

*Original Article***Criminal Justice System in India: Emerging Dimensions****Bhumika Datwani¹, Shruti Kakkad²****Author Affiliation**

^{1,2}B.A L.L.B Hons. with Specialization in Criminal Laws (2nd year), School of Law, University of Petroleum and Energy Studies, Dehradun, Uttarakhand 248007, India.

Corresponding Author

Shruti Kakkad, B.A L.L.B Hons. with Specialization in Criminal Laws (2nd year), School of Law, University of Petroleum and Energy Studies, Dehradun, Uttarakhand 248007, India.

E-mail: shrutikakkad2711@gmail.com

Abstract

“Law should not sit spiritlessly, while those who break it go free and those who seek its shelter lose hope meanwhile”. “A tooth for a tooth and a life for a life” was the basic structure of the criminal justice in Ancient times. But subsequently, a sliding scale came into existence for satisfying ordinary offences. Such a system gave birth to the archaic criminal law. Criminal justice in India consists of substantive criminal law as it defines the offence and also prescribes the punishment for the same as well as procedural criminal law administers the Substantive law. The role of the criminal law is to protect the society and the people from the criminals and punish the offenders. However the history shows a gradual inclining concern with the treatment of criminal and a virtual blackout for attention to the victims of the crime. Looking for the actual victim of the system and trace the trends of compensatory jurisprudence and need for sensitization of Judiciary. So how the biggest stakeholders of this system who set the criminal law into motion goes to oblivion. They do not have any right, and the state undertakes the responsibility to prosecute the offenders by treating the victims as mere witnesses. This research work solely depends on secondary data and hence will follow doctrinal research and will take into consideration all the precedents, journals, articles and our basic understanding of the topic.

Keywords: Victimology; Adversarial and Inquisitorial system; Compensatory jurisprudence.

How to cite this article:

Bhumika Datwani, Shruti Kakkad. Criminal Justice System in India: Emerging Dimensions. Indian J Law Hum Behav. 2019;5(2):183-190.

Introduction

- a) Victimology to criminology.
- b) Adversarial and inquisitorial system.
- c) Victimology through the six M'S of criminal justice system i.e. (money, mind, man, muscles, myth, and morality).

Man being the victim of the justice system goes to seek justice but becomes the actual victim and

suffers the adversity of our criminal procedure in India. This research work basically focuses on victim getting his prime right of justice which is been deteriorated and is often misconceived to halt at the signature on the judgment however, the true destination lies at the lap of the victim. Meanwhile it is the courts that preserve the true meaning of justice; it is the prerogative of the State to support the pillars of justice¹.

Historic Evolution in Victimology

In this chapter we will focus on the birth of the concept of adversarial system and its evolution during the centuries in ancient period, criminal law was victim familiarizing and focusing which they enjoyed the dominant position in entire criminal system. Even bound trees and animals were thought-about sacred and cutting and killing them were thought of grievous sin and criminal had to pay important compensation and endure rigorous penalty. That's why author Schafer calls it 'Golden Age' of victims. Golden age tells us that at that time the prime importance was given to the victims which then were declining century by century.

Subsequently in sixteenth and seventeenth century, with the arrival of the economic revolution, renaissance and French Revolution, a metamorphosis was noticed in each walk of lives. This gave birth to 'Adversarial System'. This was the period, in author Schafer's nomenclature, of decline in victim's role in 'criminal justice system'. Presently the criminal law became offender oriented and conjointly the suffering of victim, typically immeasurable, were entirely unperceived in misplaced sympathy for the criminal. The victim is currently the forgotten men of our criminal justice system. After the golden age slowly and steadily the decline started and led to the birth of the adversarial model.

It was in twentieth century, when the end of the second war some criminologist took upon themselves, the task of understanding the importance of finding out the criminal-victim relation, so as to achieve a far better understanding of crime, its origin and connotation. as a result of their try, U.N passed a charter for victim's right and on same ideology EU convention on the compensation of victims of violent crime'. Thus, many nations of Europe and America sign their legislation for victim's compensation in criminal justice system. Therefore, victim's movement has been obtaining momentum in whole world however with completely different shapes and nature². This is how UN helped in the finding out the criminal victim relationship and its growing importance.

