

CRIMINAL JUSTICE SYSTEM

- Justice S.B. Sinha*

India has inherited and borrowed from colonial powers its system of criminal law and procedures, as well as rules of evidence. It is partly because of this that Courts, police, and correctional systems fail to fill the societal needs of today. It is unfortunate that our national programs seldom incorporate the changing needs of society in the criminal justice system or formulate them into a national plan.

We will examine how far the system of criminal justice has failed to achieve its two primary goals; the control of crime and the protection of individual rights. Crime control implies an orderly and efficient method for arresting, prosecuting, convicting and punishing the guilty and for deterring crime by others while the protection of individual rights is necessary to safeguard the accused against the arbitrary exercise of power by the State.

Prevention and detection of crime is the primary objective of the police. Increasing criticism that the police has failed to discharge the traditional or modern duties of being accountable to people is not without truth. The police suffers from declining credibility and is dubbed as the protector of the rich and those who can afford. Has the police acquitted itself on expected lines? The rising crime rate and the high rate of recidivism clearly indicates that the police system is not an effective. Today, cases of murder, rape, theft, assault, robbery disorderly conduct, and bride burning occur much more than in the past. The open violation of laws, allegations of bribery of law enforcing agencies, police, presence of professional criminals, and intimidation of victims and witnesses are experienced in day to day life. Those who are not directly victimized often live in a constant state of fear and victimization. Violent crimes during 1986-96 has increased by 33.7%, homicides by 38.1%, rape by 86.7%. In 1998 alone, there were more than 40,000 reported murder cases in a total of four lakh crimes registered in India. This certainly does not augur well for the efficiency

* Hon'ble Judge, Supreme Court of India.

of the police. In actual practice, the problem of crime is much more serious than the official figures show, as it has been estimated that from one third to one half of all serious crimes are not reported due to a variety of reasons, including intimidation and harassment of the victims.

At least three National Police Commissions have gone into the problem after the inauguration of Constitution of India. The police are said to be insensitive to constitutional violations and the importance assigned to the rights of an individual citizen by the Constitution of India. The problems faced by the police with regard to human resources, scientific methods of investigation, political corruption, political control are no doubt well recognized problems. To take stock of these is as important to the criminal justice delivery system as Court delays.

Although due process (the rule that persons may not be deprived of life, liberty or property except by the established process of law) is an integral part of the Indian criminal Justice system, the system itself discriminates according to the social status of the accused, the ability to avoid arrest and obtain bail, and to hire a good defence lawyer which is largely a consequence of one's income and social status. The police, prosecutors and courts prosecute principally lower class criminals, organized crimes, white-collar crimes, and consumer frauds. The poor, the powerless, and the undereducated are much more likely to be caught, prosecuted, punished or even held in jail for months before they are tried, and sometimes get harsher punishment if found guilty than their counterparts committing the same offence.

How do we judge our system? Reforms in the criminal justice system offer the possibility of greater justice to all. Some years back in Japan the conviction rate fell from nearly 99% to roughly 96%. A commission of inquiry was set up to find out whether the system is responsible for prosecuting innocent persons. In India, the Penal Code dates back from 1860 and the Police Act from 1861, and revisions have been few, whereas our values, norms, social orders and behaviour patterns have changed rapidly in the past few decades, which require a complete overhauling of our traditional criminal justice system. Today,

many of us raise questions about the adequacy and efficacy of the current justice system in the context of the changing patterns of criminal behaviour, as all the wings of the justice system have had nothing to do in common with the social order and crime problem. The shortcomings in the substantive and procedural criminal law with respect to implementation, offer the possibility of the exercise of arbitrary discretion. Instead of enforcing the statutes dealing with lower class criminality or victimless crimes, we must strive to fight with recidivism, corruption, organized crimes and other serious crimes, such as murder, rape, robbery and consumer fraud.

