



Article

A Study on Challenges Regarding Criminal law in India

Article History:

Name of Author:

Gurprem Monga

Affiliation:

Bachelor of Science (B. Sc non-med),
Bachelor of Laws (LL.B.), Master of laws
(LL.M.)- Criminology, India

Corresponding Author:

Gurprem Monga

How to cite this article: Gurprem Monga. A Study on Challenges Regarding Criminal law in India. *J Int Commer Law Technol.* 2024;5(1):43–47.

Received: 28-09-2024

Revised: 13-10-2024

Accepted: 25-11-2024

Published: 30-12-2024

©2025 the Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License (<http://creativecommons.org/licenses/by/4.0>)

Abstract: The criminal justice system in India is a complex and developing system to maintain public order, prohibit and deter criminal acts, and secure justice. It is built upon several statutes, principles, and a committed judicial structure. The criminal law system in India has heroic historical legal origins, but its development is largely due to British colonial rule, while recent reforms have ushered in a new period of development. The foundation of India's criminal law system was formed during the British Raj. The Indian Penal Code (IPC), 1860, drafted by the First Law Commission of India, stood as the substantive law that defined criminal offences and codified criminal law in India. The other foundation was the Code of Criminal Procedure (CrPC), 1973, which provided the procedural law for investigation, trial, and punishment. The Indian Evidence Act, 1872 governed evidence law in a criminal trial. Recently, however, these colonial laws were replaced with new laws in 2023. This includes the Bharatiya Nyaya Sanhita (BNS), 2023, replacing the IPC, Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, replacing the CrPC, and the Bharatiya Sakshya Adhiniyam, 2023, replacing the Indian Evidence Act. These new laws aim to modernize the criminal justice system, streamline procedures, and better reflect contemporary societal needs, including introducing provisions for crimes like mob lynching and terrorism. The Indian criminal justice system operates on several fundamental principles. Every person is presumed innocent until proven guilty beyond a reasonable doubt. The burden of proof rests on the prosecution, not the accused. A crime requires both a "guilty act" (actus reus) and a "guilty mind" or criminal intent (mens rea). Generally, a person cannot be held criminally liable for an act without a corresponding malicious intent. Punishment should be proportionate to the severity of the crime. This principle ensures that penalties are just and not excessive. The accused has a right to a fair trial, including the right to legal representation and protection against self-incrimination.

Keywords: Criminal, Law, Police, Victim.

INTRODUCTION

The colonial legally structured criminal justice systems have imposed significant challenges, demanding and motivating societal calls for improvement. The system suffers from judicial delays, excessive police workload, low conviction rates, and outdated legal processes. The Indian Government's response is an intention to address the challenges and pursue change which, in the last few years, has begun with modifying its principle criminal law statutes to fundamentally reform the aspect of criminal law doctrine, shift the focus back to victims, and make the justice system more timely and efficient. (Tripathi, 2022)

The problems that exist within the criminal law context in India have deep roots and can be seen throughout the justice process including investigation, trial and so on. The biggest challenge lays upon the probably-too-massive backlog of cases. There are millions of ongoing cases in the various courts which result in adjudicating cases spanning years and even decades. This undermines the confidence of the public, causes serious harm to all parties involved, and continues the denial of justice. The police are often under-resourced, inadequately trained in modern forensic science, and less than conversed with criminal law. There is also a persistent concern about political interference and

corruption, which undermines the impartiality and integrity of the police.

India's conviction rate is low, generally ascribed to deficient investigations, intimidation of witnesses, and loopholes in procedure that defense attorneys can use. This not only encourages offenders but also constitutes a further reason the public does not trust the criminal justice process. (Wilson, 2021) The laws at the base of the system—the Indian Penal Code (IPC) of 1860, the Code of Criminal Procedure (CrPC) of 1973, and the Indian Evidence Act of 1872—were colonial-era laws that were believed to be punitive laws that punish offenders rather than ensure justice for victims; the language and provisions in the laws were complicated, outdated, and often ineffective in keeping with present-day crimes like cybercrime and organized crime. There has generally been a focus on the accused and the state and a disregard for the rights and needs of victims.