The Man as Victim of the Criminal Justice System

Students and professionals with while in criminal justice system became additional aware that the victim of a criminal offence usually becomes the victim of justice system furthermore the victim

reports his victimization to the police-the entrance to the criminal justice system-he routinely faces postponements, delays, rescheduling, and completely different frustrations. All their implies that loss of earnings, waste of the time, payment of transportation some of the different expenses, discouragement, and thus the painful realization that the system doesn't live up to its ideals and doesn't serve its body, but serves solely itself. Some believe that the victim is that the most unnoticed participant in criminal justice proceedings. In apply, when the victim has mentioned his victimization and provided all of the info to the police, he won't hear from the police or the prosecuting officer for a long period of time, if ever, cases are disposed of without any consultation with the victim if and ones the victim is called for the trial, he's treated merely like the witness for the state and is subject to long delays, postponements, and totally different frustrating experiences.³ This chapter mainly focuses on the gratitude of pain that the victim is facing and goes unnoticed who himself asks for helps and gets nothing but a biased way of working where a presumption is raised to save the accused instead of victim. This is a harsh blasphemy of our system which gives justices to whom the blame is on and questions the one who is suffering⁴.

Scenario in India

Overview of the Indian Criminal Justice System

This chapter focuses on the harsh reality prevailing in the society in the name sake of justice and the Three Pillars Of justice are failing in their duties. India gained its criminal justice system from British legal model.⁵ So there's a very fine demarcation of the role and powers and functions of the legislative assembly, Executive, and Judiciary⁶. The penal philosophy in The India has accepted the thought of hindrance of crime and treatment and rehabilitation of criminals, that area unit reiterated by several judgments of the Supreme Court. Victims don't have any rights underneath the criminal justice system, and also the state undertakes the whole responsibility to prosecute and punish the offenders by treating the victims as mere witnesses of their own cases.

India has a single unified and integrated judicial system and Supreme Court of India is at the apex court of the Indian judicial system. Judiciary plays an important role as an organ of the government. It settles disputes, interprets the law, protects the fundamental rights and acts as guardians of the Constitution. In India judicial system as a long

history from the pre-British days, in the year 1937 to hear the appeal of the high court, the federal court was established. In the 18th Century the uniform pattern of the judiciary emerged. Government after the independence has focused on the systematic judiciary system in India.

Components of the Criminal Justice System

Police

Under Article 246 of the constitution of India, police is placed in the front line of Indian criminal justice system. They play a vital role in the administration of the justice. Despite of their role being so vital, they lack in aspect of accountability of the police. The Indian police work very insufficiently towards law and order. The term insufficiently includes a lot of corruption, delay in work, etc.

D.K. Basu vs. State of West Bengal shows the judicial view on the arbitrary arrest and illegal detention. In this case the court had streamlined the procedure relating to the arrest. The case mainly focused on removing all the injustice happening to the prisoners in the jail by the police.

Prisoners

Rights of the prisoners have been taken very lightly in India. According to the people in India, once a person is sent to jail, they don't have the right to live as a normal human being. Even during the period of their punishment in jail, they are treated inhumanly by the jailers; this breaches their rights under the constitution. But article 21, safeguards their fundamental rights.

In the Supreme Court of United State in *Manna v. People of Illinois* said that life is not merely animal existence. The souls behind the bar can't be denied the same. The rights guaranteed by Art. 21 are for every person and not even the state could deny it. Prisoners also have all the rights which a free man has under some restrictions. Just being in prison doesn't deprive them from their fundamental rights.⁷

Money and Criminal Justice System in India

A serious impediment to the success of any anti-corruption efforts is corrupt justice sector institutions. Ethically compromised justice sector institutions mean that the legal and institutional mechanisms designed to curb corruption, however well-targeted, efficient or honest, remain crippled.

In addition, the wider effects of corruption on the rule of law and sustainable development are not only harmful, but destructive, in particular when the justice sector, which should embody the principles of independence, impartiality, integrity and equality, is undermined. To name just a few examples:

- A corrupt act during one step of the criminal justice chain can severely harm the whole process or even nullify its essence and erode public trust in law and order;
- Challenges in claiming rights and enforcing contracts in court proceedings can create an atmosphere of legal uncertainty and ultimately deter business, entrepreneurial spirit and investment;
- Disrespect for the equal application of the law undermines the legitimacy of public institutions and contributes to impunity.

Since no sector is immune to corruption, it is necessary that States parties acknowledge the particular role and vulnerability of justice sector institutions in regard to corruption and engage in continuous efforts to create independent, ethical and accountable justice sector institutions. To assist States parties in confronting the problem, the UN is taking a variety of approaches. It is examining corruption in the judiciary and other justice sector institutions in detail looking at the organizational level, including separation of powers, mandates and processes, and at the individual level, including professional ethics, protection from interference and training. Based on the analysis the UN seeks to identify good practices and means to address and mitigate the risk of corruption and promote integrity throughout all justice sector institutions.⁸

Men as a Victim in Criminal Justice System due to the Muscle Power used by the officials:

The problems associated with arrest of person and the controversies related:

Court Imposes Fine of ₹ 50,000 on CBI for Arresting Woman after Sunset.

