

Reformation of Criminal Justice System in India

Dr.N. Pramod Singh
Head & Associate Professor
Department of Law
Dhanamanjuri University, Manipur

Abstract

Administration of criminal justice is one of the vital functions of the state in which police, prosecution agencies, courts, correctional homes and general public are the major components of the system. Both the substantive as well as the procedural criminal laws, meticulously enacted by the British, are still found to be in the statute book of India. Efficacies of the criminal justice system of a state is generally assessed and evaluated on the basis of the crime control rate and the conviction rate of guilty offenders as well. Constant rise of crime rate and decrease of conviction rate of criminals due to multiple factors, such as inadequate investigation, ineffective enquiry, unjustifiable delay and lack of public cooperation, among others are some of the profound grey areas found in the existing criminal justice delivery system of India. Despite the inherent flaws and loopholes in the provisions of the relevant statutory laws, the existing system needs to be revamped in matching with the changing trends for which institutional intervention *inter alia* people cooperation and understanding are equally imperative for a positive transformation in the system. Issue of making people trust and confidence on the administration of criminal justice system has also been one of the core objectives to be realized by the welfare government.

Enduring features

The constitution of India *per se* is the repository for all kinds of binding legal norms that ensure protection of rights and freedoms to every individual without any discrimination. Such a national legal document also promises to secure justice, liberty, equality and dignity to all the individuals irrespective of differences among them. Criminal justice system is the system by which society first determines what constitutes a crime and then identifies the accused, tries, convicts and punishes who have violated the criminal laws. The system is to ascertain the truth for which certain rules are followed.¹ Existing criminal laws and procedures were meticulously crafted and enforced by the British ruler with the firm objective to maintain an orderly society by punishing the guilty offenders and protecting the innocent victims. Those relevant major criminal laws, applied and enforced in the criminal justice system, are still found incorporated in the statute book of India as the substantive and procedural criminal laws. The substantive criminal law like the Indian Penal Code (IPC) prescribes the types of criminal offences along with the punishments whereas the procedural criminal laws,

such as the Criminal Procedure Code (Cr.P.C) and Indian Evidence Act deal with the procedural laws and rules. One of the underlining objectives of such procedural criminal laws is to supplement the scope of the substantive criminal laws with the view to preventing commission of crimes, bringing the offenders to justice and also rendering relief to the victims. Such criminal offences, committed against citizens and individuals, not only attract the criminal laws but also the enforcement of their constitutional rights, which has been found deeply embedded in the litigation process evolved by the constitutional courts.

Dynamics nature of human society is a universal phenomenon and such emerging situations have, virtually, created manifold socio-legal, economic, political and cultural problems almost in all respects. Therefore, individual may come into contact with the criminal justice system of the state at one point of time either as a victim of crimes or an accused. In a way, commission of crimes are as old as human society, the reason being is that by nature men are inherently weak, greedy, jealous etc. Commission of crime involves actions of array of institutions--- the police, the investigation wing, the prosecution and finally the court system.² Administration of criminal justice system is one of the vital elements of the state in which police, prosecution agencies, courts and correctional homes are the major components of the system. Primarily, major criminal laws and procedures, applied and enforced in the common law legal system, enable the state to deal with the criminals *inter alia* the victims of crimes according to the laws of the state. There are three stages in a criminal case such as investigation, inquiry and trial.³ The effectiveness of the criminal justice system of a state is generally assessed and evaluated by analysing the crime control rate as well as the conviction rate of guilty offenders. It is also worth mentioning that rising of crime rate and decreasing of conviction rate due to many factors, such as inadequate investigation, ineffective enquiry, unjustifiable delay in criminal trials, lack of public understanding and support, among others are some of the cumbersome criminal system and procedures which have loaded the system in favour of the accused. This has serious repercussion on the public at large.⁴ As a matter of fact; such a chronic problem in criminal justice delivery system compels to have a radical transformation in Indian society.