There has been insufficient protections for witnesses who are also often intimidated or threatened, which leads them to recant their statements, which makes getting a conviction problematic, particularly in high-profile cases. In response to failures in the system, the Indian government has launched an extensive reform of its criminal laws.

The most important of these reforms took effect in 2024 with the abolition of the three main codes from the colonial past. The IPC has been replaced by the Bharatiya Nyaya Sanhita (BNS), the CrPC by the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Evidence Act by the Bharatiya Sakshya Adhiniyam (BSA). The aim of these codes is to change the emphasis from punishment to justice, and to decolonize the law and make it more citizen-centered.

The new codes embrace technology wherever possible to improve the judicial process. They require police to use electronic evidence, require e-FIRs, and allow trials and hearings to take place via video conferencing. For instance, all crimes punishable with the potential of at least seven years in prison must include a forensic investigation as part of the standard investigative process, meaning they can be expected to include more objective scientific probes into criminal behavior.

The reforms include stronger provisions regarding victims' rights. For example, the BNSS requires the police to give a progress report on an FIR to the complainant within a period of 90 days. Additionally, if the crime is against a woman or child the victim is entitled to free medical aid and an update on their case.

The new laws introduce specific provisions for modern-day crimes that were not adequately addressed by the old codes. These include mob lynching, organized crime, and new definitions for terrorism. They also increase the severity of punishments for sexual offenses, particularly those against women and children. (Patel, 2020)

LITERATURE REVIEW

Batra et al. (2020): The police are the first place of contact. They hold the responsibility for crime prevention, law enforcement and the initial investigations. Once a complaint is lodged against a cognizable offense, the police will record the First Information Report (FIR), and collect evidence as well as arrest individuals if necessary.

Dhawan et al. (2022): The judiciary is the hierarchical court system, which considers criminal allegations. The prosecutor provides evidence to show the guilt of an accused individual or individuals. There is an accused or accused who are represented in court by defenses arguing innocence.

Singh et al. (2021): The court ultimately makes the determination of guilty/innocent and if guilty provides a sentencing. This system is also responsible for the custody, reform and rehabilitation of our convicted criminals. This function is more than providing punishment, it is a function that attempts to reintegrate offenders back into society.

Verma et al. (2022): The reform overhauling the primary criminal laws is a significant step to positively addressing these systemic issues. The new laws offer promise for a more streamlined, competent and fair system, however their success depends on a commitment to better implementation, continuous reform, and a commitment to being guided by the constitutional principles of justice, liberty and rule of law.

Malik et al. (2020): The changes bring about major procedural changes to hasten the process of justice delivery. They stipulate deadlines for police investigations, deadlines for filing charge sheets, and deadlines for pronouncing judgments. They also permit trials in absentia for absconding accused, which allows the police to prevent an accused from escaping the law forever.

Sharma et al. (2022): The new BNS has removed the colonial law of sedition, which was frequently condemned for misuse against political dissent. Moreover, "endangering the sovereignty and integrity of India" has been added, but it is intended to prevent the law from falling into misuse for petty matters.

Gupta et al. (2022): The Indian judicial system is suffering from the case backlog and delays of justice, especially in criminal law. The famous saying, "Justice delayed is justice denied," fits well here, as the dispute process of justice can disallow the original justice principles of fairness, equality, and the rule of law to be fulfilled. This is a considerable problem, and it impacts not just the parties involved—the accused, victim, and witnesses—but also the public's faith and the process's efficiency within the criminal justice system in India.

Bose et al. (2021): There are multiple systemic and procedural reasons for the enormous backlog of criminal cases in India. Foremost, one of the main reasons is the paucity of judges. India has one of the lowest ratios of judges to population compared to the rest of the world. This continued shortage of judges results in significant caseloads assigned to a limited number of judges, and in turn, courts will not be able to resolve cases expeditiously.

