

# **The Judicial Delinquencies in the Current Criminal Administration**

## **System- A Brief Review**

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### **Abstract**

*Time and again the legal system has managed to set forth milestones that positively reshaped the course of action taken when dealing with criminal matters, yet it lacks inculcating the same efficaciously. In matters of criminal nature, the accused is treated by rigid standard norms of society that do not mirror the crime committed to the criminal intent. These in turn violate the basic human rights of the accused. The delicate yet daunting task of punishing is carried out by the Judiciary, it can be noted that the burdensome task of balancing the personal interest of the accused and fundamental well being of the society at large lies with them too.*

*The only way a society shall truly prosper is when the criminal justice system efficiently renders towards the human rights of the accused, which in nature have been accepted to be inalienable.*

*The current research paper focuses on the rights of the accused in the criminal justice system in India in its current state which consists of Police, Judiciary and Correctional Institutions. These machineries play a major role in implementing human rights and thereby protect and safeguard the human rights of the citizens but despite it all the protection of human rights of the accused stays in a mangled manner.*

*The paper focuses on how these rights of accused have equal density as that of society at large and that one must not overpower the other in order to attain an abstract idea of justice. It speaks in brief about the pre-conceived notion that any assistance or protection given to a person accused of a crime injures the interest of society and hence encourages crime, making*

*the idea of punishment a farfetched one and finally compares the rights given to all humans via various international treaties and declarations.*

## **Introduction**

*Errors do not cease to be errors simply because they're ratified into law.<sup>1</sup>*

It is a myth to think of a society which has no elements of crime in it. The entire concept of a judicial system is to administer to the transgression of one's rights or duties. When a crime is committed, it is said to hamper the peace in society and the person rattling this peace must pay a price for it. The obligation of maintaining normalcy in a society rests on the shoulders of the state and its functionaries. The delicate yet arduous task of protecting the law-abiding citizens and punishing the lawbreakers, vests in the state which performs it through the instrumentality of law. In all of this, one aspect has been ignored through advent of a legal structure; a criminal is seen as a monster in the eyes of society and is stripped off all his dignity in the process, which although ignored in the eyes of law it is unjust towards the criminal so treated. It is pertinent to note that criminals albeit are not law-abiding citizens, still have their basic human rights which require protection.

The components of current criminal justice administration although developed over a period of time still has a number of deficiencies which hamper the end result, that being maintenance of peace in society and justice to all. This happens to be the delinquency not only of one of the functionaries but all of them cumulatively at one stage or the other.

## **Main components**

The main object of criminal justice administration justice system is to render justice to those who have been wronged, to punish the criminals, to bring back society to its normalcy and to see that the trial is concluded expeditiously before the memory of the witness fades out. Justice Palok Basu said. *"The criminal trial does not mean only doing the justice with the accused but also with the victim and society. So that law and order is*

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<sup>1</sup> E.A. Bucchianeri, Brushstrokes of a Gadfly.

*maintained. A judge does not preside over a criminal trial merely to see that no innocent man is punished, but also to see that the guilty man does not escape. Both are public duty which the judge has to perform”.*<sup>2</sup>

The main components of the criminal justice administration system are the Police, the Prosecution, the Investigating bodies and the Judiciary.

## **1. Police-**

Police force has been in existence in India in one form or the other since ancient times. The great ancient law-giver Manu also emphasised the need of police force for maintenance of law and order.

The Indian Police Act,1861, was enacted to reorganise the police and to make it more “effective instruments of the prevention and detection of crime” as laid down in the Preamble of the Act but consequent to the changes brought by the Indian Independence in 1947, the colonial police set up was hardly suited to the radical changes in the Indian society but ironically, the same set up with modernisation, continues despite more than half a century after the end of the colonial rule. As rightly observed by D.H. Bailey<sup>3</sup>, the Indian police system which has developed has mainly these characteristics-

- i. The police force is organised, maintained and directed by several States of Indian Union.
- ii. The Indian police system is horizontally stratified like military forces organised into different cadres; and
- iii. The police in each State are divided vertically into armed and unarmed branches.

Despite the new democratic, secular, socialistic, welfare and humanitarian values vouched for in the Constitution, the Indian police, by and large, follows the philosophy of Paramilitarism associates with the mechanism of awe threat and coercion Under Article 246 the Constitution of India places the Police, Public order, Courts, Prisons, Reformatories,

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<sup>2</sup>Law relating to protection of Human Rights under the Indian Constitution and alike laws, Allahabad; Modern Law Publication, 2011

<sup>3</sup>D.H Bailey : The Police and Political Developments in India p.36

and other allied institutions in the State List. In other words, the democratic philosophy of the constitution hardly reflects itself in the modern police functionaries.

