CRIMINAL JUSTICE SYSTEM IN INDIA DELAY PROBLEMS: INVESTIGATION

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The Criminal Justice system is based on the cardinal principles of fairness, transparency and Human Rights. But these principles underlying criminal law, criminal justice system in India has failed in attainment of these objectives in reality. The reason in failing to satisfy the basic principles of justice system does not lie in its purposes or objects, but in proper handling and managing. The problem is embedded in the ineffective mechanism and apathetic officials entrusted with its implementation. The main problem before criminal justice system is delayed disposal of cases – ‘Justice delayed is denial of justice’ is basic principle of criminal law and based on concept of fairness in criminal trial. For coping the problem of criminality and crime waves it is desirable that guilty person should be punished without any delay. Apart from this interest of society, the question of life and death of accused lies and in addition to this the rights and interests of aggrieved person is no matter less important in criminal cases. For proper administration of justice and tackling the problem of criminality in the society, speedy disposal of cases are very crucial. In India, the right to speedy trial has now been recognised as fundamental right enshrined in Art. 21 of Constitution of India. Speedy trial is essential in order to gain public confidence in criminal justice system. It plays very crucial role in prevention and control of crime. In State of Maharashtra v. Champalal Punjafishah the court observed that:3

“The right to speedy trial is implicit in the right to fair trial which has been held to be part of the right to the life and liberty guaranteed by Art. 21 of the Constitution. A delayed trial is necessarily an unfair trial if nothing is shown. . .”

A criminal trial which drags for an unreasonable long time is not a fair trial and affects the interests of society, aggrieved person and accused person.

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3 Maharashtra v. Champalal Punjafishah, AIR 1875, 198, SCR (1) 299.
“In an adjudicatory system, whether inquisitorial or adversarial, an expected life span of a case is an inherent part of the system. No one can expect a case to be decided overnight. However, difficulty arises when the actual time taken for disposal of the case far exceeds its expected life span and that is when the researcher says there is delay in dispensation of justice. A scanning of the figures would show that despite efforts being made at various levels, the gap between the expected and actual life span of the cases is only widening.”

Now-a-days in India, criminal justice system is much affected by delayed disposal of cases. Public has now lost their confidence in law and criminal law has lost deterrent effect over prospective criminals resulting into increase in criminality in society giving rise to crime waves and ultimately the common citizenry is fearing of crime victimisation.

The problem of delay in disposal of cases is not a new problem and has been in existence since a long time. However, it has now acquired terrifying proportions. On one hand, it has put the judicial system under strain and on the other hand, it has shaken the confidence of the people also. Even the Law Commission of India in its Seventy Seventh Report has observed: “Long delay in the disposal of cases has resulted in huge arrears and a heavy backlog of pending file in various courts in the country. A bare glance at the statements of the various types of cases pending in different courts and of the duration for which those cases have been pending is enough to show the enormity of the problem.”

The speedy trial of offences has been the prime objective of the criminal justice delivery system. It is a desirable goal that long and inordinate delay may defeat the ends of justice. There are common proverbs - ‘delay defeats justice’ and ‘justice hurried is justice buried’. Hence, the object of speedy justice should not be at the cost of legal justice. Thus, it is necessary to strike a reasonable balance between the considerations of speed and justice.

Speedy trial of offences is in the interest of society. The police methodology of solving crimes has been highly defective. Rate of convictions, acquittals and observations made from time to time against police, by the Courts are sole testimony of the fact. The persons charged

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5 Seventy Seventh Report, the Law Commission of India, 1978, p.1
with offences, i.e., accused, are generally looked down in the society. An alarmingly large number of men, women etc. charged with offences are put behind bars for years awaiting trial in courts of law. They languish in prisons for years to come due to faulty procedure. Subsequently, it turns out that many innocents suffer, if we observed rate of acquittals. This is against the fundamental principle of Anglo-Saxon criminal jurisprudence, which states that “ten guilty may go unpunished but one innocent should not suffer.” Speedy trial of cases is also the responsibility of the prosecution. The prosecution does not face the problem of disappearance of witness, evidence etc. Delay may occur at any stage of case, which causes problems of prosecution.

