

THE CRIMINAL JUSTICE SYSTEM IN INDIA

WITH REFERENCE TO THE 2012 GANG RAPE INCIDENT IN NEW DELHI

-KAUSTUBH KHANNA¹

What is Criminal Justice System?

Criminal Justice System is the series of governmental agencies and institutions which includes the police, prosecution, defense lawyer, the courts and the prisons. The Criminal Justice is the delivery of the justice to those who have committed crimes. The goal of the system is to rehabilitate the offenders, prevent other crimes and give and moral support for the victims. It is a set of legal and social institutions for enforcing the criminal law in accordance with a defined set of procedural law and limitations².

The criminal-justice system consists of three main parts³. They are: -

1. **Police-** The Law enforcing agency. The major tasks of the police include, selectively enforcing the law, protecting the public, arresting the suspected law violators and preventing the crime.
2. **The Courts and accompanying defense and prosecution lawyers-** The court tries the case and awards the punishment to the convicts. The prosecution lawyer is given the task of prosecuting the accused and the defense lawyer is to defend the accused.
3. **Prisons and probation agencies-** For detaining and supervising the offenders.

In India, the Indian Penal Code, 1860; the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 are some of the acts and statues that govern the Criminal Justice System.

1. **The Indian Penal Code, 1860-** It is the official criminal code of India. It is a comprehensive code which covers all the substantive aspects of the criminal law in India.

¹ Sole Author, Vivekananda Institute of Professional Studies, New Delhi.

² Criminal Justice; Gregory McKinney

³ Wikipedia.org

It was drafted on the recommendation of the first law commission of India which was established in the year 1834 by the Charter Act, 1833. The Indian Penal Code came into force in 1862 under the British Rule.

2. **The Code of Criminal Procedure, 1973-** The Criminal Procedure Code is the main legislature on the procedure for administration of substantive criminal law in India. Cr. P.C. provides the machinery for the investigation of a crimes, apprehension of suspect, collection of evidence etc.
3. **The Indian Evidence Act, 1872-** The Indian Evidence Act was originally passed in India by the Imperial Legislative Council in 1872, during the British Rule which contains a set of rules and allied issues governing admissibility of evidence in the Indian courts of law.

In this research paper I will be talking about the Criminal Justice System in India with special reference to the Nirbhaya gang rape incident in New Delhi and what changes shall be brought forth in the system to deliver justice to the criminals and the victims. A glimpse of the Criminal Justice System is given above.

Now, we will discuss about the horrific incident of the 2012 gang rape in the capital of India, New Delhi, that shook the country as well as the whole world.

2012 Delhi gang rape *alias*⁴ Nirbhaya gang rape (*Mukesh & Anr. vs State for NCT of Delhi & Ors.*)

On the dark and cold night of 16th December, 2012, a horrific and brutal incident of gang rape occurred in the capital of India, New Delhi. The 23 years old physiotherapy intern, *Nirbhaya*⁵ was travelling back home after watching a movie in Saket, with her male friend Mr. Awindra Pratap Pandey. The two boarded an off-duty charter bus from Munirka bus stand near South

Delhi to reach back home at West Delhi. There were six people in the bus when the deceased and her friend boarded the bus, including the driver. Then bus started on a different route and the door of the bus was shut by one of the men. Seeing this, the friend raised suspicion and and

⁴ also known as

⁵ not her real name

shouted at the men. The men were drunk and then started molesting the girl and beat her male friend with a rod. The deceased was then dragged to the back of the bus and was repeatedly gang-raped for over an hour. One of the juvenile molester, Mohammad Afroz inserted an iron rod into her private parts and pulled her intestines out. As all of this brutality was happening in the bus, the bus driver drove around the capital city and after the attack both of them were thrown on the highway naked to die. The two were found half dead and without any clothes and the police was informed. They were taken to Safdurjung Hospital where medical treatment was given to them. Upon medical, the doctors found out that there were only 5% of the intestines left inside the body of the rape victim and other 95% was thrown off and a team of police along with the forensics recovered the other 95% from the road where they were thrown. The victim gave her dying declaration before a sub-divisional magistrate in the Safdurjung Hospital and demanded justice against the six attackers. The victim after 12 days of the incident was shifted to a hospital in Singapore where treatment was given to her but she succumbed to her injuries 2 days later. This arose widespread protests in Delhi and other parts of the country and everybody by this time wanted to see the attackers hanged and justice delivered to the daughter of the nation.

