

A Study on the Criminal Justice Delivery System in India

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Abstract – Justice Delivery effectively and efficiently is the basis of rule of law and governance in a society. It is critical to understand the justice delivery system to fight any crime, particularly a complex and multidimensional crime like human trafficking. In this study, we have discussed the criminal adversarial justice system, criminal inquisitorial justice system, the victim and the police, investigation and victim process, the code of criminal procedure act, 2008, and rights of the victim which is concluded that a highly efficient criminal justice system is required. The Indian criminal justice system is structured in a hierarchy. The Supreme Court, which has original appellate and advisory authority, is at the very top.

Keywords – Criminal Justice System, Delivery System, Constitution, Legislation, Inquisitorial Justice System.

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INTRODUCTION

The researchers examine the Indian Constitutional and Legislative protections to protect the rights of victims of crime in depth in this study. The researcher seeks to analyze in-depth these laws to understand their relevance to safeguard the interests of victims of crime. The Indian Constitution takes the greatest care and caution to safeguard and assist victims of human rights violations.

The Code of Criminal Procedure is the primary procedural law to safeguard victims' rights. The Code has numerous provisions dealing with victims of crime, and the investigator analyses them to find out the particular provisions relating to victims of crime. In concern to this Code, the researcher has also adopted the Indian Penal Code and Indian Evidence Act to determine different laws about victims of crime. In law to study the procedural and substantive laws, it is necessary to have full insight into the different provisions concerning victims of crime.

The researcher has already addressed the constitutional and legislative mechanism for protecting the rights of victims; in the present study, the researcher is trying to identify the different obstacles while executing the crime to protect the rights of victims of crime. The Indian legislative system constantly attempts to provide justice to the victims via the punishment of the offender.

The aim of the researchers in this study was thus to identify different gaps in the current criminal justice

system and provide suitable proposals to improve the status and position of victims of crime.

To identify the obstacles to justice for victims, the character of the Indian criminal justice system is important. We know that in the world two major kinds of criminal justice systems exist, i.e., the criminal justice system and the criminal inquisitorial justice system. To study the position and status of the victim, the characteristics of these two criminal justice systems must be studied. Both justice systems demand that the accused be properly adjudicated and that the innocent be protected. But in each of these systems, there are fundamental variations in the norms of process. Each system has its virtues and rejections and does justice to victims of crime.

CRIMINAL ADVERSARIAL JUSTICE SYSTEM

In India, the adversarial common law system acquired from the British Colonial Rulers is the system used for exempting criminal justice. The accused person is assumed to be innocent and the prosecution must prove that he is guilty beyond a reasonable doubt. The accused also has the right to silence and cannot be forced to answer. The Constitution of India guarantees this right in the form of basic law 1 as well as the internationally recognized right of the accused under Article 14 of the International Convention on Civil and Political Rights.

The truth of the opposing system should emerge from the different interpretations of the facts submitted before a neutral judge by the prosecution and by the defense. The judge serves as an arbitrator to assess whether the prosecution was able to prove this case beyond a reasonable doubt. The trial is oral, ongoing, and confrontative. The concept of morality is at the core of the trial. It stipulates that proof should usually be obtained through the live oral testimony of witnesses in court.

In the opponent's system, parties employ cross-examination of witnesses to weaken the opposing argument and to find information, and other parties has not found information. We may thus conclude that parties in the opposing system have a great degree of freedom of evidence, which extends substantially to the interrogation of witnesses. Since the opponent's system does not impose the judge's affirmative obligation to find the truth, it plays a passive function. The judge does not participate in the investigation and does not provide directions for prosecution.

As the investigator has previously discussed every system, the adversarial system focuses on rigorous respect to procedural law which gives less opportunity for the state to be prejudiced against the accused. It offers a sufficient chance to reveal the truth in a courtroom laboratory. This approach enables both parties to resolve their complaints completely and to achieve the ultimate solution via a neutral and unbiased judge. The primary benefit of this system is that the judge is not directly involved in the investigation, otherwise, the judge would be inclined to formulate the crucial statements. Since the opponent's system does not impose the judge's affirmative obligation to find the truth, it plays a passive function. In addition, the right to privacy of the person is best protected.

CRIMINAL INQUISITORIAL JUSTICE SYSTEM

The inquisitorial model mainly concerns the Romano-Germanic Law System, which is also called a civil law system or a system of continental law. The objective is to achieve justice via the composite work of the prosecutor, the police, the defense counsel, and the court. In collecting evidence, in investigating the case, and in examining the witness the Court may take an active role.