Speedy trial of offence is also in favour of the accused because if he is innocent, he will not suffer for a longer period. The speedy trial of offences strengthens administration of justice. There may be various causes of delay, such as, the absence of witnesses, absence of counsel, adjournments, crowded lists, failure to examine witnesses though present, absence of a system of day to day hearing, delay in the delivery of the judgements etc. The concept of speedy justice is *sine quo non* of criminal jurisprudence. It saves a person from evil consequences of incarceration. In past, a number of Committees have been set up to achieve the target of speedy justice. There have been various committees to look after the delay in disposal of cases but still there is huge arrears of pending cases in the High Court as unit as Supreme Court some of the connecting are:

a) Rankin Committee was formed in 1924 to look after the reason of delay in disposal of criminal cases in High Court and lower courts.

b) High Court arrears committee 1949 was formed with the aim of advisability of curtailing of right of appeal and revision to reduce the accumulation of arrears.

c) Review Committee of 1967 and 1969 were to conduct and suggest ways for reducing arrears of pending cases in the High Courts.

d) Arrears committee 1990 was formed to identify various causes for accumulation of arrears of pending cases in the High Court.

e) Arrears committee 1993 was formed to suggest remedial measures for reducing the arrears of criminal cases.

The Government of India, in the year 2003 appointed Malimat Committee to make a recommendations for speedy disposal of cases, even though there is no change in the criminal

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7 Sharma, D.P.  Speedy Justice & Indian Criminal Justice System, XLV (199) IIPA, 365.

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justice system in India. The recurrent conflict of interest between ‘delayed trial’ and ‘speedy trial’ has hampered the legal plans, legislations, research scholars and the courts. This thesis tries to study the efforts made for speedy trial of cases with special reference to fundamental right of speedy trial and examine the inordinate delay at different stages viz., police, prosecutors, judiciary etc.

CRIMINAL JUSTICE SYSTEM: DELAY PROBLEMS

The manner in which police investigations are conducted is of critical importance to the functioning of the Criminal Justice System. Not only serious miscarriage of justice will result if the collection of evidence is vitiated by error or malpractice, but successful prosecution of the guilty depends on a thorough and careful search for truth and collection of evidence which is both admissible and probative.

Faulty Investigation Method

The system adopted by police for doing investigation into the case has now become obsolete. Due to age old technique of investigation police is not able to collect evidences effectively and quickly resulting into delayed investigation and ultimate result is delayed disposal of the case. Now-a-days due to technological development criminals are committing crime in very planned manner by using scientifically developed measures. Such type of criminal activity may be checked and guilty person can be identified if investigating agencies are well trained in doing scientific investigation. Supreme Court observed about necessity of scientific investigation in modern technologically developed area. “The advancement in various fields of science, the coming into existence of various scientific instruments, the acceptance of scientific theories based on innumerable experiment and discovery of various chemicals has made it essential that science oriented detection of crime made a massive programme of police work for our technological age nothing more primitive can be conceived of than denying the discoveries of the science as aids to come suppression and nothing cruder can retard forensic efficiencies than by searching traditional oral evidence only than by discouraging the liberal use of scientific research to prove guilt.”

8 Kalraj Mishra. Judicial Accountability, retried on.4-10-16.

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Delay in Crime Scene visitation

Investigation involves several stages and the crime scene visitation is one of the most important of them, excluding perhaps, white-collar crimes. Recognising this need, the Police Manuals in most of the States have mandated immediate despatch of an officer to the scene of crime for inspecting it, preserving the evidence and preparing the site plan etc. Such inspection of scene crimes should be done by a team consisting of forensic scientist, fingerprint experts, crime photographer, legal advisor etc., and not just by a single investigating officer. In the National Seminar on “Forensic Science”: Use and Application in Investigation and Prosecution” held on 27 July 2002, at Hyderabad held under the auspicious of this Committee in which Judges, senior police officers, senior forensic scientists and Medical Jurists had participated, the forensic scientists lamented that their services were not being utilised for crime scene visitation as a result of which valuable forensic evidence is being lost.

EFFECT OF OMISSIONS, ILLEGALITIES AND IRREGULARITIES IN INVESTIGATION

The following are the reasons which nullify the whole investigation process conducted by the police. Consequently it leads to delay in disposal of the criminal cases. Irregularities in conduct of investigation are not intended to vitiate the trial before the courts. The magistrates are expected to decide cases on the evidence produced before them. Their Lordships of the Supreme Court in *H.N. Rishbud v. State of Delhi* observed as follows: “A defect or illegality in investigation however serious has no direct bearing on the competence or the procedure relating to cognizance or trial. If cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice.”