Law enforcement agency

As per the Anglo-Saxon criminal jurisprudence, police are the accusatorial agency of the state; they should act as accusers of alleged offenders of crimes. It is a normal practice of the law enforcement agencies to launch the process of criminal investigation *vis a vis* inquiry as soon as the commission of crime occurs. Therefore, the system is premised on distrust towards the law enforcement agency and its investigation.⁵ There is also a common tendency among the police officers while arresting and detaining the alleged offenders without actually taking into account the probable realities of non-availability of testimonies against the arrested persons, one of the profound reasons for cracking down the alleged criminals with the sweeping action by the law enforcement authority is to show a good crime control rate of the state. As such, a number of accused are also purposely found listed in the charge-sheets framed by the police and the attitude and conduct of the investigating agency are virtually found reflected when the cases are tried and heard by the competent courts.⁶ On the other hand, such deep-rooted practice facilitates undue delay in prosecution thereby leading to evaporation of the relevant core evidences and ultimately it has paved the ways for acquittal of the

real culprits. Adoption of such a short cut technique in the criminal investigation tends to facilitate a new culture and practice in the justice delivery system. In a way, it has seriously impacted negatively on the mind-set of general people and also created a reason for people aloofness from the legitimate agencies and machineries involved in the system. Thereafter, a pertinent question of credibility for investigating agencies, especially in the mind of general public begins to appear blurred; therefore, the emerging trends have virtually circumscribed to construe an alternative independent and impartial investigating agency in order to opt for a refined investigation report without which a just, fair and reasonable criminal justice can't be expected for the needy victims.⁷

In such a peculiar situation, the role of law enforcement agency like police is not only paramount for the maintenance of law and order but also vital for protection of human life and property of citizens. The apex court of India held in *Joginder Kumar vs State of U.P.*⁸ that no arrest can be made simply because it is lawful for the police officer to do so. The existence of the power to arrest is one and the justification for the exercise of arresting the suspected is another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention of a person in police lock-up can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in routine manner on a mere allegation of commission of an offence made against a person. Therefore, it becomes a difficult task for the law enforcement authorities to strike a balance between the statutory obligations on one hand and their responsibilities to protect the rights of citizens from oppression and injustice and such issue is also a perennial problem of state-craft.⁹

The common tendency among the police officers is to crack down the culprits as early as possible due to many profound factors and reasons. The apex court held in *D.K.Basu vs State of West Bengal*¹⁰ that the police shall take precautions in arresting the person in the contest of human rights. In addition, it has become a deep rooted practice that a number of accused persons are often found listed in the charge sheet framed by the police.¹¹ The ultimate result has, virtually misled the mindset of general public. It is also apparent that the law enforcing authority normally keeps focusing on the issue of maintaining a good crime control record for the state rather than on the issue of speedy trial for bringing to the end of the justice. As such, delay in investigation *inter alia* prosecution may lead to evaporate those evidences thereby paving the ways for acquittal of the main culprits.¹² Apart from the police and other agencies, the judiciary has often constituted its own investigating bodies through its judgements in many cases. This shows that the actual credibility of the existing law enforcement agencies has been sometimes put on hold by the judiciary in some sensitive criminal cases. Such development has also become one of the factors leading to people mistrust the existing system of state.

Judicial intervention

Whatsoever the contentions of the alleged criminals and the accuser may be, the matter shall be brought before the court of law for adjudication of the disputes between the accuser and accused. In the adversarial judicial system of India, there are four agencies which are playing important role in manning the administration of criminal justice system in the state i.e. police, prosecutor, court and correctional institutions. Since the police are the accusers of the alleged offenders in the court of