The authority to examine this system lies mainly with the police (Police/Judiciary). Based on their investigation, they investigate and draw the papers. The judicial police officer must inform the prosecutor concerned in writing of each of the offenses he has notified and submit to his prosecutor. If the prosecutor finds no case, he may close the case. However, if he thinks he needs more inquiries, he may order the legal police to carry out further inquiries.

The police must collect impartial and objective evidence for and against the accused because they

have to aid investigation and prosecution to find the truth. The primary characteristic of this system is that the exclusionary standards of evidence do not exist and that evidence is not known at the same time.

The inquisitorial system follows the adversarial criminal justice system in nations under civil law, such as France, Germany, New Zealand, Italy, and Austria as well as countries such as the UK, the United States of America, India, and other countries under common law. There are opposing opinions on the model in India, and several high courts in India have voiced their views on the current criminal justice system. The Allahabad High Court, Andhra Pradesh, Punjab & Haryana, and the Punjab High Court ruled that the current system was acceptable. Jharkhand and Uttaranchal High Court found that the opponent's system failed. Bombay, Chhattisgarh, Delhi, Himachal Pradesh, Kolkata, Madras, Madhya Pradesh, and Orissa High Tribunal have indicated that the system at hand is not acceptable. Some of them believe that some of the beneficial features of the Inquisitorial System provide an opportunity for enhancing the Adversarial System.

The Indian criminal justice system is overcharged in favor of the accused. The premise on which the legal jurisprudence system is founded is that 999 people are free rather than having one innocent person condemned. This principle, while avoiding one innocent person's wrong, denies justice to 99 victims of crime.

The experience of the victim with system, police, prosecution, and court experts is not favorable and leads to a determined attitude towards them by the victim. If victims regard their treatment as too stressful, degraded, disfigured, distorting reality, too distant or too concerned about their rights, feelings, and interests, or make decisions that feel unsatisfactory, their belief in the victim may be reduced and ultimately lead to disappointment, disinterest and future non-cooperation of the victim.

The researcher will discuss with the various professionals the role and the iteration of the victim throughout the proceedings in particular with the police, the prosecution, and the court, the researcher also examines the many measures to provide justice to victims of crime in depth. In this study, the researcher's results emphasize the real difficulties that the victim is facing when she interacts with many victims engaged in the criminal process and which ultimately results in human rights violations.

THE VICTIM AND THE POLICE

The initial interaction between the victims and the criminal justice system is with the police. When a victim of a cognizable offense informs the police about the same, the police must reduce the information in writing and read it to the informant. The informant must sign and get a copy of the FIR. If

the police refuse to register information, the victim-informant may submit it to the police superintendent concerned, in writing and by post. The clause, however, requires that the same be done by post. This presents a problem since this procedure takes time. If both the postal service and the police superintendent are efficient, a reasonable wait of 48 hours may take place. This provides the accused enough time to manipulate the evidence, and the first information report under section 154 of the CrPC will therefore be useless. If for any reason the police decline to investigate the case, the police are required to tell the informant of the fact. Alternatively, Section 190 of the CrPC allows victims to not go to the police station for remedy and to approach the Magistrate directly with his complaint. This is called a 'private complaint' and under its supervision, the Magistrate is authorized to conduct an investigation.

This is a legal procedure that would need the victim to hire a lawyer to comply with the official requirements of the law. When the initial information report is submitted, the Indian law strikes to place all responsibility on the victim. If the case is not recognizable, the police must send the informant to the magistrate. Therefore, there is a potential for police abuse that was experimentally documented in India. The report of the Mali math Committee notes that informants are being handled indifferently by the police and are sometimes intimidated with complaints. The facts are altered to prevent recognizable cases.

The researcher would like to refer to the French criminal justice system that follows the criminal justice system's inquiry model. According to French criminal law, when the police have no authority to investigate the alleged crime, they are required to take the statement of the victim and forward the statement to the appropriate authorities. It would be advantageous to incorporate this approach into Indian criminal law for two reasons. First, the police will become the unique point of approach for the victim/informant, who will deal with the problems that are now alleged. Second, a magistrate's time may be better used, since the magistrate will have to look into the recorded statement and make a decision, rather than personally recording the victim/statement informant's.