Case name: Kavita Manikikar v. Central Bureau of Investigation, Mumbai.

In a recent case, the Two-Judge Bench of the Bombay High Court took strong note of conduct of CBI Officers in arresting woman after sunset i.e. in violation of Section 46 (4) of the Code of Criminal Procedure which mandates that except in exceptional circumstances a woman shall not be arrested after sunset and before sunrise.

In the case, the Petitioner who was arrested by the CBI at 8.00 PM approached the Court seeking a declaration that her arrest was contrary to Section 46 (4) of the Code of Criminal Procedure. The petitioner also prayed for a direction to initiate inquiry against the Officers who arrested her in violation of the statutory provision.

The observations made by the Bombay High Court are as under:

That Section 46 (4) of the Code of Criminal Procedure came to be introduced on recommendation of the Law Commission in its 135th Report on Women in Custody. The Report was prepared with the intent to prevent harassment and exploitation of women and to deal with the women accused with honor and dignity. That in the Report the first step that was recommended to be incorporated in the form of legislation was that no woman accused shall be arrested after sunset and before sunrise.

That 'Life and Liberty' as enshrined in Article 21 of the Constitution available to a citizen cannot be denied to a convict, an accused in custody and surely not a suspect who is sought to be converted to an accused on investigation and then from an accused to a convict in trial.

The High Court in view of the aforesaid held the concerned CBI officials liable to pay costs of ₹ 50,000/- to the petitioner.

The Horror Storm of Sec 66A of it Act 2000 Still Continues

Sec 66A has Life after Judicial Death

Bengaluru, Karnataka—Police departments across the country continue to arrest and detain citizens under the draconian provisions of Section 66A of the Information Technology Act 2000 despite the section being struck down by the Supreme Court in 2015, an analysis of news reports and data gathered by researchers shows.

Until it was read down, Section 66A, made it an offense to send "any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages."

Yet the arrests continue.

The latest case is from Guntur in Andhra Pradesh, where a man was arrested by the police for impersonating a woman on a dating app called Locanto, and asking people for money. After being scammed on Locanto himself, the accused,

Veeramreddy Suman Reddy (29) had decided to use the same app and methods to meet people and ask for money, and allegedly cheated 507 people of ₹ 21.58 lakh. While Reddy was booked under Section 420 (cheating), the police also registered a case under Section 66A of the IT Act (misleading people through electronic communication).

While senior policemen have tried to explain away the arrests as a consequence of a lack of training, the continued detentions illustrate how citizens are being deprived of their freedom without any legal mandate.

Section 66A has a life after judicial death. Despite the Shreya Singhal decision holding it unconstitutional, earlier prosecutions continue and fresh ones are launched," wrote Apar Gupta, executive director of the Internet Freedom Foundation. "Even without Section 66A there exist enough provisions under the Indian Penal Code and the Information Technology Act to prosecute many forms of online abuse and harassment."

The Main Problem is no Training

Training of officers remains a small part of the police expenditure. Radhika Jha, a research executive at Common Cause India, who worked on a report called Status of Policing in India 2018, told Huff Post India that training accounted for 1.03% of total police expenditure in India in 2016 according to Bureau of Police Research and Development (BPR and D).

However, there's no clear indication of how this will be done.

Men as a Victim of Morality and Myth

The mentality that is been carried away by the judicial system in deciding cases is decided by the judges their mentality and their upbringing as the case of *Sabrimala Temple Case*⁹ where women were not allowed to enter Lord Ayyappa's temple as per the mentality and as well as the women judge Jst Indu Malhotra had a dissenting opinion in the case being a woman she had a drastically patriarchal view which then increased the suffering of the women and also the mentality of society is decided by the judges their signature on the judgement decides the future. Here there was a myth that women cannot enter the temple as they were not pure and would sexually attract people and Lord Ayappa so this created the biggest blasphemy.

Also in the case of *Naz, Nalsa, Navtej* where the victim suffered and was a victim of their own

criminal system.

The mentality of the Muslim community made women suffer the most as Muslim Women were not allowed to ask for divorce as their Hindu counterpart as they suffered a long long era of the "Evil of Triple Talaq"

Man as a Victim of Money and Power

Men being a victim of money and power is the most common and underrated thing which is been faced from centuries by the victims. For e.g. *Vijay Malya* being very powerful was given a loan without any investigation and with full trust and support but if middle class men would have approached he would face a number of questions and investigations and proofs.

