

A CRITICAL STUDY OF LEGAL REFORMS IN INDIAN CRIMINAL JUSTICE SYSTEM

AUTHOR – KAUSTUBH KASYAP* & DR. SHAIWALINI SINGH**

* STUDENT AT AMITY UNIVERSITY LUCKNOW

** PROFESSOR AT AMITY UNIVERSITY LUCKNOW

BEST CITATION – KAUSTUBH KASYAP & DR. SHAIWALINI SINGH, A CRITICAL STUDY OF LEGAL REFORMS IN INDIAN CRIMINAL JUSTICE SYSTEM, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (5) OF 2026, PG. 835-840, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract

The criminal justice system in India has traditionally been governed by colonial period laws, especially the Indian penal code (IPC) of 1860 which was the cornerstone of the substantive criminal law over a period of over 160 years. India is the largest democracy in the world. Regrettably, the efficacy of its prominence is waning due to a flawed criminal justice system. Consequently, we are at a critical juncture; we need to rethink and reformulate the Judicial system in order to confront contemporary challenges due to a significant increase in the demand for justice. Specific gaps require the advancement of various techniques and strategies that can be effectively integrated into the policy framework. Therefore, examining how to enhance understanding of the criminal justice system is worthwhile. The purpose of the criminal justice system has been discussed hereunder.

Nevertheless, the shifting socio-economic situations, technological progress, and the increased interests in the rights of victims and the efficiency of the judicial system required radical changes. With the introduction of the Bharatibatra Nyaya Sanhita (BNS), 2023, the Indian criminal law has a new change of paradigm as it substitutes the IPC with new provisions that are expected to cater to the modern nature of crime and positively impact the efficiency of the justice delivery system in modern times. The BNS is part of a much larger legislative reform, together with the Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Sakshya Adhinyam, 2023, which all aim to modernize criminal law in India and to abandon colonial legal frameworks. The Bharatiya Nyaya Sanhita restates and rationalises substantive criminal law, to the extent that fewer sections are created in comparison with the IPC, with new assailants being organised crime, terrorism, mob lynching, offenses against national sovereignty. The bill attempts to meet the new criminal issues and focuses on the justice that is victim-centered, integrates technology, and expedites the judicial procedures. The present research paper is a critical review of the Bharatiya Nyaya Sanhita, 2023 that has been described as a significant change in the criminal justice system in India. It assesses the goals, material aspects and legal consequences of the new law and compares it with the old legal system that was established in IPC. Another major inquiry made in the study is whether the BNS is indeed a radical overhaul of criminal jurisprudence, or a restructuring of the current provisions. It particularly focuses on the introduction of new offences, reforms on punishment, change of definition of crimes and the implication on civil liberties and constitutional governance. The paper is based on a doctrinal legal research methodology, which largely relies on statutory analysis, scholarly articles, governmental reports, and judicial commentaries that were published in 2020-2024. Critical analysis helps the study to determine the merits and defects of the Bharatiya Nyaya Sanhita. As the law seeks to bring criminal law into the current times and reflect new types of crime, scholars have criticized the use of ambiguous terminology in some of the provisions, the possible exploitation of the concept of national

security offences, and the continued existence of some of the legal systems of the colonial era in the new system. The results indicate that the Bharatiya Nyaya Sanhita is a significant move towards the reform of the criminal justice system in India but needs to be implemented with caution and should be reviewed periodically to address the needs of reinforcing rule of law, protecting basic rights, and enhancing effective justice delivery. The research concludes that, although the BNS has a number of progressive reforms, the ultimate effects will rely on the judicial interpretation, institutionalized and efficient coordination with law enforcement agencies.

Keywords: Criminal Justice Reform, Bharatiya Nyaya Sanhita 2023, Indian Penal Code, Criminal Law Modernization, Victim-Centric Justice, Legal Reform in India, Criminal Jurisprudence.

Introduction

Criminal justice is one of the most important foundations of governance in any democratic state. It provides upholding the law and order, defending individual rights, and accountability of the law. In India, the criminal law system has traditionally been based on colonial laws enacted during the British colony, the most famous of which is the Indian Penal Code (IPC), 1860, which remained the main substantive criminal law over the course of a century. Although IPC was to be instrumental in the systematization of criminal law, its colonial background and obsolescence became more and more criticized within the framework of the new social and technological realities. With time, scholars and policymakers have become aware that the IPC had a number of provisions that were no longer applicable to modern realities. Development of organized crime, cybercrime, terrorism, mob violence, and transnational criminal networks posed issues that were not sufficiently dealt with in the nineteenth century legislation. Also, the form of the IPC was commonly criticized, as it was perceived as too complex, obsolete and concentrated rather on the state than on crime victims. These issues led to an increasing demand on full scale criminal law reform in India.