Another alternative proposed in the report from the Mali math Committee is that the distinction between cognizable and non-cognizable offenses about the police's powers to investigate offenses should be eliminated and it should be made compulsory for the police to lodge and investigate complaints regarding the commission of all offenses. Researchers believe it is not desirable, since in certain instances the reason for distinguishing this is to exclude the police. For example, all offenses against the marital institution are unrecognizable offenses. The legislature seems to have wanted the Magistrate, before allowing the police to investigate such a complaint, to apply its mind. The removal of the distinction would annul this goal. The French system thus seems to be more practical and desirable.

The researcher addresses the problem of victims in a procedural sense while interacting with the police, but in general, when they approach the police station to register the case, the victim is faced with many problems. Victims are generally reluctant to disclose the cases to the police. They're not pleased with the police approach. The most frequent problem many of the victims have when reporting an incident is that the police lack reception and sympathy for the victims. In certain cases, apart from harmful behavior, police harassment of victims of crime is not commonplace.

Victims need police cooperation and emotional support, and the police cannot track the crime without the assistance of victims. However, the police do not necessarily consider that the victim is an essential part of the criminal justice system and do not necessarily view the role of the victim as providing emotional support.

In its policy declaration, the International Association of Chiefs of Police (IACP) calls for the police to ensure that victims are treated as 'privilege customers' and also calls on the police to 'establish procedures and train personnel in the implementation of the 'incontrovertible rights of all victims of crime.' They're as below:

- To be free from bullying;
- to be informed on the availability and procurement of financial aid and social services;
- A safe location for interviews and court hearings should be provided;
- The return has stolen or other personal items when no further evidence is required;
- To be quick to resolve the case, regularly informed on the status and ultimate disposition of the case and also regarding release from custody of the offender;
- To be questioned by women officials in the case of rape and other sexual offenses in which staff and resources are available?

The Council of Europe for the Improvement of Victim Protection has also highlighted the suffering and problems of the victims of crime. In 1981, the Council set a select victim Committee on Victims and criminal and Social Policy. In addition to the victim assistance programs, in 1985, several recommendations on police response to victims of crime were adopted by the Council of Europe. Some of them are as below:

1. The victim should be handled sensitively at the police station so that no further emotional harm may occur.

2. The victim should be taught how financial, medical and psychological assistance may be obtained from various sources.
3. He shall also be notified of restitution claims and state compensation.
4. The victim's right shall be safeguarded and not exposed to secondary, i.e. extra harm in the criminal justice procedure.
5. Appropriate steps should be taken to safeguard the victim and his family from any potential threats from the offender.
6. Informal proceedings for resolving disagreements between the victim and the offender should be promoted, without resorting to criminal justice proceedings.

INVESTIGATION AND VICTIM PROCESS

The investigation process is part of the procedure to penalize the offender. To gather evidence, to find out the truth, the investigation is essential to bring the matter before the court. In certain cases, the appropriate court shall appoint a special investigative officer to investigate the matter.

When we examine the role of the victim in the investigation process, the code does not appear to provide the victim any role throughout the investigation. The victim's statement, if he or she is also the informant, should be recorded in the first report. If the victim is not the informant, the police will interview the victim independently.

The word 'inquiry' shall mean any cases that are essential for the gathering of evidence, by a police officer or by any person authorized by a magistrate to do so. The inquiry officer must provide to the judge a report as required by the Code upon completion of the investigation. The investigation thus starts with the submission of the first information report and concludes with the filing of the final report, which is also known as the charging sheet.

If we closely follow the concept of "investigation," there is no reason why the police could not involve the victim in the investigation process. The victim's assistance may enable the police to investigate in the correct manner or direction. The practice shows, however, that after the victim's statement is recorded, the case is fully in police control and does not involve the victim in the investigation process. The Mali math Committee report recommends that throughout the investigation the victim should take an active role.

According to the committee, the criminal justice system aims to find the truth. The participation of the victims is thus extremely essential. The victim may help the investigation find the offender and gather evidence to establish the crime's commission. The

Committee also proposes that the victim may make recommendations in respect of the investigation and that he may move the court in the necessary investigation to guarantee that the case is properly investigated. This is comparable to the French criminal justice system, in which the victim has the same rights of participation as the suspect during the pre-trial investigation. The judge may seek instructions on the conduct of a specific investigation and access to the case file is provided via his or her lawyer.

Section 157, of CrPC deals with the investigation process. The report states that if the police officer finds that there is no adequate basis for an investigation, he or she will not investigate the case. However, if a decision is made, the officer is obliged to inform the informant of the fact that the case is not investigated. This appears to have provided the informant to make use of the various possibilities available under the CrPC to put in action the criminal justice system.