Salman Khan's hit and run case and the Black Buck case is really famous but if an ordinary man would have done that he would be suffering in Tihar Jail but they are freely earning more and more money by corruption power and money.

Similar is the *Sanjay Dutt's* case where he was having an AK47 with him but money power and reputation talks.

Aasharam Bapu Case if an ordinary victim after the Nirbhaya case where rape laws are so stricter and difficult now, he is enjoying his four times meal a day after raping hundreds of innocent girls.

Current Situation of Victims of Crime at Each Stage of the Criminal Justice Process in India in Comparison to International Standards

Now here comes the role of UN in helping our system from this menace's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN General Assembly, 1985), thought of the 'magna carta' for victims, provides the elemental framework of principles that at intervals the last twenty years are majorly vociferously debated and regenerate as victims' rights by variety of the developed countries. The international standards expected of the countries within the treatment of victims by the CJS agencies at completely different stages of the criminal method are in an elaborate way careful within the UN book of facts on Justice for Victims.¹⁰ The police play a crucial role in victim help because it is that the 1st agency victims acquire contact with once being victimised by a criminal offense. "The police at the sphere level UN agency are in

actual contact with the victims in day-to-day crime things square measure blissfully unaware of the international developments among the sphere of Victimology and conjointly the far better treatment victims request from the police powers.¹¹ It is a mockery on the system that even today, Section 25¹² of the Indian Evidence Act, "No confession made to a police officer shall be proved as against a person accused of any offence", remains in force. But the Government and the Police Academies pursue a policy of sensitizing the police to a better treatment of victims, why is it so? The reference to the book says that "victims have a sound interest within the prosecution of the case and may be involved in the least stages of the proceedings". In practice, the entire court proceedings protect the rights and interest of the accused, neglecting the victims' interest.

Laws to Care for and Protect Special Categories of Victims

So this chapter focuses on protecting the special categories of victims giving them different remedies through all different sections and providing them the much needed special attention through new laws of protection. There also are important developments within the type of new laws to push the reason behind victims and to mitigate the sufferings of potential victims of vulnerable sections of the population like women, children and elders which are to be mostly focused on. For example: The Protection of Women from Domestic Violence Act, 2005¹³ Here in this act it is specifically provided that If the protection officer refuses to discharge his duties, he shall be punished with imprisonment for one year or with a fine of 20,000 rupees or with both.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

If children or legal heirs neglect or refuse to take care of the adult they are owing to help, the court will pass an order asking the children or legal heirs to form a monthly allowance for his or her maintenance with due diligence therewith.¹⁴

Prevention of Child Abuse and Victim Protection

"The State shall provide free and compulsory education to all children of the age 6-14 years in such manner as the State may by law determine". And for 0 to 6 years of age Aanganwadi is there.

The National Commission for protection of child Rights¹⁵ (NCPDR)

India signed and ratified this treaty way before which is the United Nations Convention on the Rights of the Child in 1992¹⁶ and that Act was passed as one of the most important or significant steps to safeguard the rights of children in the particular country of nation¹⁷.

Prevention of Caste-Based Victimization and Protection for Victims: The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989¹⁸

Types of Criminal Justice System

There are basically two main system of criminal justice which is adversarial system of justice and inquisitorial system of justice. According to Black's Law dictionary, "Adversary system is that the court system wherever a judge decides on a case argued by an advocate, the one who is suing the plaintiff and thus the defence council who defends their complainant. According to Black's Law dictionary, the inquisitorial system is, "proof taking used in civil law, whereby the judge conducts the trial, determines what inquiries to boost, and defines the scope and extent of the inquiry". So majorly in inquisitorial there is active participation of judges however in adversarial which we follow majorly focuses on the decision taking of the judges on the arguments given by the advocates handling the cases thereby.

Principles of Criminal Law in France and Comparison with our System

The Main principles of criminal law are as follows:

- While considering the French law, presumption of innocence is there, an individual suspect of a criminal offense is innocent till found guilty by a court of law. As a result, AN suspect is often bereft of freedom throughout legal proceedings as long as needed conditions are met. usually, all suspects are released; detention is being done solely in exceptional cases. However, this is not the case in India as there is custody and are detained¹⁹.
- Within the trial, the guilt must be evidenced on the far side reasonable doubt by the public prosecutor. At now, any testimony that is asked to supply is also crucial.

- Court proceedings typically come about publicly. In sure cases associated with sexual offences, the court might commit to proceed in absence of the general public.
- Suspect isn't absolute to affirm in his or her own defence.