The six attackers were identified by a team of Delhi Police as Ram Singh, Mukesh Singh, Vinay Gupta, Pawan Gupta, Akshay Thakur and a juvenile Mohammad Afroz and were arrested and booked under various sections of the Indian Penal Code, 1860. All the six were charged with murder⁶ and sexual assault⁷. Later on, one of the accused was identified as juvenile and was tried before the JJB⁸. After this, the other five accused were booked under rape⁹, gang rape¹⁰, murder, kidnapping¹¹, destruction of evidence¹², and attempted murder¹³ of the woman's male companion. The Patiala House Court¹⁴ after the trial and collection of evidence sentenced the five adult attackers death sentence. The juvenile attacker was given the maximum sentence of 3

⁶ S. 302, IPC, 1860

⁷ S. 354A, IPC, 1860

⁸ Juvenile Justice Board

⁹ S. 376, IPC, 1860

¹⁰ S. 376D, IPC, 1860

¹¹ S. 363, IPC, 1860

¹² S. 204, IPC, 1860

¹³ S. 307, IPC, 1860

¹⁴ Lower Sessions Court

years by the JJB and was released in 2015 with a new identity. All the five major attackers moved their petition to the High Court of Delhi and to the Supreme Court of India and both the upper courts maintained the death sentence. The counsel for the accused further sent mercy plea to the President of India¹⁵, Mr. Ram Nath Kovind, but the mercy plea were rejected too. The high court again issued a death warrant against the accused and they were finally executed on 20th March, 2020 at 5:30 am in the Tihar Jail Complex in New Delhi.

The defense counsel Mr. M.L. Sharma and Mr. A.P. Singh tried every move and loophole in the Criminal Justice System of India to delay the execution of their client. This delay in execution not only rose anger in throughout the country but also gave a chance and way to mend the law further so that justice is not delayed and the victims of the crime are not longer harassed and need to wait for the justice.

After all,

“Justice delayed is Justice denied¹⁶”

Background of the Criminal Justice System in India

The British ruled the Indian subcontinent for over 109 years from 1858 to 1947, when Indian subcontinent was divided into India and East and West Pakistan. The British formed and enacted many laws in India which are still prevalent today. One of the good examples of this is the Criminal Justice System which is an age-old system and primarily based upon the Penal Legal System which was established by the British Raj in India during the late 19th Century. The system has not undergone any substantial change even after 70 years of independence from the British Rule. The Indian Penal Code was enacted in the year 1860, the Indian Evidence Act in the year 1872. The Code of Criminal Procedure which provides the procedure for the penal law was last amended in the year 1973. The entire Cr. P.C. was amended and various changes were made in the law and procedure for delivering justice in the system.

¹⁵ 14th President of India

¹⁶ Penn, William

In 1993, the **Vohra Committee** was formed under the chairmanship of the former Indian Union Home Secretary, N.N. Vohra and studied the problem of criminalization of politics and of the nexus among the criminals, politicians and the bureaucrats in India. The Vohra Committee was the first ever step towards the reformation of the Criminal Justice System in India. The Vohra Report mentioned the nexus between the criminal gangs, police, bureaucracy and politicians and mentioned that the money power is used to develop a network of muscle power which was used by the politicians during the election campaigns to attract and buy votes. The mafia politician link was clearly mentioned in the report¹⁷.

In 2000, the NDA government formed another committee for reforming the Criminal Justice System; the **Malimath Committee**, the Malimath Committee consisted of a panel headed by Retd.¹⁸ Chief Justice of Kerala and Karnataka High Court Justice V.N. Malimath¹⁹. The panel favored in the borrowing of some good features from the system of investigation practiced in other countries such as Germany and France, where a specialized JM²⁰ supervises the investigation procedure during the trial. The committee also mentioned another 158 recommendations to be implemented in the Indian System to impart justice to the criminals and the victim. The important point mentioned by the Malimath Committee was that the current judicial system weighed in favor of the accused and did not focus adequately on the justice to the victims of the crime.

The report of the Malimath Committee was submitted three years later in 2003. The key points mentioned in the report were as follows: -

1. Courts and Judges.
2. National Judicial Commission.
3. Separate criminal division in the higher courts.
4. The inquisitional system of investigation.
5. Power of the court to summon any person.
6. Right to remain silent.
7. The right of the accused.

¹⁷ Hindustan Times dated 12th November, 2017.

¹⁸ retired

¹⁹ The Hindu dated 17th January, 2017.

²⁰ judicial magistrate

8. Presumption of innocence.
9. Justice to the victims.
10. VCF²¹
11. Police Investigation

.....and many more

Need for reform in the Criminal Justice System

“Change is the only constant in life²²”

A Greek philosopher, around 2,500 years ago said that change is the only constant in life. His saying is still considered true in 21st Century and same goes for judiciary. Criminal Judiciary in India needs a long awaited change in the process of dispersing justice to the victim and the criminals. Lack of change and use of old traditional laws are the reason for the ineffective enforcement of the law, accountability, and the delay in disposing of the cases. There are three main components of the criminal judiciary as we have discussed above. ***These are the police, the judiciary and the prisons.***

In layman language whenever a crime happens, first of all it is reported to the police. The police note the complaint i.e. the FIR and according to the nature of the crime i.e. cognizable or non-cognizable²³ they(police) either arrest the accused or summons are sent to the accused²⁴ by the due procedure as mentioned in the Cr. P.C. The case is then moved to the trial court where the magistrates of various classes take cognizance. The case then moves to the sessions court and finally the accused is either convicted or acquitted of the charges framed on him. If the person is acquitted, he is set free from the charges and is free to walk back home. If he/she is convicted, they are sent to the prisons or the recreational houses for completing their sentence of punishment as mentioned by the judge.