The second key section in the CrPC is Section 167, which states that for ninety days a person may be held in custody when the investigation pertains to a death offense, life or 10 years imprisonment, and sixty days in all other cases. If within that period, the police do not finish an investigation, the accused has the right to be freed on bail, according to the specified terms. This is another place where the victim may interfere and ask the police to explain why the investigation has not been completed on time. A clause requiring police to keep the victim informed of the status of the investigation is desirable. If the victim can help speed up the process, his or her assistance should be taken.

Section 173 of the CrPC is an explicit place to the informant. Paragraph 2(ii) states that at the time of filing with the Magistrate of the charge, the police officer must notify the action taken by the Magistrate to the person who provided the initial information about the commission of the offense. Consequently, in two instances, the CrPC explicitly engages the informant in an inquiry process - one under Section 170 which requires the police to make a preliminary report to the magistrate, if they think an offense has been committed, and a second under Section 173(2).

THE CODE OF CRIMINAL PROCEDURE ACT, 2008 AND RIGHTS OF VICTIM

By establishing and clarifying the rights of victims, the 2008 Code of Criminal Procedure (Amendment) Act introduced a significant and profound shift to the Indian Criminal Justice system. More rights were granted to the victims and significant developments were described below.

Most importantly, the Code defines the word victim as the term established by adding a new Section 2. 'Victim' is a person who has experienced a loss or

damage due to any act or omission on which the accused has been charged, including his or her guardian or legal heir.

The definition included in this section extends the term 'victim.' The revised definition includes a victim's guardian or legal heir, and therefore gives them the same rights as a victim.

Appointment of an Advocate – Section 301(2) was introduced into a clause in which a victim has the right to engage a defender of his or her choice to assist the Prosecutor and act following the direction of the Prosecutor, or the Assistant Public Prosecutor and may submit written arguments after the evidence has been concluded in that matter, with the consent of the Court. A victim also has a right to select a lawyer of his choosing to assist the Public Prosecutor and his function is the same as in previous cases.

Protection against victims of rape – Clause (a) of Section 26 has added a proviso that stipulates that any offense under Sections 376 A to 376 D of the Indian Penal Code would be prosecuted by a woman's Court as far as it is possible. The second proviso is included in Section 157 concerning evidence of rape, which requires that a victim's statement be recorded in the victim's domicile, wherever possible, and as far as a police officer is possible in the presence of a woman's parent, guardian or near-relative or social worker in the locality. This clause, therefore, excludes and gives the victims greater rights throughout the investigation. Section 173 introduces a new Subsection (1A) to ensure an investigation into the offense of child rape is completed within 3 months of the date the information was recorded by the police station's officer-in-charge. Section 327(2) has also included a new provision providing for a woman judge or magistrate to conduct the in-camera trial. The Indian Law Commission likewise made the same recommendations.

Protection for Testimonies - Protection shall be given to witnesses of this case, and a person who tries to threaten the witnesses shall be punished and a new Section shall make provision for a witness or any other person to present complaints on his behalf concerning an offense following Section 195a of the Indian Penal Code. The new Section shall be established.

Right to appeal – Section 372 has introduced a new provision in which the victim has the right to appeal any decision of the Tribunal acquitting the accused or convicting the accused of a small offense or imposing insufficient reimbursement. Because of the history of legislation and jurisprudence, it is firmly considered that the right of the victim restricted to three categories is meant to be absolute and is in line with the legislature's goal to protect the victims.

The Victim Compensation Scheme – New Section 375 A, which provides for the preparation of the "Scheme of Victim Compensation," in coordination with the Central Government, to compensate the

victim or the dependent who suffered loss or injury as a result of the crime, was introduced by the State Government. The victim has been guaranteed a compensation sum with the establishment of this scheme.

Previous provisions, i.e., section 357 of the CrPC, could not be used to compensate victims or victims' families. The system is modeled on the UK Criminal Injuries Act of 1988, which incorporates a compensation mechanism for the victims. The Law Commission of India has proposed this system in its 152nd report and the 154th report. This means that the victim has the right to compensation, which is going to radically alter access to justice.

CONCLUSION

Human trafficking is a complex and organized crime. We need a very efficient criminal justice system to fight it. The Indian criminal justice system is structured in a hierarchy. The Supreme Court, which has original appellate and advisory authority, is at the very top. The idea of profit and loss has ushered in a slew of new socio-judicial developments in India. It has aided in the establishment of a new human rights system. Registration of an FIR, investigation, charge sheet, trial, defense for prosecution, and judgment are the six stages of the criminal judicial system.

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