In another case, the Apex Court of India has held that even if there is any irregularity in the investigation that would not vitiate the trial or the conviction. In the absence of evidence that

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the accused has been prejudiced.\textsuperscript{13} No proceedings against the accused can be quashed solely on the ground of illegal investigation. The court should go into the question whether the illegal investigation had resulted in prejudice to the accused.\textsuperscript{14} Any irregularity even illegally committed in the course of investigation does not by itself affect the legality of the trial by an otherwise competent court unless miscarriage of justice has been caused thereby.\textsuperscript{15}

SCIENTIFIC INVESTIGATION

Due to modern advancement of Science and Technology, the \textit{modus operandi} of committing crimes with the latest invention of science and technology. So far combating such types of crimes, the ordinary and obsolete methods of crime detection is not tenable in the present day circumstances.

Shortage of forensic experts

The number of forensic experts available in India, compared to the number required, is very small. This could be due to the stigma attached to an autopsy surgeon (“dead body” doctor), or it could be due to the poor working conditions, or the pressures of doing work that is disliked by many in society. In India, except in those hospitals attached to medical colleges, medico-legal autopsies are usually carried out not by forensic medicine doctors but by MBBS doctors who have insufficient experience of such work. As a result, there is a chance that the medical evidence is not properly presented in court. On the other hand, graduates do not consider that a forensic scientist’s job is lucrative enough, though it is very challenging. Due to shortages of staff in most central and state run forensic laboratories, reports are delayed (and justice delayed is justice denied) and there are greater chances of overworked staff making mistakes. By having forensic experts on, both, the prosecution and defence side in a case, we can eliminate bias. By having private forensic science laboratories, we can have independent testing of samples by non-government laboratories. But, unfortunately, with a shortage of staff - both forensic doctors and forensic scientists - the idea of a forensic expert for the defence remains a distant dream in India.

CORRUPTION AND PROFESSIONAL ETHICS

Medical evidence alone stands above all other evidence in a court of law. There are many instances where, even if all witnesses turn hostile, courts have convicted the accused if the medical evidence is conclusive. However, efforts to attain justice have sometimes been frustrated by the corrupt practices of a handful of black sheep in the medical profession who withhold the truth or introduce false evidence. At the other end of the spectrum, honest doctors may not be allowed to function freely because they are subjected to pressure. The result is that the medical evidence submitted to the court is either improper or incomplete or inconclusive. Newer techniques like narco-analysis, brain mapping and polygraphy are being utilised by some forensic science laboratories in the investigation of various crimes16.

CONCLUSIONS AND SUGGESTIONS

The speedy disposal of criminal cases is the cornerstone of fair trial otherwise the dream of justice would be greatly damaged. Investigation of criminal case plays a very important role and makes foundation of the case whole trail is completely depending in investigation therefore it should be properly effectively and promptly done for this purpose Criminal Procedure Code expressly and by implication makes - very detailed provisions prompt and proper investigation in necessary for the purpose of tackling the problem of criminality, if there will be delayed investigation in criminal cases.

(i) The staff in all stations in urban areas should be divided as Crime Police and Law and Order Police. The strength will depend upon the crime and other problems in the Police Station area.

(ii) In addition to the officer in-charge of the police station, the officer in-charge of the Crime Police should also have the powers of the officer in-charge of the police station.

(iii) The investigating officers in the Crime Police should be at the least of the rank of Assistant Sub-Inspector and must be graduates, preferably with a law degree, with 5 years experience of police work.

(iv) Police Manuals and Standing Orders of different States/Union Territories need to be amended to make the use of Forensic Science mandatory, as far as practicable, in investigation of all grave and important crimes such as those involving violence against the persons, sexual offences, dacoity, robbery, burglary, terrorists crimes, arson, narcotics, poisons, crimes involving fire-arms, fraud and forgery and computer crimes.

(v) Police Manuals and Standing Orders should mandate the supervisory officers to carefully monitor and scrutinize, if or not the Investigating Officers have exploited the possibility of the use of forensic science in the investigation of each crime right from the threshold of investigation.