Criminal Law is based on the cardinal principles of presumption of innocence, proof beyond reasonable doubt and onus/burden on the prosecution. Have these principles been worn out? In *State of U.P. v. Ramsagar Yadav*, AIR 1985 SC 416 the Apex Court suggested an amendment to the law of evidence:-

"The law as to the burden of proof in such cases may be re-examined by the legislature so that handmaids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection."

In *State of M.P. v. Shyamsunder Trivedi*, (1995) 4 SCC 262 the Supreme Court while referring to the recommendation of 113th Report of the Law Commission of India which had recommended the insertion of Section 14-B in the Indian Evidence Act placing the burden on the police officer in a case of custodial violence observed thus :-

"The exaggerated adherence to and insistence upon the establishment of proof beyond reasonable doubt, ignoring the ground realities, the fact situations and the peculiar circumstances of a given case, as in the present case, often result in miscarriage of justice and makes the justice delivery system a suspect."

The above view was reiterated in *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

Justice process in India, however, seems to be a series of discretions and a decision making process through which the suspects may pass. The police, prosecution, and the Courts exercise too much discretion with least accountability. Many a time, discretion is exercised in a selective and discriminatory manner prejudicial to the interests of the poor, undereducated and powerless persons. In our criminal justice system, the police officer has first to exercise discretion whether or not to arrest, investigate, search or use force if necessary. Perhaps much greater discretion is permitted to the prosecuting authority who may decide not to prosecute the offender and may ask the Court to alter, dismiss or withdraw charges levelled against the accused. Thus, in criminal cases, the prosecuting officer has greater power over the freedom and liberty of individuals who come into his contact than any other agency. He has also the power to discontinue the prosecution on the ground that the State has insufficient evidence to win the case. If the accused is found guilty, the prosecuting authority may recommend leniency in the sentence or the most severe sentence as the case may be.

The judiciary has an important role in implementation of the rule of law. In the criminal justice delivery system, the rule of law and detection of the crime has primary importance; investigation and prosecution of the offender come later. But prosecution of the offender as expeditiously as possible has far more influence than others.

It is not uncommon for any criminal case to drag on for many years. During this time, evidence grows stale, witnesses may die or become hostile, or recollection fade, and in some cases the complainant may decide to drop the case. Long delay in Court causes great hardship not only to the accused but even to the victim and the State. The accused who is not on bail may sit in jail for months or even years awaiting trial. To avoid unnecessary delay in Court, there is a greater need to have more trials by increasing the number of Judges, if necessary and of course, settle more cases out of Court through mediation and Court mandated counselling services, and find various ways to make more effective use of the Judges time. After all, the better internal management of the Court system would be helpful in improving the system.

Delay and heavy workloads in the Courts have resulted in the informal system of pretrial bargaining and settlement in some Western countries, especially in the United States. The system is commonly known as plea bargaining. A suspect may be advised to admit part of all of the crime charged in return for a specified punishment rather than await trial with the possibility of either acquittal or a more serious punishment. Plea bargaining, as most criminal justice reformers believe, is more suitable, flexible and better fitted to the needs of society, as it might be helpful in securing admissions in cases where it might be difficult to prove the charge laid against the accused. Practically desirable, the practice has some disadvantages. The main danger is that suspects especially the poor may confess in order to have to matter settled promptly. It is regarded in India as non-permissible. However, the Law commission of India in its 154th Report has come out with this concept to lessen the burden of piling arrears awaiting trial. The commission also made it clear that "plea bargaining" shall not be made available to habitual offenders and persons accused of offences against women and children. Before introducing this unique concept in our criminal justice system, we should seriously consider *the* pros and cons of this concept in the context of our legal values and norms. In England as well as in India the position of the Courts is that a guilty plea can be considered a mitigating factor and, therefore, influence the Judge to impose a lighter sentence. But the refusal to plead guilty cannot be considered as a factor for imposing a more severe sentence. It is suggested that every new system should be introduced very cautiously, keeping in view the widespread illiteracy, poverty and social inequality that are prevalent in our society.