The Police are first in line and play a vital role when it comes to administration of justice since they are the ones coming first in contact with all evidence and persons connected to a crime committed. This brings a great responsibility which sometimes is not upheld by their shoulders due to mistakes which should not be made, like acting in excess to power given or hampering evidence, misplacing evidence, manhandling prisoners, abusing the criminals in custody causing agony.

*In CBI v/s Kishore Singh and others<sup>4</sup>,*

*In our opinion, policemen who commit criminal acts deserve harsher punishment than other persons who commit such acts, because it is the duty of the policemen to protect the people, and not break the law themselves. If the protector becomes the predator civilized society will cease to exist. As the Bible says “If the salt has lost its flavour, wherewith shall it be salted? (Matthew 5, Mark 9.50 and Luke 14.34-35) or as the ancient Romans used to say “Who will guard the praetorian guards?”*

## **2. Judiciary-**

India being a democratic country has its judiciary playing a vial role in the delivery of justice, dispensing justice is as delicate a task as it is a tough task. The present criminal justice system in Indian 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.

*In D.K Basu v/s State of West Bengal,*

*“Custodial violence” and abuse of police power is not only peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1984, which market the emergency of worldwide trend of protection and guarantee of*

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<sup>4</sup>6 SCC 369 2011

*certain basic human rights, stipulates in Article 5 that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” Despite the pious declaration, the crime continues unabated, though every civilised nation shows its concern and takes steps for its eradication.*

*The following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:*

*(1) 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 a such memo shall be attested by at least one witness. who may be either 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 counter signed by the arrestee and shall contain the time and date of arrest.*

*(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.*

*(4) 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, 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.*

*(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.*

*(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the friend of the person who has been*

*informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.*

*(7) 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 the 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.*

*(8) The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.*

*(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqua Magistrate for his record.*

*(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.*

*(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.*

It is pertinent to note that the role of the Court in developing the current system plays a crucial part. The judiciary need not go out of its way and mend any laws because if the laws already laid down are expeditiously followed through, it would bring about an inordinate amount of change. Some of the aspects of the legislation are-

#### **i. Limiting power of arrest-**

The Criminal Procedure Code, 1908 details fairly extensive powers of the arrest mainly to the police in certain Sections i.e. Sec. 41, 42, and 151 of the code but considering the misuse of power done so ardently, the arrest must be done in coherence with Art.21 and

22 of the Constitution of India. Hence, it is the duty of the magistrate to satisfy himself all the requirements of the arrest has been fulfilled. A new Section 436-A of the Cr.P.C. which deals with the “Maximum period for which an under trial prisoner can be detained”. The purpose of this Section is to ensure the human rights of the arrested person. The duty of imposing the same falls on the shoulders of the judiciary.

#### **ii. Judge’s Sensibility coupled with Sensitivity-**

The criminal justice administration faces ever changing aspects when it comes to the type of crimes that are committed. Thus when a judgement is being passed, the judge must ensure that the current social circumstances are taken in consideration as well along with the law. It does no good to have judge with a conservative mind, give a judgement which will hamper the society and the matters to be decided in the future. *Justice does not reside in the judge’s intellect only, it also resides in his heart. It is the blending of the heart and the intellect that result in justice.*<sup>5</sup>

#### **iii. Prudence in granting bail and remand-**

While there is no ardent law relating to granting of bail, a judge is supposed to take each into consideration on basis of its merit while granting bail and must in all their morality aim for justice for everyone. In Cr.P.C Section 436 provides the law relating to bailable offences. Similarly, Sec. 437 dealing with non-bailable offences. Now it is the duty of the courts to take care of due caution and care when granting and denying the bail. Under Section 167 of the Cr.P.C. Magistrate is empowered to grant the remand either in Police or Judicial custody, for a period not exceeding fifteen days at a time (in case of police custody, only for initial fifteen days). Judicial authorization of detention amounts to curtailment of personal liberty and, therefore, due caution should be exercised while authorizing detention of an accused in police or judicial custody.

#### **iv. Adjournment of cases-**

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<sup>5</sup>Hon’ble Justice Enoch dumbutshena (Zimbabwe), Role of the Judge in advancing Human rights, 1300, Heinonline, common wealth law bulletin.

In the Judicial system, the biggest hurdle is the humongous number of cases pending for decision. Judges have made an unofficial rule of granting adjournments instead of hearing matters if it is asked for. The Civil Procedure Code, 1908 contains a rule of not crossing the limit of granting adjournment more than three times under Order XVII, Rule 1. The implementation of the same happens to be lax; strictness in the same would bring about a required amount of change.

