

CRIMINAL JUSTICE DELIVERY SYSTEM :ROLE OF SOCIETY AND ENFORCEMENT FUNCTIONARIES

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Abstract:

Of the many ills that plague the criminal justice system in India to day, the most over whelming and important one is the fact that prosecution witnesses retract from the statements made earlier before the police and turn hostile in the court. What is shocking is that witnesses are turning hostile with predictable regularity in cases involving heinous crimes or high-profile personalities due to external pressures thereby leading to the failure of the criminal justice system.

However, this is not the first time that the criminal justice system has failed to deliver justice. It is routine in India for powerful people accused for heinous crimes to be acquitted for lack of evidence. Largely because witnesses in such cases turn hostile with unfailing regularity. High-profile personalities have exposed the truth that the rich and powerful can manipulate criminal justice by intimidating and coercing the witnesses.

Witnesses assume a pivotal role in the criminal justice system of our country. In the labyrinth of criminal justice of today, where burden of proof lies heavily on the prosecution, the entire merit of a criminal case depends on the witness. By giving evidence relating to the commission of an offence ,he performs a sacred duty of assisting the court to discover truth. The increasing the number of instances or witnesses turning hostile is one of the main reasons for the low conviction rate in India.

The witness also feels disgusted over having been summoned time and again and having appeared uselessly on a number of dates only to be told to appear again without failing at the risk

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and cost of being issued arrest warrant in case of his failure to appear or late coming. The witness then realizes the folly of his having volunteered or consented to become a prosecution witness to help the cause of justice and starts helping the defense to get ride of the harassment.

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The following may be the main reasons for witnesses retracting their statements before the court and turning hostile:

Social Factors

In olden days, it was rare to see an important prosecution eye witness turning hostile or not supporting case of prosecution during trial in a court. Now a days, in spite of several attendances by the witnesses, their examination-in-chief is not started at all largely due to delaying tactics of the lawyer of the accused.

Stock witnesses refer to certain persons of doubtful credentials who are available to serve the police as witnesses where real witnesses are not forthcoming. Planting such pliable witnesses as prosecution witnesses quite invariably leads to such witnesses turning hostile as they can be bought for a small price. The result is failure of case ending in acquittal of all the accused. There being no evidence or reliable evidence on record.

In many cases the witnesses are bought off or “purchased” with the use of money. The prime witnesses in a case are contacted either directly by the party or through the lawyers in that case and then offered a sum of money for not co-operating in the investigation and /or told to take a pre-decided stand at the trial.

There are certain upright people still existing in this world and it is largely for them that muscle power is used. Even an honest and law abiding citizen would think ten times over before deposing against the accused if he or any of his family members is threatened with death or dire consequences. In most of the cases, witnesses are given the threat and intimidation and retract from the statement made earlier by them or fail to identify the accused.

Political pressure, self generated fear of police and the legal system, absence of fear of the law of perjury, an unsympathetic law enforcement machinery and corruption are some of the other reasons for witnesses tuning hostile in the course of trial.

A flurry of questions naturally come to the mind after seeing the harassment being faced by prosecution witnesses during the course of trial- why does the criminal justice system expect the witness to speak out the truth and co-operate with the prosecution if it cannot protect them against such degrading, insulting and lacerating circumstances. What are the loopholes in the criminal justice system which allows a witness to be influenced by external pressures? We will now try to find out the answer to this question.

Loopholes in the criminal justice system¹

No specific provision for protection of witnesses:

In dealing with the pressures on witnesses the provisions of Indian Penal Code and the Code of Criminal Procedure are woefully incomplete. Evidence is tampered with and witnesses influenced with alarming regularity in high-profile cases.

There is no special provision in the law to immediately arrest persons/accused who are threatening or intimidating the witness. Such an act of intimidation of witnesses has not been made punishable under the Indian Penal Code. Section 503 of the Indian Penal Code deals generally with criminal intimidation and does not provide any special protection to the witness from being influenced by the accused or other persons. Similarly the provisions relating to assault, hurt, criminal force etc. exist in the penal law of India but there is no specific provision to specifically address the malaise of intimidation of witness.