Purpose of criminal justice system

The criminal justice system aims to administer public justice and penalize the offender. And also to ensure that the trial is concluded promptly before the witness's memory fades or

diminishes and speedy justice is made available to the victim. The criminal trial entails not only administering justice to the accused but also balancing the rights of the victim and the society; and to ensure the maintenance of law and order. A judge does not preside over a criminal trial to ensure that no innocent individual is penalized and that the culpable individual does not evade justice. Both constitute the public responsibilities that the judge must fulfil¹⁰⁵¹.

Therefore, the courts must consistently uphold public trust among the populace in the administration of justice by upholding the principle of human rights in the administration of justice.

Necessity of reform in the criminal justice system

In the contemporary era, change is perpetual. However, even amidst this transformative phase, the criminal justice system in India requires enhancement. These are several reasons such as absence of accountability, inadequate law enforcement, and protracted case trials etc. These are instances of insufficiently trained law enforcement, an overloaded judicial system, and substandard prison conditions. These are the principal issues within the criminal justice system that needs improvement. In India, the administration of the criminal justice system adheres to the Anglo-

¹⁰⁵¹ Justice Palok Basu, Law About the Protection of Human Rights under the Indian Constitution and Associated Legislation, Allahabad: Modern Law Publication, 2011

Saxon adversarial model that comprises of three essential components:

- a) Police,
- b) Judiciary,
- c) Prison.

ELEMENTS OF THE CRIMINAL JUSTICE SYSTEM: CURRENT CONTEXT

LAW ENFORCEMENT

The police, as a frontline component of the criminal justice system, possess a significant crucial function in the administration of justice. Consequently, for comprehending the criminal justice system it serves as a precursor to comprehending the police. According to Article 246 of the Constitution of India

allocates responsibilities for the police, public order, courts, prisons, and reformatories. Additional affiliated institutions are provided in the State List¹⁰⁵². The subsequent pressing inquiry is- How to hold the police accountable? What is a crucial component of the Indian Criminal Justice System? In the following section of this article, we will assess this issue.

Police accountability

The Indian Police Act of 1861 is an antiquated law established during the regime of the colonial system, designed to subjugate the populace. Regrettably, the National Police Commission's ongoing demand is met with reluctance from the Indian government to implement any modifications to this colonial legislation. Moreover, the Police Act of 1861 does not contain any such provisions. Provision of the accountability of the police, in contrast to the UK, where the Independent Police Complaints Commission (IPCC) oversees and examines public grievances against the police. The police may assume of oversight or investigation any complaint case.¹⁰⁵³

The Indian Police Act is deficient in this regard. It is evident from the cases concerning the police atrocities frequently appearing before the court, some are as individuals, while adhering to legal statutes themselves. If the guardian transforms into an aggressor, civilized Society will terminate. As the Bible states, "If the salt has lost its flavor with what shall it be followed."

Central Bureau of Investigation v. Kishore Singh and Others¹⁰⁵⁴

In the present case, Hon'ble Justice Markandey Katju articulated what actions should be taken against the erring Police officers who "Bobbitt" an individual at a police station and believe they can evade consequences.

The question has been resolved in the case. The court determined that, in our view, the police officer who commits criminal acts warrants more severe penalties than those who engage in similar offences.

Isn't it the duty of the police officers to protect the public? "Or as the ancient Romans employed" Consequently, the police are expected to safeguard the populace and enforce the law; However, when individuals engage in criminal behavior, it becomes a formidable challenge to guarantee the protection of their Human rights.

A.S. Mohammed Rafi v. State of Tamil Nadu¹⁰⁵⁵

The court awarded 1.5 lakhs in compensation to the victim in the present case due to police actions like death in custody. Nonetheless, apart from the instances above, one of the most captivating and engaging instances of fervent discourse regarding the unlawful and capricious detainment by law enforcement personnel. Consequently, it is essential to document, examine, and analyses specific case laws in this context.

Judicial perspective on arbitrary arrest and unlawful detention The authority of the police to effectuate arrests is frequently egregiously

¹⁰⁵² Chenthilkumar Paramasivam, Police Organization of India, Commonwealth Human Rights Initiative.