law, they are obligated to expedite the process of criminal investigation *inter alia* prosecution. However, in the adversarial judicial system, the available evidences are the only basis for determining the justice as per the criminal laws but sometimes the actual truth and facts of the victim, which may neither be permitted nor admitted as the testimonies in the proceedings of the court due to the admissibility criteria prescribed by the Law of Evidence, may remain irrelevant and illogical; therefore, common people do feel the sense of injustice whenever and wherever they get involved in such deplorable and pathetic conditions. This may, perhaps turn to be a fragile indication of the criminal justice delivery system. The normal adversary system which was adequate for the past century has been, increasingly, unable to cope with the litigation explosion as well.¹³ Such unprecedented situation generates the people trust deficit towards the existing system thereby inducing the common masses to find out available option for instant justice. Every guilty person and culprit who escaped punishment is a potential threat to society and its peace, morale and confidence in the institutions of law and justice.¹⁴ However, the actual remedy for such maladies still remains unaddressed to by the existing system because of the fact that the state is incapable in dealing with the issues or the responsible political executive are indifferent to the occurrences of crimes and violence or due to some inherent flaws in the existing criminal laws and system.

Thereby a sense of injustice may instil in the mind-set of general public and it may also lead to frustration of their positive feeling towards the justice delivery system. On the other hand, there is also a common tendency of people that they not only want quick relief but also want justice of high quality from all courts.¹⁵ As per the working of Indian courts, criminal trials are normally conducted by the subordinate courts; therefore, the High Court concerned is to control and monitor the process of dispensation of criminal cases undertaken by the subordinate courts as mandated under Articles 227 and 235 of the Indian constitution. The 77th Law Commission of India Report in 1978 has also dealt with the problems of delay in the criminal trials and also made certain positive recommendations relating to administrative measures including supervision by the higher courts. It is also true that comparatively the judicial scrutiny is more reliable and acceptable than the review done by the legislature and executive. Though, the law court is considered to be the last resort for the victims of crimes, it is, perhaps true that in the democracy of India, justice has become a rare commodity for an ordinary man.¹⁶ Henceforth, the proposition of “justice delay is justice denied” becomes a reality, and as such, the twenty-first century Goddess of justice holding a scale of justice can’t and need not be blindfolded, her eyes must be wide open so as to see that justice is being done between the parties and no one turns its back to justice with bitterness.¹⁷ Indian criminal jurisprudence allows a room for creating a tussle between the accused person and the state which may, otherwise, lead to a lawlessness society thereby breeding a care free politico-legal space for the criminals.

Media and general public

The role of press and media is another important facet of the administration of criminal justice. The freedom of press is not only an essential for political discourse but also a requisite element for smooth functioning of criminal justice system in the state; therefore, it is the heart of socio-legal and political intercourse. Media reporting of crimes and violence shall be fair and accurate beyond any

doubt that too without any distortion of the fact, but they always need to balance between their freedom and social interest. So far Article 19(2) of the constitution is concerned; imposition of reasonable restrictions by the state shall be done by maintaining a proper balancing for all good reasons. The vexed problem is about the permissible limits of restrictions on freedom of expression, in striking the right balance between preservation of free speech and legitimate societal interests and the fundamental rights of other persons.¹⁸ However, in reality the media persons do face multiples barriers, especially in reporting of serious and sensitive cases such as communal violence, mob violence, political violence and violence related with insurgency, ethnic violence and communal clashes, etc. Another important issue, in this regards, is the proliferation of information technology which *per se* is the game changers, therefore, a proper regulation and effective management of the emerging technology need to be put in place in a rigorous manner. In such condition, general public are also to be well sensitised and informed about the evil trend of varieties of criminal activities and they need to come forward and lend their sincere support to the agencies of the state in combating the menace instead of encouraging the blame game practices among the stockholders. Enhancing the principles of counter-check and balance and building up a healthy cooperation and coordination among the police, prosecutors, law court, media and general public shall also be put on the top priority for the state so as to mitigate the increasing number of crimes and violence and also to revamp the criminal justice system in a constructive way.

Democratic government of India allows every country man to play an important role in preventing and mitigating of crimes and violence in the society. Despite the fragmented views cropped up from the blame game practices among the stakeholders of the state, especially on the emerging issues of mob violence and communal violence, one of the underlining objectives of the constitutional governance is to prevent such unwarranted happenings and punish the culprits as well and also to address the grievances of victims by rendering fair justice to the needy people according to the law of the land.