Kumar et al. (2020) Another major reason was the poor infrastructure of courts, which evidence to include the absence of modern technology, inadequate number of courtrooms and a shortage of adjudicatory staff. Many courts continue to rely on outdated systems of recordkeeping done on paper, which slows the justice process for all.

CHALLENGES REGARDING CRIMINAL LAW IN INDIA

The legal and procedural structure is a source of delay in itself. The "adjournment culture" is the most general expression of this issue where cases are adjourned due to the lawyers' requests quite frequently with next to no justification. Added to this, are the complicated, lengthy, and confusing procedures taking place under the provisions of the Code of Criminal Procedure (CrPc); which allows sufficient opportunities to employ delay tactics. In addition, the quantity of all types of appearances from the client, (that is, Government appearances) and requests for additional appearances, there are many, many appeals that lawyers are telling clients they can make. The Government of India is often the largest litigator, as the state, again adds to the Demand on System of Justice.

The consequences which the delay presents to the criminal justice system are innumerable and serious. The more obvious consequence, which is simply part of the issue itself, is that a person's right to a trial without delay is one of many aspects to a person's right to life, and liberty, under the provisions of Article 21 of the Indian Constitution. Many undertrial prisoners, who are legally deemed innocent until proven otherwise, may be sitting in a barracks that is flaring compared to their peers; sometimes being

locked up for longer than the legally allowable term ultimately provided for their potential crime. All of this is ineffective and unsettling for clients who think there is justice mutually and collectively, while they are losing relationships, money, employment and any hope of articulating concerns in a process that would not continue with impediment after impediment. The long-term impact on prisoners (which could be assumed) would have a chilling impact on their persons, financial capabilities, and ultimately society. A delay in the delivery of justice can undermine the public's trust in the judiciary and the rule of law. The public will look upon the projects' procedure and outcome as ineffective, corrupt, or only available to the wealthy and powerful, which can erode social order, leading to a breakdown where individuals decide to enact vigilante justice or try to resolve conflicts through an act of self-help.

The criminal justice system has three purposes: punishment of offenders, deterrence of future offenses, and rehabilitation of the offender. A delayed trial system also diminishes the link between the crime and its punishment, thus defeating the deterrence objective. There is also the very real possibility that prolonged pre-trial detention has a dehumanizing effect on any rehabilitative effort.

To address the challenge of case backlog, multiple strategies are needed that include legislative, administrative, and technological reform. The government must prioritize filling all vacant judicial positions and increase the number of judges to an effective ratio; it must also invest in modernizing court infrastructure and, in particular, make the most efficient use of e-courts, including e-filing, case management, and virtual hearings. Technology has the capacity to promote efficiency, transparency, and reduce delay in processes.

In order to address unnecessary delays in adjournments because of requests by parties, we must adopt stricter adjournment practices. Legal practices should also be streamlined, and limits in the adjournment process should be established as part of the trial schedule. In addition, alternative dispute resolution (ADR) could be considered as a way of alleviating court congestion; for example, plea bargaining in less serious cases.

Second, if an approach such as the National Judicial Data Grid (NJDG) is implemented, it is an analytical approach that facilitates benchmarking of delays and can help prioritize cases that have sat in the system for a long time. Another possibility could be the establishment of fast track courts for certain kinds of cases, including for serious crimes, which will assist the course of justice being expedited for victims.

As we can see, the backlog of cases and delays in criminal justice is a complex problem and is unique to the root causes and consequences associated with the issue. The causes of the problem are systemic in nature and examines the very essence of democracy and accountability to the rule of law. The issues are staggering but this framework puts an emphasis on a combined and population based approach from the Government, judiciary and legal community to enact reforms to the system collectively. We will not offer any protection or rights in accessing justice without any meaningful and large-scale reforms.