*In, Additional District Magistrate (A.D.M) of Jabalpur v/s Shivkanth Shukla*<sup>6</sup>

The Judge ruled in favour of the government with a four to one majority. Only Judge Khanna had the courage to make the right decision in favour of human nature and freedom. He knew what was at stake. The records indicate that the night before the announcement of the judgment, he informed his sister that he had made a decision and that he knew that it would cost him the seat of the President of the Supreme Court. From India. The judgment ended with a firm quote: "As Judge Huges observed, judges are not there to decide cases, but to decide them as they should, and even if they are regrettable that they can not always agree, it is better that their independence is maintained and that unanimity is guaranteed by their sacrifice.

The Supreme Court judge, Bhagwati has stated that "*I was wrong, the majority judgment was not good judgment, and if I was ready to make a new decision, then I would agree with what Judge Khanna did. Initially, I was not in favour of the majority opinion, but in the end, I do not know why they convinced me to agree with them, a type of litigation for the first time. was an act of weakness on my part.*"

*Rudal Shah v/s State of Bihar*<sup>7</sup>

Rudal Shah's case is a landmark judgment in the jurisprudence of state liability. It is considered particularly important as it led to the emergence of compensatory jurisprudence for the violation of fundamental rights under the Constitution. It is noteworthy in this context that there is no express provision for awarding compensation in the text of the Indian Constitution, and that this judgment

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<sup>6</sup>1207 SC AIR 1976

<sup>7</sup>4 141 SCC 1983



wason the basis of the Court's interpretation of the extent of its remedial powers. This was the first case since the inception of the Supreme Court that awarded monetary compensation to a person for the violation of his fundamental rights guaranteed under the Constitution. The grant of such monetary compensation was in addition, and not to the exclusion, to the right of the aggrieved person to bring an action for damages in civil law or in tort.

### 3. Prison-

According to the national crime records Bureau of the Government of the India, eight persons died in the custody and 42 civilian died in police firing during 2005. Besides, at least 87 persons were killed in alleged encounters between January and March 2005 alone, while the figure stood at 238 in 2004 and 214 in 2003.<sup>8</sup> It is a well known fact that the way the prisoners live in downright inhuman and the conditions they have to face for having the most basic necessities in their lifetime in prison are in most cases already violating their rights as humans.

Nahar Sing Yadav and another v. Union of India and others.<sup>9</sup> In instant case court held that "a true and fair trial is sine qua non of Article 21 of the constitution. Therefore, it can be clearly documented from this case, that court should take care and caution at every step of the administration of the justice.

In *SAHELI v. Commissioner of Police*<sup>10</sup>, a writ petition was filed by the Women Civil Rights Organisation, called SAHELI under Article 32 of the Indian Constitution on behalf of the deceased's mother for recover of compensation consequent to the death of her nine years old child caused in custody of Anand Prabhat Police Station in Delhi.

One another case of custodial death which shows the serious view that the Supreme Court took is *Dalip Singh v State of Haryana*<sup>11</sup>. In this case two constables long with a sub-inspector of Kururkshetra district were found guilty of causing death of the accused by

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<sup>8</sup>Id. at 184

<sup>9</sup>1 307 SCC Para 21. 2011

<sup>10</sup>1 422 SCC 1990

<sup>11</sup>2302 SC AIR 1993

besting and convicted them under Section 304(2) IPC i.e. for causing death by negligence.

These cases show that the prison condition continues to be a burdensome pace to carry out any kind of retributive or reformatory punishment.

### **International Conventions(ICC and ICJ)**

The idea of creating the ICC emerged from the ashes of World War II and the Nazi Holocaust. The Rome Statute established four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression. Under the Rome Statute, the International Criminal Court (ICC) may only investigate and prosecute the four core international crimes in situations where states are “unable” or “unwilling” to do so themselves; the jurisdiction of the court is complementary to jurisdictions of domestic courts.

India also has had a very brief participation in the International Court of Justice as well as the International Criminal. In the case of Aerial Incident of 1999(*Pakistan Vs India, 1999*)The court rejected Pakistan’s contention that the Simla Accord provides for disputes between the two countries to be submitted to the ICJ. ICJ concluded that it had no jurisdiction to entertain the application filed by Pakistan. At the same time, the court requested both the countries to settle their disputes by peaceful means. In the case about the obligation of negotiations about cessation of Nuclear Arms Race (*Marshall Islands Vs India, 2014*) The court ruled that it does not have any jurisdiction on the issue in the absence of a dispute between the two countries. The court further ruled that it cannot proceed to the merits of the case because of the lack of jurisdiction.

Thus it becomes pertinent to note that although India is a party to these international conventions that aim mainly at restoring and holding peace intact in the world, there is a lacking in the aspect of upholding what has been decided due to other factors such as mutual treaties signed amongst nations or jurisdiction limitations.

The reason behind what we may consider inefficiencies is that the ICC is a relatively new institution; it has investigated numerous allegations and prosecuted several cases, leading to a handful of convictions thus far in cases ranging from the use of child soldiers to the war crime of murder. Even so, under the principle of complementarity, the court will not prosecute cases where the relevant country has taken necessary steps to investigate and punish war crimes.

