

Reforms in Police Investigation and Prosecution

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ABSTRACT:

The Criminal Justice System in India is based on age-old institutions such as archaic and colonial police laws passed in 1861. Though in the present context, we have seen inordinate delays, corruption, oppression and political influence has been a major hindrance and it influenced both police system and society at large. In the present paper, the author investigated about the reforms in police investigation and what are the steps need to be taken currently to make it more effective. In the era of high-definition technology, the strategy of both crime and investigation has been changed dramatically. To improve the police system, there are numerous committees and commissions were constituted in the past but still we are lacking in implementation with increasing crime rate. Here, the question arises, that do we need better police system, robust investigation teams flooded with technology and with all kinds of experts or we need a transparency first, at the grass root level. This paper highlights the prosecution aspects as in the case of Jaipal Singh Naresh v. State of Uttar Pradesh, it was decided by Allahabad High Court that the intention of the parliament to keep separate prosecution from police is to investigate the offence and indentify the guilt. The paper also analyse the modernization of police system and need to establish a tracking mechanism for expeditious results in criminal cases to render justice. As said by William E. Gladstone that "Justice delayed, Justice denied".

I. INTRODUCTION

As this case makes its way, through criminal justice system I would like everyone to remember that this is actually about a girl named Jill, who went for a bike ride and never came home’.

--“Marilyn Behrman”

To begin with the question that, over the years numerous efforts have been made in the name of reforms to make the difference in Criminal Justice System in India, but in spite of the efforts to make it reduced, on the other hand, the crime rate is horrendously increased. Why the suggested reforming measures are still on papers not in practice or explicitly dead & so-called implementations. In the true prospects, our criminal justice system is in tatters—justice delayed is justice denied—but that is just one of the ways in which we deny justice to ourselves. As lately, Shoddy investigations leading to poor conviction rates, framing innocent people to get the heat off high profile crimes, goofed up trials, witnesses turning hostile. You name it, it happens in our system¹. The hopelessly understaffed police and low salary resulted into catastrophic situations such as corruption, demoralization and often in few areas the police end up its involvement with the perpetrators of crime. Here we are lamenting the lack of seriousness and sensitivity of the police but condition where they are working; one wonders how they perform as much as they do.

Underlying this question, where not only police is flawed and unfair the system is also deeply misfortunate

¹ Harish Salve, A Case for Prosecution, *India Today*, May 11, 2009.

state. We incarcerate more people from poor section of society as they can't afford the exorbitant advocates and generally the justice is privilege of wealthy people. India is country of diverse culture and vulnerable section is more in threat such as major crimes are against women and children. This is not the only issue but underreporting due to a lot of societal pressure and patriarchal culture in both starting from home to workplace. In fact there are a lot of cases where protected are themselves involved in such disgracing activities and due to power and money, the voice has been suppressed. There are uncounted incidents, where women raised their voices and neither prosecution nor police is helpful due to corrupt and nasty power ridden social mafias. As they hold good position and reputation in respected societies and to raise a voice against such white-collar criminals is the real difficulty, irrespective of gender.

As stated in the Constitution of India, Law and Justice comes in the concurrent list of the constitution; therefore both the central and state government has the authority to pass the laws in this context. In current scenario, the challenging aspect of law is not the law making part and amendments in the specific genre but the implementation. Recently we have seen that S. 375 of IPC has been amended and POCSO has been enacted to make the laws of crime more glamorous, through on the contrary, rapes, acid attacks and other heinous non-cognizable crimes has been increased.

II. ANALYSIS OF WORKING OF POLICE

For a kick start of a case, first it begins with investigation. There should be a crime committed and shall be punishable as per Indian Penal Code, 1860. The role of police is to prevent the law and order but here, in India due to lack of sufficient trained staff neither prevention nor investigation has been properly conducted. The Indian Police Commission appointed in July, 1902 under the chairmanship of Sir A.H.L. Fraser concluded: the police force is far from efficient; it is defective in training and organization; it is inadequately supervised; it is generally regarded as corrupt and oppressive; and it has utterly failed to secure the confidence and cordial co-operation of the people². In research report by Andhra Pradesh Police department in 2010, the research team studied cases decided on various issues pertaining to investigation by the Supreme Court from 1950 to 2009. It is found in the survey of cases that the police report consists of two parts. The first part is confidential and is only submitted for the courts perusal. The second part of report is open to the public. The research team perused the records of one year i.e. 2006-2007. The research team perused the records of grave offences such as Murder, Rape, Dacoity, Kidnap and Abduction³. Here the thorough examination has been conducted from the fundamentals of Criminal Justice System to the recent lacunas. The team has gone through the records of the