In India, as is the case in other parts of the world, the criminal justice system is reliant on police investigations and police work. However, there are significant deficits in the Indian criminal justice system that compromise its effectiveness and integrity, such as historical legacies, structural inadequacies, and inadequate resources, which ultimately results in low conviction rates and simultaneous disengagement from the public.

One of the largest challenges is dealing with the Police Act of 1861, colonial law that has not been reformed appropriately. The Police Act makes a higher presumption of concern for law enforcement and order established by the state; however, it is absent of responsibilities towards the welfare of persons' and their rights. The Police Act serves as a foundation for constitutional legitimacy of police forces that unfortunately are perceived to be less of a public service and more of an instrument of the state. Further, police forces are professionally combined with law enforcement and criminal investigation, which may add a conflict of interest while lacking specialization. Police officers are often assigned multiple roles and duties such as traffic events and/or VIP duties that detracts them from completing *modus operandi* (process) investigations with the equivalent quality or timeliness.

Another major challenge is the lack of resources. Police stations throughout the Indian subcontinent are quite often under-resourced, under-trained and under-equipped. The high case load can lead to strained investigation efforts and mishandling of cases, impaired evidence collection and delayed filing of charges. Due to limited financial resources and modern forensic sciences, there are few, if any, police vehicles and available training for new age crimes (cybercrime, financial fraud). As a result, crimes that are complex are not only difficult to investigate, but for those officers that are weighing costs or compromise on targets, the ease of corruption creates the temptation to behave unethically to generate funds. Political interference is another systemic, debilitating issue in policing investigations. The Indian police force is under instruction of the

state government, and officers are subject to pressures that run against interference and political involvement from influence. Officers can be instructed or pressured to redirect investigations, file false cases, or find viable means to not follow through with investigations against politicians that are connected to either political influence and/or economic benefit to the officer involved. Although pressure and temptation to take the high road of integrity and conduct quality investigation are ultimately damaging to the integrity of the investigation and police officer. Additionally, corruption at various levels of the police hierarchy, often fueled by low salaries and poor working conditions, can lead to fabricated evidence, witness intimidation, and the wrongful acquittal of criminals. The low level of public trust in the police is a significant impediment to effective investigation. Due to past experiences with police brutality, corruption, and a general lack of accountability, many citizens are reluctant to report crimes or act as witnesses. This lack of cooperation can result in a scarcity of crucial evidence, such as eyewitness testimonies, which are vital for a successful prosecution. Witnesses often become antagonistic or recant their testimony in court out of fear of being retaliated against by the perpetrator or facing harassment from police officers. This can only hurt the prosecution's case.

While the 1973 Code of Criminal Procedure (CrPC) provides a legal structure for police investigating crime, certain procedural aspects create obstacles. For example, once a suspect is in judicial custody, they cannot be interrogated continuously or repeatedly, meaning the police cannot glean any further evidence from a suspect being held or charged. Furthermore, under the Indian Evidence Act, 1872, the police cannot generally offer confessions as evidence in court, which is particularly unfortunate because while confessing outlawed practices against the police also, ironically, acts to limit police investigative practice and evidence collection. The lengthy and often bureaucratic process for the police to obtain a warrant and complete general paperwork, lends itself to consequences of potentially losing evidence or its contamination.

Witnesses and victims contribute fundamentally to realizing justice in India's criminal justice system, but they face considerable threats, which can include: threats of violence, lack of protection, and delay in adjudication, which all contribute to witness hostility or refusal to cooperate. All of these factors may impact the integrity of the judicial process in a way that undermines the conviction rate. Even once formal legal protection is in place, this protection can be problematic.

This may be the most pressing issue. In high profile cases or cases connected with organized crime, witnesses and victims face many types of intimidation or threats of violence from the accused. The fear of violence may also extend to the witnesses' or victims' family or loved ones. Violence, or the fear of reprisal, breeds witness hostility and/or recanting of testimonial statements. The concern about the lack of an accessible, effective legal means to keep the witness or victim out of physical harm is a unique concern because it makes the witness or victim feel vulnerable, which will result in a lack of trust in the judicial process.