Task ahead

1.1 Republic of India inherited its criminal justice system from the foreign ruler in which both the substantive as well as the procedural laws were found to be so meticulously drafted and enforced by the British. Hence, such criminal laws have also been remained in the Indian statute book even without encountering any massive change in those statutory laws except some amendments thereto. In a way, the existing criminal justice delivery system of India requires to be set in tune with the changing demands of the day. In this regards, one may analyse three institutions that play together a critical role in bringing out a positive reformation in the criminal justice system of India, i.e. i) the role of law colleges and universities in imparting legal education ii) the role of lawyers in the courts iii) the role of judges in dispensing of justice. As a matter of fact, If the first one (the legal institution) is taken care of with a long vision, the second one will have no problem and if the first and second are taken care of, the third one will automatically be alright.¹⁹ Such analytical approach is also paramount since they are closely found inter-related and inter-woven knowledge based generating institutions in terms of their credential outputs to the justice delivery system of the state.

1.2 Despite the inherent flaws in the existing criminal laws and rules, one of the acute problems is the manner in which the exercise of authority to arrest, detain and investigate the alleged offenders by the law enforcement authority. In addition, the existing system also virtually suffers because of the lack of political will, unwarranted interferences by the political executive, and retention of impunity and immunity culture that have, eventually, facilitated a gradual deterioration of the system in India. It is worth mentioning that unless there is a huge public outcry for justice against the injustice or unless the parties, involved in the commission of crimes, are politically well connected, there is a common perception in the mind of general public that there will be a less chance of getting justice for the ordinary victims.

1.3 Another problem is that since the existing system keeps relying on the model of “retributive justice” which describes crime as a wrong against the state; that is how, the court and state are given complete monopoly to deal with the system and as such, the traditional practices of indigenous justice delivery system of different natives are either neglected or delegitimized. On the other hand, customary rules of those natives also do hamper the criminal justice system since they are allowed to try and decide even the heinous crimes according to their own customary rules. As a result, re-looking and re-structuring of the existing criminal justice system in the light of the age-old customary rules and practices of different native communities are imperative; however, that does not necessarily mean to debunk the existing system or the indigenous customary rules.

1.4 The principles of Restorative Justice, which has been put in place in different parts of the world, such as in New Zealand, Canada, France, South Africa and Australia among others, may also be an available road map at this point of time for bringing a constructive reformation in the system. The core objective of such principle is that when a crime is committed, it looks at how the victim, the offender and the community are affected. In a way, restorative justice is a way of analysing the rectification applicable for the re-integration of offenders and the victims.²⁰ It also focuses on how the commission of crime disturbs the equilibrium of the community and how can the needs of the victim, the offender and the community be restored. There may be some reasons for drifting the people towards mob violence or instant justice despite the existing criminal justice system, such as when the victims of crimes get less chance of getting justice either due to their lack of close connection with lawful authorities or they can't mobilize a huge public protest for the needy justice, or when their indigenous traditional practices of justice delivery system are either delegitimized or de-humanized, mob violence or instant justice may also be the alternative reflection of their grievances, or when injustice is done to them and they feel outraged, they will definitely come out and express their feelings aggressively in some form or other. It is of the view that blaming and criticising the police, prosecution agencies, court, media or general public shall neither create any conducive atmosphere nor bring any positive solution to the existing criminal justice system in India; instead, it will nurture the culture of blame game technique among the stakeholders. In the meanwhile, corruption is also a huge problem in the system in which the same victims of criminal offences may also become the second time victims of corruption.

1.5 Police being the accusatorial agency of the state, they need higher standards of professionalism and should be provided adequate logistic and technological supports as well. The police shall not be

burdened with other duties like security, maintenance of law and order in the state and they should be entrusted exclusively with investigation of serious offences.²¹ However, in reality, they are not in the position to focus on criminal investigation and despite they are obligated to deal with the insurgency related cases as well. Therefore, the police department needs to have its separate wing, especially for criminal investigation. Delay in framing charge-sheets due to non-availability of forensic reports or other relevant expert reports virtually hampers the criminal justice delivery system that is why it is imperative to upgrade the forensic science laboratories and also to install other relevant equipments, like DNA machine in the specific native region so as to overcome the shortfalls. Updated scientific methods and techniques of investigation, interrogation and inquiry shall be given to the police and other investigation officers for whom intensive trainings are required. Arrest and detention powers exercised by the police need to be periodically reviewed since most of the arrests and detentions made by police have been found unnecessary.²² Therefore, they need to avoid the method of adopting short-cut and extra-legal approaches in performing their duties.