² G.P. Joshi, Police Accountability in India, available at, https://www.humanrightsinitiative.org/programs/aj/police/papers/gpj/police_accountability_in_india.pdf

³ Bureau of Police and Research Development, Problems in the Criminal Investigation with reference to increasing acquittals: A study of Criminal Law and Practice in Andhra Pradesh, (2016).

cases in which the accused was acquitted. The team could find all documents like sketch of the crime scene, doctor's report, and any other documents relevant. It is found that in all cases there is an inordinate delay in filing the or forensic experts' report⁴. The other challenges before police is lack of expertise and lack of human resources as to make the system more effective there shall be researchers, policy makers, legal practitioners and community policing should be there to enhance the outcome and in true sense not only traditional policing. Getting a confession from a subject, making connections with a shop owner or community member, or a patrol officer using natural, keen instincts to read cues that a subject needs further investigation, are examples of successful policing that are often considered the "art and craft" of law enforcement⁵. Also in India as still a Third World nation, we need to adopt the technology but due to poor financial conditions, often in all government sector there is no real reform but the money is eaten by the few in numerous departments. Through there is upcoming research has been done that in United States as action based Evidence based policing, in this Evidence shows that proactive policing that targets hot places, hot people and hot times based on knowledge gleaned from crime analysts has proved to be an effective crime-reduction strategy⁶. Hence, there are multiple ways to curb the menace and ensure social justice; firstly the pre- established system should be robust rather than preparing or adopting a new one.

In a *case study* conducted in Delhi, where there is no political interference and the police commissioner report to the Lieutenant Governor, and the Chief Minister. With a population smaller than Mumbai, it has two times number of police stations. In Delhi, 13,803 crimes against women were reported and n chargesheets were filed in 4,371 cases; in Mumbai with 5,128 crimes reported against women, final reports were filed in only 15% of cases⁷. Here, we have seen that how statistics of police performance is grossly incorrect in reporting and recording both but there is lot of impact on chargesheets and convictions.

III. ROLE OF PROSECUTOR AND UNDERLYING LEGAL PROVISIONS AS PER CR.PC.

The provisions given in Cr.PC deal with the appointment of prosecutor and assistant public prosecutor. Section 24 (7) and (8) of the Cr.PC state the qualifications required for the appointment of an Additional Public Prosecutor or Public Prosecutor , to be as follow:

- i. Should be an *advocate* practicing for not less than 7 years
- ii. The Central Government and State Government may appoint an advocate as a Special Public Prosecutor, if he has been in practice for not less than 10 years

⁴ *Ibid*

⁵ Lieutenant Jason Potts, *5 Ways how evidence-based policing enhance law enforcement*, (2019) May 11.

⁶ *Ibid*

⁷ Mukul Sanwal, *Of crime and punishment*, (2017) December 6.

In addition Section 25(2) of the Cr.PC says: A Police Officer shall be eligible to become the Additional Public Prosecutor provided the Police Officer-

- i. had not taken part in the investigation in which the accused is being prosecuted and
- ii. is not below the rank of an Inspector.⁸

In our Criminal Justice System there is hierarchy of prosecutors as follows.

Assistant Public Prosecutor>>Additional Public Prosecutor>>Chief Public Prosecutor>>Public Prosecutor>>Directorate of Public prosecutor

However, due to recommendations given by the Malimath Committee Report worked and subsequently, Sec. 24 and 25 has been amended as Director of Police can be a Director of Public Prosecution. The public prosecutor is the lynchpin of the criminal justice system. Once the investigation is complete, the role of the public prosecutor commences. Increase in white and gold collar crime requires different and advanced skills of investigation and prosecution⁹. There is a case where Anti- corruption Bureau in Mumbai a 39 year old Assistant Public Prosecutor from Anhderi Court for demanding and accepting Rs. 50,000 from a cheating case accused to wind up the case¹⁰.