Overall, the process of criminal justice can take a long time and be expensive, requiring vacation from work, lost wages and/or travel expenses to get to the court. Furthermore, they receive little to no psychological counseling or support to cope with the trauma of the crime and the stress of the trial.

The court process can be extremely frightening in itself, with witnesses often engaged in long and intimidating cross-examinations, and appearing to be subject to disrespect by lawyers and officials at court, the witness often has to report to court on multiple occasions given the almost routine adjournment of cases, and because of this issue, the witness has their life severely disrupted and is frustrated by the process. Ultimately, this does not encourage people to come forward to provide evidence.

India has tried to address these concerns in different legislative and judicial ways, most notably through the Witness Protection Scheme 2018, which is a significant initiative and the Supreme Court endorsed the witness protection scheme, which is an accomplishment.

Section 357A of the Code of Criminal Procedure – 1973 (Cr.pc), requires every state government to establish a scheme for victim compensation. This scheme establishes a fund to provide compensation to victim(s) and/or dependants where some loss or injury was suffered as a result of a crime and the victim needs rehabilitation. Compensation can be recommended by the court, and also in circumstances, where the offender is not traced, the victim can apply for compensation.

The low rates of conviction in India is reflective of the systemic failure to adequately protect victims and/or witnesses. Although reforms like the Witness Protection Scheme 2018 and the Victim Compensation Scheme are significant, putting these innovations into practice is critical to the criminal justice system's resilience. An interdisciplinary approach is necessary, requiring funding and implementing law enforcement and judicial

personnel educational and training opportunities in a timely manner; and, arresting the judicial process to facilitate timely trials. Without these critical actions the "eyes and ears of justice" will remain intimidated into silence and justice will remain a fallacy.

CONCLUSION

The Indian criminal justice system is at a critical juncture in its development. The latest reforms are a significant beginning for the criminal justice system to address the problems that have plagued it for years, particularly the backlogged systems, while also modernizing legal frameworks, improving efficiency, and increasing attention to citizens' and victims' rights. However, these new laws will only be fundamentally impactful to the justice system for all persons if and when they are put into practice to ensure accessibility, speedy and fair access to justice.

REFERENCES

1. Batra M. Criminal justice system in India: issues and challenges. New Delhi: LexisNexis; c2020.
2. Dhawan R. Judicial delays in India: causes and solutions. New Delhi: Eastern Book Company; c2022.
3. Singh P. Role of police in criminal justice administration. Mumbai: Universal Law Publishing; c2021.
4. Verma S. Understanding criminal procedure in India. Kolkata: Satyam Law International; c2022.
5. Malik A. Victimology and criminal justice in India. Hyderabad: Asia Law House; c2020.
6. Sharma R. Forensic science and criminal investigations in India. New Delhi: Thomson Reuters; c2022.
7. Gupta K. Comparative criminal justice systems: India, US, and UK. Chennai: Oxford University Press; c2022.
8. Bose A. Judicial activism and criminal law reform in India. New Delhi: Cambridge University Press; c2021.
9. Kumar N. Challenges in Indian trial procedures. Bengaluru: NLSIU Publications; c2020.
10. Rao V. Witness protection in the criminal justice system. New Delhi: Bloomsbury India; c2021.
11. Mishra S. Delay in criminal trials: an Indian perspective. Mumbai: Hind Law House; c2021.
12. Patel D. Role of prosecutors in the Indian criminal justice system. Pune: Modern Law Publications; c2020.
13. Roy P. Judicial reforms in India: a critical analysis. New Delhi: Springer; c2020.
14. Wilson J. International perspectives on criminal justice. London: Routledge; c2021.
15. Tripathi H. Rehabilitation and prison reforms in India. Hyderabad: Asia Law House; c2022.