²¹ Victim Compensation Fund

²² Heraclitus

²³ S. 2(1) Cr. P.C. 1973

²⁴ S. 62 Cr. P.C. 1973

But after all this there are a few problems in the criminal judiciary that is prevailing since ages that reduce the justice disposal rate and delay the time in giving justice to the criminals and the accused.

The problems in the Criminal Justice System can be traced back to the various problems in each part of the system as mentioned below: -

1. **Police-** Police is a State subject²⁵. The police force is the governed by the rules and regulations framed by the State Governments. Police force plays a vital role in the administration of the justice and is working on the front line in the criminal judiciary. The Indian Police Act, 1861 is yet another colonial act enacted by the British during their rule in India. The Indian Government is unwilling to do any change in this. The need of the hour is the decentralization of the police force, but the same is not amended by the legislature in the parliament. Also, the method of working of the police remains unchanged and the traditional method is being used, the lack of public accountability also remains unchanged. The police has the power to arrest people²⁶ which is grossly misused and was analyzed in the case of D.K. Basu vs. State of West Bengal²⁷ where the court streamlined the procedure relating to the arrest of the accused and the protection from the arbitrary arrest²⁸ was enforced.
2. **Judiciary-** Judiciary and the judges play a vital role in the implementation of law. The court of justice is expected to protect the human rights and give relief to the victim. The Indian Criminal Justice System gives more attention to the protection of the human rights and less to giving justice to the victims and protection of the witnesses. Various sections of the Cr. P.C. namely 41, 42 and 151 gives the power to the police to arrest person and section 436A of the Cr. P.C. talks about the maximum period for which a person can be detained by the police. It depends on

²⁵ Article 246, The Constitution of India

²⁶ S. 41 Cr. P.C.

²⁷ W.P. (Cr.) No. 592 of 1987

²⁸ Article 21 and 21(1) of The Constitution of India

the judiciary to realize these rights. Some cases are delayed by adjourning them yet again. The cases should not be adjourned more often as it causes the delay in justice.

3. **Prisons-** The fundamental rights of the prisoners are safeguarded²⁹ by the Indian Constitution. The Hon'ble Supreme Court has listed some of the rights against inhumane treatment of the prisoners in the prisons. These includes keeping record in a register with proper name tags of the police personnel who handles interrogation; a proper memo of arrest to be carried by the police personnel at the time of arrest; the person arrested must be aware of their rights; the arrestee should be subject to a proper medical examination by trained team of doctors every 48 hours during his detention; the arrestee must be allowed to meet his lawyer during interrogation. In India, the prisoners remain deplorable. The law enforcement is responsible for the violation of the human rights in the prisons. According to a report in 2005, there were 8 people who died in the police custody and 42 civilians died in the police firing. The prisoners are also sexually assaulted and raped inside the prisons.

Reforms undertaken by the Government

After the wide spread protests nationwide and various reports submitted by the committees to the government, some reforms were undertaken by the Central and the State Governments for better working of the Criminal Justice System in India.

The reforms are as under: -

1. A number of recommendations like permitting videography of statements was implemented.
2. The definition of rape has been expanded and new offences against women were added.
3. The victim compensation became a part of the law.

²⁹ Article 21 of The Constitution of India

4. A new MoP³⁰ for the appointment of High Court and Supreme Court Judges was drafted.
5. 1000 obsolete laws were removed by the government.
6. Gram Nyayalayas and Lok Adalats were established to provide access to justice to the citizens at their doorstep.
7. The Legal Service Authority Act³¹ was enacted by the Parliament with an object to provide free legal service to the weaker sections of the society.
8. Six fast track courts were established for speedy trial especially in rape and sexual assault cases.
9. The Criminal Law (Amendment) Ordinance³² was passed by the then President of India³³ for amending the IPC, Cr. P.C. and the Evidence Act for laws relating to sexual offences.

Even after all the changes and reform that the government has done in the Criminal Justice System in India, we still need further reforms and air tight laws to deliver justice as soon as possible so that the cases are not prolonged for a long term as we witnessed in the Nirbhaya gang rape case where the attackers were executed after approximately 7 years of the offence committed. The Nirbhaya incident has had a deep impact on the State and since then, the Legislature has made new laws, the Judiciary is trying it's best to deliver justice as soon as possible and the Executive i.e. the police is trying their best to investigate and reduce the crime rate in the country.

I would like to end my research paper on a famous saying: -

“There is no greater tyranny than that which is perpetrated under the shield of the law and in the name of justice.”³⁴

³⁰ Memorandum of Procedure

³¹ in 1987

³² in 2013

³³ Shri Pranab Mukherjee

³⁴ Charles-Louis de Secondat in The Spirit of the Laws.