

**RECENT SCENARIO OF CRIMINAL JUSTICE AND REHABILITATION IN INDIA**

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**ABSTRACT**

This research paper aims to introduce the various aspects and the challenges related to criminal justice and rehabilitation in India. Criminal Justice can be defined as a system of institutions and governing bodies that are set up to maintain law and order in the country along with punishing the perpetrators. Rehabilitation, on the other hand, is an extended step towards the betterment of the society and is an integral requirement in order to cut down on such crime rates drastically.

The Judicial system aims to provide justice to the victim and send across a strong message to the society in order to deter and mitigate crime. Other than this, its purpose is also correcting the culprit so that the person re-develops the conscience and stops himself from committing further crimes. This aspect is taken care by the rehabilitation wing of the criminal justice system.

The paper aims to deal with the psychological and philosophical sides of the human brain in order to inculcate a sense of guilt and repentance and take into consideration the various crimes which can be considered from petty to grave to discuss in detail the punishment that has been accorded to each. Further, it will unfold as a comparative study of various cases from around the world to devise and suggest ways through which the Indian Judiciary system may improve upon the aspect of Criminal Justice and Rehabilitation. In the end of the research paper, the research will try to reach to a conclusive result as in how effective the current criminal justice and rehabilitation system of India has been throughout the years and the loopholes that come along with it.

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**INTRODUCTION**

The present paper aims to analyse the various aspects of criminal justice and rehabilitation in India. The paper will be focusing on some specific cases of the past and the aspect of juvenile justice.

Criminal Justice can be defined as the steps taken by the various institutions and systems that are placed in the country to maintain law and order and to deter crime. Basically, the whole concept of criminal justice came into being so that peace can prevail in the society and justice can be bestowed by punishing the perpetrators. In India, we have a network of judiciaries which follow certain procedures and rules in order to provide justice and protection to the masses. The whole system that works for the cause of criminal justice in India is so well thought out and transparent that it also provides some protections and safeguards for those who are accused. These safeguards are provided to reduce the factor of abuse of investigatory and prosecution powers. In other words, to socially control the condition of any society and for its

betterment, a well-functioning criminal justice system is essential. Despite living in a civilised human society, some individuals tend to get involved in activities which are considered to be anti-social and harmful to other members of the society, so the criminal justice system takes up the job of preventing such activities by apprehending and punishing transgressors so that any possibility of future occurrence gets deterred. The criteria that distinguishes a criminal justice system from other institutions of social control is that its ambit is strictly restricted to legal control. Criminal Justice system in India or any other country for that matter does not exercise control over the moral behaviours of any individual. For regulating or keeping a check on the moral aspect, institutions such as church, family and school have already been placed by the society itself.

***It can be concluded that the aims of criminal justice system that is set up in a society are as follows***

1. To prevent the occurrence of crime
2. To punish the transgressors and the criminals
3. To compensate the victims
4. To maintain law and order in the society
5. To deter the offenders from committing any criminal act in the future

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Criminal Justice System has laid down certain rules and regulations which are referred to as laws on the basis of which it works to catch and correct criminals. Law breakers or criminals are punished and trialled under these laws only. Judiciary's work is to threaten prospective law breaker and to punish the actual offenders so that a condition of peace and prosperity remains in the society and respect for the criminal justice system can be maintained.

Criminal law can be understood better by further dividing it into two different categories. The two types are substantive criminal law and procedural criminal law. Substantive criminal law can be understood as that part which defines crimes and suggests the punishments that are to be given under those crimes. Procedural law, on the other hand, manages and checks the implementation and working of the substantive law.

The two main guides which are followed in our country regarding the administration of any criminal proceedings are CRPC and IPC. CRPC stands for Criminal procedure code and IPC is the abbreviation of Indian Penal Code. The very importance of a civilized society is that it adheres to the law that has been created for the peaceful functioning of the society. These laws came into existence not so that they may impose restrictions on your liberty, rather they came into existence, so that they define an individual's liberty in a better manner. We have to exercise the liberty bestowed to us with some rules and regulations so that each and every member of the society can remain at peace. These laws ensure that activities of one individual do not trespass into the lifestyle of another. Therefore, these laws have been designed after keeping a lot factors in mind, such as society, norms, negative and positive liberty.