In the case of *Zahira Habibullah v. State of Gujarat*¹¹, where the conduct of the “Best Bakery” case involving the burning down of an establishment in Varodara which caused the death of 14 persons, came up for the consideration the Hon’ble Supreme Court, leading to what Rajeeva Dhavan has described as the indictment of the justice. The Court observed that the public prosecutor appears to have acted more as a defence counsel rather than whose duty was to present truth before the court¹².

IV. DYNAMICS BETWEEN POLICE AND PUBLIC PROSECUTOR-

In the terms of prospects of dynamics, the boundary between state and police is completely blurred. In India, there is a robust hierarchy in case of work of prosecution and it needs to pass through lot of channels such as in recruitment of prosecution there is lot of political interference so as during the investigation of the large profile cases. In numerous cases, the evidences are buried and FIR has been filed but not the chargesheets and in any pressure for instance the chargesheets are filed then there is no final reports so then so prosecution can suo-moto or their own will raise such cases where there is no evidences left and cannot take as substantial question of law. Lately, PIL has been filed by many social organizations and lawyers but due to political interference and

⁸ Miss Neelima Pothireddy, Appointment of a Police Officer As a Director of Public Prosecution, *Manupatra*.

⁹ *Supra* note 1

¹⁰ TNN, Assistant Public Prosecutor held by ACB, June 23, 2019.

¹¹ *Zahira Habibullah H. Sheikh v. State of Gujrat*, (2004) 4 SCC 158

¹² Y. Shrinivasa Rao, Duty of the Public Prosecutor in Criminal Justice System, available at <http://www.legalservicesindia.com/article/1606/Duty-of-The-Public-Prosecutor-In-The-Criminal-Justice-System.html>

other loopholes in investigation department they are miserably failed generally in the case of crime against women where the perpetrators are protectors or the same allies.

In the case of Jaipal Singh Naresh v. State of Uttar Pradesh¹³, it was decided by the Allahabad High Court that the intention of parliament to keep separate prosecution from the police is to investigate the offence and identify the guilt of accused. The prosecutor is under the duty to represent the accused not to represent the crown. Hence, in this case, it was held that the police and prosecution is complementary to each other. Also police can take suggestions from prosecution before filing chargesheets and final reports. On the other aspects, prosecution also plays an important role in witness identification during trial so it matters that the prosecutor is fulfilling their duties to explore the truth and towards justice. But due to rampant corruption we all know that how badly many times prosecutor doesn't ask much due to bribed by other side and sometimes witness turned hostile. So there is always thin line in criminal trial what is correct and render true justice. There are many aspects such as custodial violence by police and forceful admissions where the accused is neither able to understand the legal technicality nor can afford a decent attorney. The late Nani Palkhivala used to say that we are a country of gestures, as a gesture to the problem; we made the law and stopped there¹⁴. In the above mentioned case of public prosecutor in Mumbai¹⁵, where the lady advocate was booked under Prevention of Corruption Act for taking bribe. The accused and complainant had mutually decided to end the Amboli case wanted to file an application for compromise. The complainant approached the Anti-Corruption Bureau and they by the bait and trap arrested that lady. The new government would do a great service to the system by creating at the level of the Union an independent directorate of prosecution, as a cadre service with its own in-house training mechanism, and making it lucrative to attract the best talent. Let us not forget that those working in this directorate will not enjoy the invisible perks of the civil services¹⁶.

On the other hand, prosecution of crimes is conducted by the state on behalf of victims; it is astonishing that the justice system provides little space for the victim. At present the victim's role is recognized only to the extent that s/he is a prosecution witness. Even here the large number of victim-witnesses turning hostile is testament to the harassment and intimidation they face within the system. Another space where victims can form part of the prosecution process is by appointing a lawyer to assist the prosecution. While the victim's lawyer has a wider role in the Magistrate's Courts, this is far reduced in the Sessions Courts where s/he must act under the direction of the public prosecutor.¹⁷

¹³ Jaipal Singh Naresh and others v. State of U.P. 1976 Cr.L.J 32

¹⁴ *Supra* note 1

¹⁵ *Supra* note 10

¹⁶ *Supra* note 1

¹⁷ Bikram Jeet Batra, *Public Prosecution- in need of reform*, India Together,(2019) September 1