¹⁰⁵³ Maja Daruwala, G.P. Joshi, and Mandeep Tiwana, Police Act, 1861: The Necessity for Its Replacement COMMONWEALTH HUMAN RIGHTS INITIATIVE, July 2005. Accessible at.

www.humanrightsinitiative.org/police/

¹⁰⁵⁴ (2011) 6 SCC 371 Supreme Court Cases Weekly, 2011 Volume 6

¹⁰⁵⁵ (2011) 1 SCC 688

misused. This can be analyzed through the subsequent cases. The Apex Court has issued numerous directives in various cases State of West Bengal¹⁰⁵⁶, the court optimized the process concerning the arrest. The court reaffirmed in this case that, Protection against arbitrary arrest is derived from Article 21 and Article 22(1) of the Constitution. The guidelines have to be implemented rigorously. The Supreme Court in *Joginder Kumar v. State of Uttar Pradesh*¹⁰⁵⁷ has imposed explicit limitations on the authority of law enforcement to execute capricious arrests.

The cases above represent groundbreaking judgments. Consequently, it is imperative to examine the authority of the President as delineated in Article 372(2)(9) of the Constitution of India which authorizes the President to modify the legislation under the Constitution. concerning the arrest, for instance, in *D.K. Basu*.

JUDICIARY

The judiciary plays a crucial role in enforcing the rule of law. The principal or paramount duty of the courts is to safeguard and uphold human rights and to provide relief to the victim. This duty and obligation are essential for smooth functioning of a Democratic nation. The current criminal justice system in Indian courts aims to offer greater focus on the accused and endeavor to safeguard all of his/her rights, including the presumption of innocence, legal protections against arrest, and double jeopardy, among others, undoubtedly pertain to the accused who is entitled to all these rights. However, in the current changing circumstances, it is also anticipated that the Courts will concentrate on both the victim and the witness also.

The court's role during criminal proceedings: Ensuring humane conditions during the inquiry The relevant question is: What should the court's role in reforming the criminal justice system? As previously discussed, it is the Judiciary that possesses a crucial function in the enforcement

of the rule of law. Additionally, there are certain provisions within the legislation, the effective implementation of which can yield significant transformation within the realm of the criminal justice system.

These provisions are examined in the subsequent section of the article.

Restriction on the authority to arrest

The Criminal Procedure Code of 1908 grants considerable powers of arrest primarily to the police under various sections, namely Sections 41, 42, and 151 of the code. Several instances demonstrate the misuse of power by police officers. Consequently, the concept of the arrest procedure must derive from Articles 21 and 22 of the Constitution of India. Therefore, it is the magistrate's responsibility to ensure that all requirements are met while the arrest is executed. A newly introduced Section 436-A of the Criminal Procedure Code, which pertains to the "The maximum duration of detention for an undertrial prisoner."

The objective of this section is designed to safeguard the human rights of the apprehended individual. It is now incumbent upon the Judiciary for the complete actualization of this right. Furthermore, the court should also consider the Section 310 of the Code of Criminal Procedure. This operates as follows:

"Any Judge or Magistrate may, at any point during any inquiry, trial, or other proceeding; Following proper notification to the parties, conduct a visit and inspection of any location where an offence is purported to have occurred.

Consequently, it is evident from the preceding section that the magistrate possesses ample powers and the requisite authority required to implement human rights at any investigation phase effectively.

Restriction on the postponement of cases

Currently, the practice of granting adjournments in cases has become standard rule rather than the exception. This is also a significant factor contributing to the delay in the

¹⁰⁵⁶ (1998) 6 SCC 380

¹⁰⁵⁷ (1994) 4 SCC 260

disposal of the matters. There is an explicit prohibition against adjournment exceeding three times as per Order XVII, Rule 1 of the Civil Procedure Code, 1908. However, in practice, there is a lack of significant apprehension regarding it. Consequently, the Courts should consider all these provisions to facilitate the prompt resolution of disputes.

The judge should be made aware

Judges must adopt a more proactive role in the administration of justice and equity. They may exercise their discretion in the process when deemed necessary in the interest of justice and equity. Some judges recuse themselves from progressing the criminal case in judicial system due to their antiquated mindset.

The antiquated judge observed that, according to the statute, they believe justice can only be achieved by a rigorous interpretation. Consequently, judges ought to observe through the window to see the impact of their judgment on the general populace. Consequently, Justice is not solely contingent upon the judge's intellect, it also dwells in his heart. It is the synthesis of emotion and reason that culminates in justice. Consequently, in contemporary times, criminal justice reform is a significant concern and essential for effective enforcement. The active engagement of judges is essential.

Due diligence and causation regarding the bail application and remand order

Initially, there are no strict rules concerning the granting or denying bail. Each case should be adjudicated based on its specific circumstances. However, according to Honorable Justice Enoch Dumbutshena (Zimbabwe), "The Role of the Judge in Advancing Human Rights," 1300, HeinOnline,

Commonwealth Law Bulletin; the matter should be determined by prudent application of judicial discretion. Section 436 of the Criminal Procedure Code delineates the law about bailable offences. Likewise, Section 437 addresses non-bailable offences. Currently, it is

the responsibility of the courts to exercise due diligence and caution when granting and refusing the bail.

