRC REPORT https://nhrc.nic.in/press-release/nhrc-issues-fresh-guidelines-regarding-intimation-criminal justice
2.	Report By Ministry Of Home Affairs
3.	INTERNATIONAL STATUTES AND CONVENTIONS
4.	UN CHARTER, 1945
5.	Justice VERMA COMMITTEE
6.	Universal Declaration of Human Rights, 1948 (UDHR)
7.	United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015
8.	NCRB Journal