Earlier, "a tooth for a tooth, an eye for an eye, a life for a life" was the forerunner of criminal justice. Now, the time has changed and the members of the society have evolved to understand the importance and follow this system of laws. They respect the criminal justice system and stick to its rulings for a peaceful working of the society. This system helps in providing compensation to the injured party and punishing the criminals. It also lays down a certain set of principles which later on dictates the social behaviour of any human in a society.

### ***Roots of Evolution of the Criminal Justice System***

With changing times and ideologies, the basic aim and motive of the criminal justice system had also got modified. As stated earlier in this paper that the criminal justice system is a product of the society, it can be easily understood that it also evolves and improvises as the society does. This system is both rigid and flexible. It is rigid in a way that it binds an individual to follow a particular code of conduct and does not entertain any sort of amendment in that. It can also be characterised flexible at the same time because at the end of the day, it moulds and changes itself to what society as a whole thinks is correct. This can be better understood by an example of LGBT rights.

The LGBT community has now long been part of several debates and different societies in this world have different perceptions to it. In a society where members hold this community to be acceptable, the criminal justice system reflects the same. However, in the Indian society like ours

where the majority of the members are hostile towards this community, even the criminal justice system reflects that and has criminalized this as an offence.

With modernization and advancement in thought, the masses now have a changed notion regarding criminal justice and its related laws. Now, criminal laws are not meant only for the sole purpose of punishing the criminal or to achieve an absolutely deterrent effect, they also aim to achieve the purpose of correction of a criminal. The system wishes to develop on humanitarian grounds by making an effort to improve the conduct of the offender. Now the focus of the punishment is not only justice to the victim, but it also keeps in mind, that the criminal learns and improves from his past actions. The whole procedure and system is now working in a way such that they are able to induce a sense of guilt and correction in the criminal. This is a very positive change in the criminal justice system of India and should be welcomed by all.

The purpose of the existence of this criminal justice system is improving the society at the end of the day. This target can only be achieved by including the aspect of rehabilitation in the overall process. It has been scientifically proved that majority of the criminals undergo a psychological change when they are in the period of trial or in the prison. They undergo a complete transformation at the level of their conscious and proper guidance at this point of time can lead to their betterment for the rest of their lives. We should always keep this aspect in mind that every offender is capable of recovery and good behaviour. Hence the need of rehabilitation becomes even more important to discuss in this research paper.

### ***Meaning and Need of Rehabilitation***

Rehabilitation is not a one step process. It has many layers and levels. Rehabilitation starts working as soon as the judgement has been declared in court and continues to work till the offender has been taken back in the society. The process of rehabilitation is so subtle that it is difficult to notice but it starts as soon as the offender is convicted<sup>1</sup>.

With the advancement in the several human behavioural and social sciences the need and requirement of rehabilitation has increased manifold in the present century. The basic agenda of rehabilitation is that such transformative changes be introduced in the personality of an offender that he or she refrains from committing crimes in the future. This is the only way how we can hope to bring a positive change in the society. The process of rehabilitation is dependent on three R. These are Reform, Re-socialise or Re-make. These are the basic steps through which we wish to achieve and complete the whole rehabilitative process.

The main supporters of the rehabilitation movement have been the psychologists and sociologists for obvious reasons. The measures that have been proposed to improve the field of rehabilitation in the Indian society are –

1. Involving and encouraging professional help for treatment of offenders
2. Expanding the correctional services
3. Improvement in the treatment theory

<sup>1</sup> Rehabilitation Council of India Act: An Overview And Emerging Issues by Vandana Bedi, pg no, 173-174.

The concept of Rehabilitation becomes even more significant when we consider the case of minors who are convicted of crimes. We need to understand and realise the fact that children generally do not commit crimes because of any personal mala fide intentions and hence it becomes even more important for them to go through the process of rehabilitation and correct themselves. If young offenders are not provided with the right guidance at the right point of time, they may grow up to hold contempt and hatred for the systems of the society and bear ill faith in their hearts. These are the reasons why special juvenile delinquents have been introduced so that children can be helped to the maximum extent.