Non-registration of cases by police due to the known and unknown extraneous factors shall be assessed and monitored by the competent authority. Concerted efforts and meaningful coordination between and among the stakeholders of the criminal justice system, more particularly the police and general public, are paramount for a smooth running of the system. The greatest asset of the police in investigation of crimes and maintenance of law and order is the confidence of the people; however, the police are increasingly losing the benefit of this asset of public confidence.²³ The provision relating to right to compensation for the loss or injury caused by criminal offence, provided in Sec.357 of Cr.P.C. needs to be accorded as a mandatory obligation for the state and the same shall also be made as an enforceable right of victim in India.²⁴

1.6 It is equally important to launch targeted awareness campaign at various communities' levels, especially on the harmful and outdated indigenous customary practices which are found incompatible with the modern criminal jurisprudence. General public shall also be made well sensitized and well informed about the existing legal norms and justice delivery system. one of the cardinal objectives of such system is to build the public confidence and trust, in which the assets of both investigation and prosecution of criminals *inter alia* the asset for protection of victims' rights are some of the vital elements to be taken into account in transforming the system; therefore, it is of the view that such reformation may essentially begin with the premise of victim-oriented approach for which all the stakeholders, such as the police, lawyers, judges and public authorities including general public and the media require to stand up together and put their concerted efforts on the same board with a firm commitment.

Notes and references

1. Ms. Sharada R. Shindhe, "Basic principles of criminal justice system—Their relevance to the present society" IBR, Vol. xxxii(3&4) 2005, P. 547

2. Annual Survey of India, ILI, New Delhi, Vol. LIII, 2017. P.249
3. S.N. Mishra, Criminal Procedure Code, Sangam Law Agency, Allahabad, 1986, P.10
4. Gaurav Kaushik, "Future paradigms of Indian criminal justice system": Criminal Law Journal, 4413(MP),2005, P.353
5. Supra, no. 1, P.506
6. B.S. Sharwat, "Criminal court and justice delivery system": IBR, Vol.28(1)2001, P.23
7. Cases relating to human rights violation, fact-finding bodies have been constituted by the Supreme Court and the High Courts through their judgement making process despite the existing competent investigating agencies of the state
8. AIR 1975 SC 511
9. Nandini Satpathy vs P.L.Dhani, AIR 1978 SC 1025
10. (1997)1 SCC 416
11. Supra, no.6, p.23-24
12. Supra, no. 1, p.560
13. Ashok Desai, "The law shall prevail: A re-look at the Indian legal system": UIA Journal, Indian chapter, 1999, Butterworth India, p.47
14. Mahesh Chandra, "Socio-economic crimes" : N.M. Tripathi publications, Bombay (1979), p.112
15. P.P. Rao, "Access to justice and delay in disposal cases": IBR, Vol.xxx(2&3)2003, p.210
16. S.S.Sharma, "Public courts and access to justice": Civil & Military Journal, Vol. 43, (3&4), 2007, p.69
17. Ibid, p.74
18. Soli J. Sorabjee, "Freedom of expression: problems and perspectives" : UIA Journal, Butterworths India, 1999, p.11
19. Justice S. Verma, "Constitutional obligations of the judiciary" : UIA Journal, Butterworths, India, 1999, p.36
20. <http://www.legalbites.in>
21. Report of National Commission to Review the Working of the Constitution; Universal Law Publications, Vol.1 2003, p.146
22. National Police Commission Report of 1977 indicated 60% of arrest by police as unnecessary
23. Supra, no.21, p.146
24. As provided in Article 9(5) of the International Covenant on Civil and Political Rights,1966