Authority to issue the remand, According to Section 167 of the Criminal Procedure Code. The magistrate is empowered to grant the remand either in police or judicial custody for a duration not exceeding fifteen days at a time. Police custody is limited to the initial fifteen days. Judicial approval of detention is a restriction of personal freedom, hence, appropriate caution must be exercised while authorizing the detention of an accused in police or judicial custody upon presentation of the alleged complaint. Consequently, the magistrate should scrutinise the case diary along with all the substantive fact before issuing the order.

Case Analysis:

Joginder Kumar v. State of Uttar Pradesh¹⁰⁵⁸

The courts have established specific guidelines: Upon request, an arrested individual in custody is entitled to have one friend, relative or acquaintance who is familiar with him or likely to be concerned about his well-being, be informed, to the extent feasible, of his arrest and the location of his detention.

The police officer must inform the arrested individual upon their arrival at the police station. Station about his rights. An entry must be recorded in the diary indicating who was notified of the detention. This protection from power must be derived from Articles 21 and 22 of the Indian Constitution.

Nahar Singh Yadav v. Union of India and others¹⁰⁵⁹

The court ruled in the present case that an accurate and fair trial is essential to Article 21 of the Constitution. Consequently, this case should be followed, emphasising that the court must always exercise care and caution.

¹⁰⁵⁸ AIR 1994 SC 1349

¹⁰⁵⁹ (2011) 1 SCC 307.

Prison

Infringement of prisoners' rights:

The condition of the prisoners in India remained deplorable. The Law Enforcement personnel were accountable for extensive violations of human rights, including the capricious deprivation of life in purported encounters and fatalities in custody and indiscriminate utilization of firearms. As per the National Crime Records Bureau, the Government of India reported that eight individuals died in custody and 42 civilians were killed. Police discharge of firearms in 2005. Moreover, at least 87 individuals were deceased in purported encounters from January to March 2005; the figure was 238 in 2004 and 214 in 2003. Therefore, all Courts must conduct regular visits as well as unannounced inspection of the prison to ascertain the humane treatment of the inmates.

RECOMMENDATIONS:

There are several critical recommendations to ensure the efficacy of the criminal justice system for reformation, as following:

1. Periodic inspection of courts is necessary.
2. Currently, there are numerous cases awaiting resolution in the courts, and regrettably, there is no verifiable data on this matter, and additionally, the Supreme Court and High Courts do not release any annual administrative reports concerning case backlog.
3. Another deficiency is the requirement for government sanction (Sec. 197) before prosecution of the designation of a public servant in Section 166 of the I.P.C. significantly obstructs the exercise of authority conferred by Section 166 of the Indian Penal Code. Consequently, it must be retracted. The National Police Commission, in its eighth report from 1979–1981, of criminal procedure code.
- 4 It is a travesty that most of the laws today are outdated. The punishments stipulated by the laws are so trivial and insignificant that they

lack any significant effect on the criminal landscape. The Police Act of 1861 serves as an example of this.

5 Cases must be allocated based on the individual's specialization. Additionally, recommended by the Malimath Committee on November 24, 2000, that case assignments, neglecting specialization results in delays in case resolution. The necessity to diminish political influence arises from the provisions of the Police Act of 1861, which confers authority upon the oversight of the police is directly vested in the political executive, namely the state administration. Currently, the Chief of Police (Director General/Inspector) serves at the discretion of the Chief Minister. They may be dismissed from the position at any time without justification. This situation has led to extensive politicization of the police. Recommended the Repeal of Sections 132 and 197 of the Criminal Procedure Code.

References:

- Justice Palok Basu, Law About the Protection of Human Rights under the Indian Constitution and Associated Legislation, Allahabad: Modern Law Publication, 2011.
- Chenthilkumar Paramasivam, Police Organisation of India, Commonwealth Human Rights Initiative.
- Maja Daruwala, G.P. Joshi, and Mandeep Tiwana, Police Act, 1861: The Necessity for Its Replacement COMMONWEALTH HUMAN RIGHTS INITIATIVE, July 2005. Accessible at www.humanrightsinitiative.org/police/
- (2011) 6 SCC 371 Supreme Court Cases Weekly, 2011 Volume 6
- (2011) 7 SCC 46
- (2011) 1 SCC 688
- (1998) 6 SCC 380
- (1994) 4 SCC 260