The children should be to be provided with care, maintenance, education, protection, training etc., all with the basic agenda of their rehabilitation in this society. The young generation being a vital asset, efforts should be made to provide them opportunities for development and advancement so that they become robust and responsible citizens of the nation who are physically fit, mentally alert and morally healthy, with the skills set needed by the society.

Further, the various problems that the current criminal justice system of India is facing will be discussed in this paper.

### ***Loopholes in the Current Criminal Justice and Rehabilitation System of India***

The Indian Criminal Justice System has now been very old and is ailing with several flaws. The reason behind the same is that there has been no significant contribution in modifying and altering the archaic criminal laws of the country. It is even more disappointing to know that the efforts made in the field of implanting and executing these criminal laws are also negligible. The problem lies in the system and the lack of it being addressed.

There is not one but many loopholes in the criminal justice and rehabilitation system of India. All such loopholes have been discussed in this research paper through the means of various examples and then further prospective solutions are also discussed.

There are a few critical questions that are need to be answered to understand the problem, these questions are-

1. How effective are the amendments without introducing changes to other structural flaws?
2. Do we need laws only to punish the criminals or laws which will also prevent them from committing further crimes?
3. Is it possible to introduce reforms in the judicial sector without police reforms?
4. How important is time as a factor while coming to conclusions in judicial cases?

There have been many eminent writers and research scholars who have worked for the betterment of this justice system and they have come up with solutions that need to be worked out in order to improve the situation. The first problem that pops up while examining the situation of people who are under-trial is the lack of resources and finances. The people who get involved in the tedious process of criminal proceedings have to spend a lot of money to hire quality lawyers to assist them. Not every party is resourceful because of which they end up living a traumatised life which they nobody deserves. Moreover, those convicted are provided the aid of "bail" only

when they can submit some amount of money to the court. Generally, this is a hefty amount and people who are not financially sound are not able to manage this amount because of which their bail gets delayed and they do not even get the opportunity to fight back.

Another problem that needs to be discussed over here is that of overcrowding in Indian jails. There are numerous cases where people are forced to stay inside prisons for years just because they are not financially sound to furnish the surety amount or to fight back for their case with the guidance of an expert lawyer because they would not be able to pay for their fees. Such individuals end up spending a lot more time in prisons than required. This is one of the many reasons why jails are getting overcrowded and the situation is worsening day by day. Hence, criminal law of India proves to be of little help to the poor and hostile to the weaker sections of the society. It is very important for us to understand here as to why overcrowding of jails is such a big problem.

First of all, it drains the government and resources by increasing the amount of money spent on jails for their upkeep and maintenance. Secondly, keeping the human rights provided by the United Nations in mind, even convicted criminals have the right to live a humane life. The constant increase in the population only brings down the level of life that is there in the jails. From spending time in jails in order to realise their mistake and go on a rehabilitative journey, the conditions that are provided inside the jails make the convict fight for his survival and even more dangerous. Thirdly, it increases risk of disease which in turn affects the health of the prisoners. The need of the hour is to change the archaic criminal laws which can very easily be termed as the replica of the colonial times.

Supreme Court judgement holds, legal aid to a poor is a constitutional mandate not only by virtue of Article 39A but also Articles 14, 19, 21 which cannot be denied by the government, but the current situation is only making it even more tough for the poor to reach this temple of justice and to hope for justice in their lives<sup>2</sup>.

This paper aims to demonstrate all these disappointing facts with the help of statistics and it is important to mention that in fact 64.7% of incarcerated constitute under trials. Meaning thereby that merely on the presumption of guilt the state is trampling on their fundamental right of equality, liberty, and justice. The might of the state forces an innocent to be treated at par with the persons found guilty and in fact subjugates such innocents to undergo almost the same hardship as any other prisoner. In such a hypothetical situation when sleeping, eating, dining, and sharing toilets et al with hardened criminals make indelible imprint on his psyche and in real terms starts adjusting rather coping up with persons of tainted past, a transformation of personality. In most of the cases he develops a sense of frustration and complex owing to his inabilities and becomes disrespectful for self and also for the society. In his heart of the heart he knows that he is innocent but due to compulsions heaped upon himself starts adjusting with day to day life styles of perverted and corrupt. Can anyone deny the fact that even in most unfettered and liberal set up a human mind remains susceptible to company it keeps, so in a hostile set up when a person with clean background is