The most important factor in preventing and determining crime is the certainty of punishment, the frequency with which those who commit crimes are arrested, prosecuted, convicted and punished. Efforts should be made to improve the management of prosecution in order to increase the certainty of conviction and punishment for most serious offenders and repeaters. For the better administration of criminal justice, recidivists, career criminals and violent offenders need to be prosecuted expeditiously in a selective manner, because these offenders pose a serious threat to the society. For selective prosecution, cases may be classified in terms of (a) the seriousness of the offence

based primarily on the extent of actual harm done to the victim rather than the legal definition of crime: (b) the past criminal records of the accused; and (c) the assessment of the evidentiary strength and the probability of the conviction. In selective prosecution, special attention should be given to the career criminals, worst offenders, and to all those who commit crime against women and children. Today, the problem is that the prosecutors in India are overburdened with too many cases of widely varying degree of seriousness with too few assistants and inadequate financial resources. The result, however, has been the long delay in Courts with individual misery and serious hardships. With slight improvement in the management of prosecution, the prosecutors can play a significant role in the administration of criminal justice by prosecuting only those who should be prosecuted and releasing or directing the use of non-punitive methods of treatment of those whose cases would best be processed outside the Courts. Prosecution of serious offenders, recidivists, and career criminals should be given top priority, as they pose a serious threat not only to the public order but also undermine respect for our justice system.

In India, the police, and Courts and other correctional agencies tend to be isolated from each other as well as from other community groups such as schools, welfare agencies and human rights institutions. It appears that the administrators of police, Courts, prisons, and probation service tend to maintain their status quo. As agents and organs of the Government, the police and the Courts conform to traditional practices and often have relatively little latitude in which and how to operate. The primary goals of criminal justice system (that is, the prevention and control of crime and the protection of civil rights) can best be secured only through proper coordination between the different wings of criminal justice agencies. Regular meeting between interested member of the police, prosecutors, Courts, correctional institutions and community member need to be emphasized which would help to clarify the needs and problems of each wing and discuss the ways in which they could cooperate to make the justice system more effective to meet the challenges of the growing menace of crimes.

The police and the prosecution which are the components of the criminal justice delivery system have many challenges before them.

The police have to face the challenge of corrupt political control as well as declining credibility. The prosecuting agencies are blamed for their declining scales and dishonest practices in concocting and fabricating the evidence with police connivance. The Court system is faced with the problem of under trial prisoners and guaranteeing speedy trial to the man in the dock. Long delays in trials appear to have become a perennial problem. The present system is yet to come out of the British days and dovetail into the constitutional governance. There cannot be any panacea for all the problems. The ever increasing population is a bane for any reformation or progress in any system. The justice delivery system cannot isolate itself from the realities of society. Indian society is known for its fragmented social anthropology. Though unity in diversity is the motto, all could not be so rosy when it comes to facing the problem.

A concerted effort by all those who are concerned with the criminal justice delivery system including Legislature, Executive and Judiciary should evolve concrete procedures and solutions to face the challengers posed by the recidivists, career professionals, professional criminals, terrorists and serious violent offenders. An attempt to rope in the social groups and other institutions of society would come a long way in managing the material resources as well as non-material resources to tackle the problem. This would help in improving the efficiency of the criminal justice delivery system at least to an optimum level. But the silver lining in the dark cloud is the realization that shortcomings of every other component of the system can be kept to a minimum by an efficient functioning of the system itself. I would, therefore, conclude by quoting Justice Arthur T. Vanderbilt [The Challenge of Law Reforms (Princeton : Princeton University Press, 1955), pp 4-5]

"...it is in the Courts and not in the Legislature, that our citizens primarily feel the keen, cutting edge of the law. If they have respect for the work of the Courts, their respect for law will service the shortcomings of every other branch of Government; but if they lose their respect for the work of the Courts, their respect for law and order will vanish with it to the great detriment of society.