This all in all brings India back to the deficiency of being unable to simply uphold legislations which have been provided for the same. If what

### **Critical Analysis**

From the above information provided and cited, we realise a few certain things about the administration of criminal justice in context to Indian viewpoint as well as India's inculcation of international treaties such as the ICC and ICJ.

- i. **Ineffective System-** Over time, along with circumstances the crimes committed have gradually become severe but the laws administering the same have not been brought up to date, the system subsequently has become ineffective in rendering justice in a speedy manner and when justice is not administered speedily it loses its effectiveness and one of the main aims of halting similar crimes that may be committed.
- ii. **Incapable Investigation Agencies-** Components of the judicial system are the police, judges, prison and other agencies, when these agencies are not well equipped with knowledge as well as power to do right by the criminal's rights and the victim's rights, it defies the purpose of the entire judicial system. The inability to handle these situations with precision is what leads to the end result of all adversaries that the criminal justice system faces.

- iii. **Trust of Public-** A judicial system is set up in order to provide for the public. Common man's faith only stays afloat when right judgments are delivered by the Courts. Inability to do so or prolongation of cases for years and years sets back public trust by large steps which are not easily regained.
- iv. **Well Educated Commissaries-** One of the main reasons for lack of public trust in the judicial system is the treatment of prisoners by the police. Custodial death and harassment in prisons as well as being beaten up by police in jail cells by officials is not uncommon knowledge in India, if only the regulations which have been provided are adhered to and police personnel is well educated to not harass and beat up prisoners in lock ups and instead present them immediately as per law in front of magistrates, the system would buck up in no time.
- v. **Gruesome condition of Prisons-**It was clearly observed in one such case that the conditions of prisons in India by far at best befitting a description of ghastly and if the same is not rectified; it only infringes the basic human rights which even the Constitution of India protects. *Husainara Khatoon v/s State of Bihar*<sup>12</sup>. "The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this Court as the guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial."

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<sup>12</sup>1 SCC 98 1980

Thus, it must be brought to strict changes for any further change towards a better judicial future.

### **Suggestions**

- i. India being a country that was once ruled as colonial state has adopted most of its laws in consonance with the laws of the United States, hence here it is pertinent to note that the UK criminal justice administration system has the concept of an independent police complaints commission (IPCC) to investigate complaints against policemen and to take over the supervision of such a case, it is believed that a policeman who commits a crime should be punished in a stricter manner than a criminal since police is nothing more than one of the commissaries of law.
- ii. The legislation provides for a rule of only three adjournments being allowed in any case, the same should be strictly adhered to so that any criminal case gets its judgment without losing the essence of time.
- iii. The Jail Manual which was introduced as a result of the Rudal Shah case has never been strictly imposed and the imposition of the same is bound to bring about required changes.
- iv. An officer of the law holds utmost respect in the society, it only does well for these officers of law to be well educated in the field of law and must be judges and officers who not only are honest but also are sensitive enough to not let any innocence be punished.
- v. The suggestions made by the Malimath Committee which highlights issues of importance like appointment of more judges in courts, an inquisitorial system of investigation, forth modification of Article 20 (3) of the Indian Constitution which speaks of right to silence as well as presumption of innocence.

- vi. The laws upholding the pillars of our community need to be rebuilt every now and then so that they withstand the pressure of the modern times. Regular amendments in laws must be accepted.

## Conclusion

*“Criminal justice” is what happens after a complicated series of events has gone bad. It is the end result of failure--the failure of a group of people that sometimes includes, but is never limited to, the accused person.*”<sup>13</sup>

Our current criminal justice system lacks not the machineries to provide justice speedily; it lacks the basics of initiative and effectiveness of adequate implementation. The 239th Report of the Law Commission of India noted, delay in the investigation and prosecution of criminal cases erodes faith in the rule of law and the criminal justice system, which has serious implications for the legitimacy of the Judiciary. Justice delayed, is thus justice denied.

The components of the criminal justice administrative system i.e the police, judiciary, investigate authorities and the prisons all have their delinquencies and thus, no matter how many suggestions are put forth by legal minds, it does no good if changes are not brought forth for the same. International conventions that India is a party to also have limited jurisdiction when it comes to hearing cases due other additional factors which have already been discussed. Thus it can be concluded that only strict adherence to existing provisions can bring about a positive outcome in the criminal justice administration of India and that remains to be the beacon of hope.

*“Justice doesn’t mean absence of injustice, it means the presence of human will to stand up to injustice”*<sup>14</sup>

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<sup>13</sup>Paul Delano Butler, Let's Get Free: A Hip-Hop Theory of Justice

<sup>14</sup>Abhijit Naskar, Operation Justice; To Make a Society that Needs no Law

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