<sup>2</sup> Article 14 of the Indian Constitution Analysis in GK today

bunched up with goons and hoodlums due to procedural inefficiencies, legal lacunae his own poverty or sheer corruption in justice delivery apparatus the existing arrangements of keeping an under trial in incarceration is flawed and disturbing. Merely on presumption of guilt if the system is fiddling with the liberty and psyche before even commencement of trial, the system itself needs to be chastised. Its hightime that a spade is called a spade and needs to be comprehended holistically before advancing for giving the corrective position. We should be aware that the law shuns the dictum an eye for an eye rather it draws sustenance from the principle that hundreds may get scot free but not a single innocent may not get punished. The legal doctrines are blown to smithereens and are nowhere at par with the facts mentioned in preceding lines. The position of undertrials is an eye opener and goes on to explain that the present justice delivery system punishes a large cross section of accused based on concocted facts and even before passing of judgements. It is imperative to understand the various stages which are mandatory before reaching to a stage of judgement and how the system may return unintended and flawed verdicts. The major steps that are taken include:

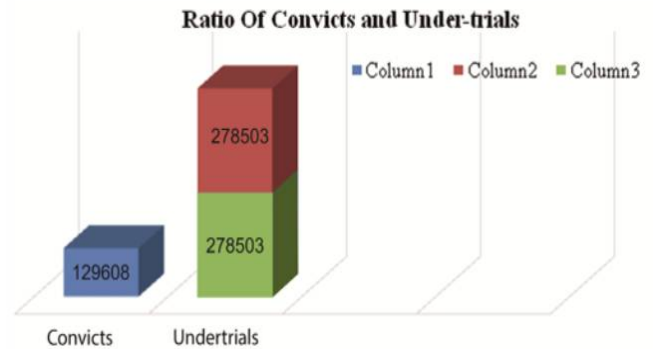
1. Investigation
2. Trial
3. Judgement.

So, we aim to bring into the attention of the masses here that there are thousands of innocent people who suffer through the torturous environment of prisons even when they have not committed any crime just because they have been arrested on suspicion of committing petty crimes. Sometimes, they end up caged in the prisons for a duration which is longer than the actual punishment that is prescribed for the crime.

There are many laws under which trials can get justice but then the implementation of these laws is an issue. In one of the study the data compiled by the National Crime Records Bureau (NCRB) at the end of 2013, the total number of convict prisoners was 1,29,608 and under-trial prisoners was 2,78,503 in jails of the country, there were 1,92,202 Hindu, 57,936 Muslim, 11,666 Sikh, 12,406 Christian, 4,293 Other under-trial prisoners in jails at the end of 2013<sup>3</sup>. This brings us to our second question that was concerned with the structural flaws of the system. We cannot hope to bring improvements in this system until and unless the police force of the country starts to transform radically. We need to make the laws that govern the code of conduct of the police force to be more strict and particular so that real modifications can be made in the system.

**Some Numbers to Remember**

Supreme Court of India in its order dated 5.9.2014 in Writ Petition No. 310/2005 –Bhim Singh Vs Union of India & Others relating to under-trial prisoners, has directed for effective implementation of Section 436A of the Code of Criminal Procedure by directing the jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge to hold one sitting in a week in each jail/prison for two months commencing from 1st October, 2014 for the purposes of effective implementation of section 436A of the Code of Criminal Procedure<sup>4</sup>.



In its sittings in jail, the above judicial officers shall identify the under-trial prisoners who have completed half period of the maximum period or maximum period of Imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436A pass an appropriate order in jail itself for release of such under-trial prisoners who fulfil the requirement of section 436A of CRPC.

Such conditions are not only humiliating for the individual who is convicted but also for the family and the ones who are related to him or her and have to face the society and the outside world. It is can easily understood that because the breadwinner of the family is now behind the bars, their families are forced into destitution. Here, the process of rehabilitation becomes even more important as the convicted has to undergo the social stigma and ostracism. The possibility of exploitation of such families also increases, thus increasing poverty and the risk of forcing citizens into terrorism. There is no compensation for the mental agony and pain that the families go through of those people who spend a substantial amount of their lives in jails just because of suspicion and in the end come out as clean in the court's verdict.