There is difference as compared to our system but the main difference is the examining or investigating judge which id the mere difference that they are involved in getting to the ends of justice.

Contrast between both the systems adversarial and inquisitorial system

An adversarial system is that wherever the court act as a referee between the parties in this process court takes a nonpartisan role and is neutral and follow the arguments of the advocates.²⁰

An inquisitorial system could be a system where the court is actively involved in proof of facts by taking investigation of the case.

The adversarial system aims to urge the reality through the open competition between the parties through a tussle.

In adversarial systems previous judgement by higher courts are binding on lower courts and basically follow the precedent rule.

Whereas here There is not much scope of judicial precedent in inquisitorial systems. this suggests Judges are absolve to decide each case by their own regardless of previous circumstances.

In an adversarial system the hearing, evidence or examination and cross-examination done by the lawyer get priority and the judgment is ordered on the arguments decided by the advocates and solely on that.

In an inquisitorial system the legal documents and the knowledge regarding the question of facts get priority over examinations.

Repeated time petition (common practice) is permitted at the time of continuance of the case and the lawyer's take the opportunity of making time petition. So, delay occurs in disposal of any cases. And this is a major setback of this rule.

Whereas the main object of this method is to cut back the time for disposing a case and to confirm speedy justice. Judge plays a lively role when making a decision time petition honoured or reject time petition and therefore speedy disposition of cases occurs.

Conclusion and Suggestions

This chapter mainly focuses on the reforms that can be taken place in order to cope up with the damages of the adversarial system. The adversarial system lacks dynamism as a result of it's no lofty ideal to inspire. It's not been entrusted with a positive duty to search out the truth inside the inquisitorial system. Once the investigation square measure perfunctory and ineffective. Judges seldom take any initiative to remedy the case. Throughout the trial, the judges don't trouble if relevant proof isn't made and passive role as they don't have any duty to go looking for the reality. Because the prosecution must prove the case on the far side affordable doubt, the system seems to be skew in favour of the defendant. It is thus, necessary to strengthen the adversarial system by adopting with acceptable modifications variety of the great and useful choices of the inquisitorial system.

How to reform the judicial process?

Today, in adversarial system of justice we have lot to reform.

Court fees to be abolished

The purpose of justice is delivering the promise of law and justice and thus the role of state is to safeguard it but to charge fees for justice is like walking to the door of retailers to buy justice.

Advocate fees to be abolished

It is clearly mentioned in the Advocates Act that advocates are the main officers of Court. There ought to be provision for public advocates that should be provided to everybody and may be paid by state.²¹

The Limitation Act should be struck down

The Limitation Act ought to be stuck down as unconstitutional since its violation of Article fourteen. As there is a right and everybody can exercise and come to the doorstep of justice.

Delays should be avoided

The delays in the system should be avoided and nowadays the proceedings has become a convenient technique for avoiding prompt retribution by many of us on the incorrect aspect of law and to defeat the ends of justice.

Supreme Court to have Benches throughout the country

Article 130 of the Constitution provides that the SC shall sit in Delhi or in such other place or places, as the CJI may with the approval of President. From time to time appoint. But however, this principle is not applied till now and it must be litigator friendly and it has to be in more places to reduce the hardship of litigant.

No presumption should be raised in favour of anyone

"It leads to presume the preponderance of power in favour of a party and tilts the balance unjustly. This totally upset the equilibrium of parity of power, which is ensured through the guarantee of "equal protection of laws" under Article 14 as well as Article 13 (2) and (3) of the Constitution, respectively. All of its burden of justifying the constitutional validity of the law as well as the important fact that the state action was in accordance with such law should be on the state, and not on the person who challenges its constitutional validity. Asking the injured party to prove the wrong or injury suffered destroyed the guarantee of equal protection of laws. Such an opinion of the part of our justice system is extremely low on the ethical count of the power spectrum."

Judges should play active and not passive role while deciding cases

Article fourteen of the Indian Constitution made an obligation of state to provide end to end justice to all or any at the door step. Thus, the Indian Constitution essentially envisages inquisitorial mode. But however it is not taking active participation in doing so

Reluctant approach of Supreme Court to accept petition under Article 32

It is the primary and main duty of SC because it is apparent from the word "the Supreme Court shall" in Article 32 of Indian Constitution. However, the SC is reluctant to perform its functions.

My concluding remarks are that no matter could also be the system of the procedural laws should be bare minimum, and also should be very easy and should be litigator friendly too. A litigator is meant to pay the value of serving summons and this is often another lacuna and a procedural hurdle because it is that the duty of the State to serve summons and not the litigator.