V. CHALLENGES-

If we begin in the context of challenges in the prospect of working, there are many as from initial aspect i.e. investigation to the complete trial. The system hardly works as per the fancy and well written laws and precedents. It works how it should not and it is heart wrenching that once we are criticizing the system will end up either becoming the part of it, or thrown out often due to some manipulating part of our own people. The main aim of Criminal Justice System is to conduct a fair trial. There is no doubt however that a number of steps need to be taken before that to ensure that the prosecution service can even attempt to resist this pressure. This includes providing adequate facilities, fair appointments and ensuring job security¹⁸. In the age of fifth-generation technology, the crime prevention measures has been increased such as CCTV camera, better forensic labs, cyber-team for policing, so as the crime rate has been terribly upsurged.

VI. SUGGESTION

In thematic prospects, the police and Indian Judiciary adopted a lot of changes as there are enormous interventions in case of technological upgradation as well as amendments has been made. In Police system, the on paper discussion of Evidence-Based Policing and solely independent prosecutors where they can suo-moto handle the entire inquiry as well. But the real situation is altogether different, as a Third World Nation we cannot deny if we are not making a robust grassroot level both police and Judiciary, adopting and making policies from developed countries such as United States, United Kingdom, Australia and Canada etc. etc. can't solve the issue. In Indian scenario, the prosecutors are under paid so as the police apart from higher rank officials, here the role social media works as addition of toxic drug in increasing crime especially against women and children and other vulnerable sections. Cyber crime, the recent # me too movement is the true example worldwide the sexual harassment cases, so here again the question raised that how come as a developing nation we are still so lethargic about the true justice and it's shame that we are discussing and making new laws one after another inspite of the worst implementation scale. Public Prosecutors are in the race of increasing the number of conviction to make the fame and sometimes work an advocate of defence to make illegal money. In high profile cases, police investigations are hampered by political cases and recent case of INX Media, where Karti Chidambaram committed the offence of money laundering, where the trial is conducted at slow pace just to pass the time and case will be moribund after a while supposedly. We have seen many sexual harassment cases on high profile dignitaries, where more than half got the clean chit with no tedious efforts.

¹⁸ *Ibid*

- **New Methods need to be introduced-**

Moreover, when we pass these hurdles, we can adopt Evidence-based Policing, it operates under the same principles as evidence-based medicine. The medical profession conducts extensive research to test medications and procedures to ensure that they are effective in treating the patient, and that the medications and procedures do little harm to patients (or at least that we know what harm will be done and weigh that harm against the benefits of that medication). The same is true in policing: officers should use tactics and strategies that have been shown to be effective in reducing, preventing, controlling, and detecting crime, doing as little harm to people as possible¹⁹. In spite of the intervention of fifth generation technology, we are unable to use it in a fruitful manner neither in Criminal Trails nor in Police Investigation. Only metropolitan cities have new infrastructure and better courts, the small places and districts courts are still in poor condition. Hence we have seen that we need to work not only on system's failure but also work as an advocate and researcher to introduce better polices.

VII. CONCLUSION

As written in "Mahabharata", '*Protect, Preserve and promote human life and its essence* and do not destroy it (or its essence) for once it's destroyed, it cannot be recreated'. On the contrary, we have seen numerous instances where there is major need to reform the Criminal Justice System. While each of the instances such as the #me too movement and big media trial cases have shown that there are a lot of discrepancies in our system. The notable aspects that police investigation, interrogation and witness identification and protection is to protect the interest and rights of the accused and to aid the justice delivery procedure. Though what are shows is way too different and this will result in to injustice and lack of motivation for those who really want to work. The level of corruption is raising day by day and from mental health issues, local crimes, crime against vulnerable to inter-state terrorism, hate against govt., hate crimes and inspite of all this we are lacking from the aim of constitutional preamble i.e. to protect the nation and secure all its citizen Justice, Social and Economical rights and this is not only shameful for the lawyers Police department and other bureaucrats but for every citizen of the nation.

¹⁹ Center for Evidence Based Crime Policy, Evidence Based Policing -The basic Study Guide, available at <http://cebcp.org/wp-content/evidence-based-policing/EBP-Guide.pdf>