**Prospective Solutions to the Flaws**

We can propose that the people are who are under trial should not be kept with convicts as their intermingling is not beneficial for the two parties and may act as a deterrent in the process of rehabilitation. We should proper policies for the reformation and correction of convicts and those of who are still under-trial.

We need to work together and introduce reforms for forming a system where all the branches of the criminal justice system cooperate with each other for the better functioning of the system as a whole. This is the only way through which the conditions of the under trial prisoners and those convicted can be mitigated and their population comes down drastically.

The next problem that will be taken into consideration in this research paper is that of delay that takes place in any criminal proceeding. It has been rightly said that Justice delayed is justice denied. The number of judges available in courts is far less than the required number and the number of holidays that are provided to those judges is much more than that usually provided to any other working individual. These are some of the reasons why cases keep on getting delayed and remain pending for a very long period of time. All the parties concerned with the proceedings get affected because of the same as their fate lies in the final judgement of the court. It is very important to provide justice to the victim in a specified

<sup>3</sup> Rayees Rasool paper on Criminal Justice System in India published on 05 June 2015  
<sup>4</sup> Rayees Rasool paper on Criminal Justice System in India published on 05 June 2015

period of time as it is only then that the real essence of justice can be felt. It is completely futile to declare the judgement when there is the pain and agony of the victim belongs to the past. Rather, it would only elevate the agony by reminding the victim of an unfortunate incident that took place in his or her life so many years ago. Also, it is very crucial that speedy trials take place for the accused as delayed criminal proceedings will not impact and impose restrictions on his life but also effect the mental stability and calmness of a person. The psychological aspect needs to be taken care of when the court is dealing with any such case and that is the reason why time becomes of crucial importance. The kind of turbulence that the families of the victim and convict get involved in, right from the point of occurrence of the case to going to the court for the hearings, it is essential to reduce the amount of time taken for each judgement to be declared.

This can only take place if the number of judges are increased exponentially and they understand the value of time of the court. Moreover, a slow criminal justice system only gives rise and produces more crimes. Corruption in the criminal justice system of India is not something that is unheard of. The longer the time it takes to reach to a conclusion of any case, the more the number of loopholes increase. The witnesses can be moulded or threatened by the stronger party in order to reach to a desired result and corrupt the whole system. Such loopholes are the reasons for the weakening and collapse of the criminal justice system of India.

When the amount of time taken to reach to the conclusion increases, the difficulty in the process of rehabilitation increases as well. The minds of the individuals concerned are constantly revolving around the criminal proceedings and them after effects because of which it becomes difficult to come back to the normal circumstances and the process of rehabilitation becomes almost impossible.

In order to change and improve the current criminal justice system of India, we need to work together to implement all the prospective measures so real change can be seen. The society needs a rational outlook as soon as possible.

## CONCLUSION

India's criminal justice system and its laws have been inspired and is a reflection of the workings of the colonial times. With changing times and advancement in thought, we have reached the crossroads where there is an urgent need of introducing amendments and new techniques of implementing and providing people the justice they deserve. There have been many reasons because of which the criminal justice system of India has developed not one, but many flaws. These reasons vary from carelessness of authorities to loopholes in laws which can be easily manipulated. There is no denying the fact that for the proper functioning and growth of any country, it is imperative for its justice system to be fool proof.

In a developing country like ours, it is very important for the citizens to place their belief and faith in the criminal justice system of India so that the society may work in harmony and live in peace. The basic aim of this research paper has been to analyse the present scenario of criminal justice in India and the problems that are associated with it. The effort has been to analyse and understand the conditions that the prisoners go through and what role does rehabilitation play in the whole process of conviction. Along with discussing the need and importance of rehabilitation, the paper proceeded further to analyse the hurdles that we face in the road to rehabilitation of a convict.

In the end, this paper strives to suggest prospective solutions to all the highlighted problems and the ways in which the system can work together to overcome all the issues.

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