Perjury: A forgotten crime

Successful justice systems of the world over treat perjury as a terrible crime that will ruin the whole justice system if not rooted out. If every body in court tells lies, one cannot hope to discover the truth. Witnesses need to believe that if they lie, they will be jailed only then will the incentive to tell the truth exceed that to lie. But in India neither the public nor the judiciary seems

much concerned about it. They fail to see that if perjury is not checked, the judicial system simply cannot deliver justice.

Easy availability of bail to the accused:

In many cases involving high-profile personalities or heinous crimes, the courts easily grant bail to the accused thereby making the witnesses vulnerable to threats and intimidation by the accused.

Prolonged trials:

The Cr. P C. was enacted with the objective of ensuring speedy and expeditious disposal of cases and thus to prevent harassment of witnesses. However the spirit of this beneficial provision has been totally missed by the judiciary and adjournments are granted by courts on regular basis.

False allegations of rape :

There can be little doubt that the spectator of false rape allegations has significantly influenced the development of legal doctrine and its enforcement. The fear of false allegations has been used to justify evidential rules in cases involving sexual offences such as the corroboration warning.

Sir Mathew Hale's seventeenth century opinion that rape "is an accusation easily to be made and hard to be proved and harder to be defended by the party accused, though never so innocent"² and the suspicion of rape complainants that this view represents has figured prominently in the legal response to rape. Across many jurisdictions, legal practitioners and scholars have commented upon the ease with which women, children and sometimes men can fabricate an allegation of rape and how difficult it is to refute such claims.

It is perhaps surprising, therefore, that while the issue of false allegations appears significant in the treatment of rape by the criminal justice system, there has been little detailed attention given to the reliability of the evidence on the prevalence of false allegations. Consequently, there are several reasons why the study of false allegations should be included in discussions concerning the enforcement of rape law and associated legal reform. The first reason is that there appears to

be a widely held view that false allegations of rape are common and easily made by vengeful or desperate women, mirroring media coverage that cites high estimates as to the number of false allegations. The second reason is that incorrect or unreliable assumptions about false complaints provide a poor basis upon which to develop appropriate policy responses to rape. Indeed, legal scholars, law reform bodies and interested pressure groups have rejected reform measures that rest on untested assumptions as to the frequency of false allegations.

Finally, false allegations raise the possibility of miscarriage of justice, they divert attention from genuine victims and may help to create a dangerous and unjustifiable scepticism among criminal justice professionals to all allegations of rape.

Study revealed that there were 447 allegations of rape reported to the police, of which 215 were not recorded as offences. In contravention of circular 69/1986, nearly half of these 215 cases, 101 were not recorded because of “insufficient evidence”, with another 91 cases not recorded because the complainant withdrew the allegation. Including within the category of cases not recorded were only 17 complaints that were deemed to be malicious.³

In the United States, law enforcement agencies make a distinction between rape reports that are “founded” and “unfounded”. The Federal Bureau of Investigation’s Uniform Crime Reports has stated that un-founding refers to the percentage of complaints determined through investigation to be false. The US Department of justice, Bureau of Justice Statistics report from 1997 on sex offences and offenders has published data from more than 16000 local, county and state law enforcement agencies. The Bureau found that law enforcement agencies indicated that about 8% of forcible rape cases reported to them were determined to be unfounded and were excluded from the count of crimes.⁴

One of the earliest and most detailed studies of police recording practice in the United States was a study that examined the police investigation reports of rape and attempted rape notified to the Police Department in the second half of 1966. While false complaints do occur, approximately three-quarters of the incidents concluded by the police to be false appeared to have been judged to some extent at least on the basis of stereotypes regarding the complainant’s behavior, attitude,

demeanor or possible motive. Suspicious comments were made by the detectives regarding a woman who laughed while being interviewed and others who were seen as 'attention seeking' and some who were said to be 'crying rape' for revenge or guilt motives.

Historically, legal scholarship has produced two broad approaches to the issue of false rape allegations. The first approach claims that women are very likely to make false complaints of rape, and provides various medical or psychological explanations for this behavior. These works have consistently failed to challenge the assumption that significant numbers of women falsely allege rape.

Since the mid 1970s, a second approach has emerged. It can be found in a large number of legal articles and books examining the law of rape and its enforcement taking the view that the number of false allegations is low, or at least no higher than the rate for other serious offences.

The issue of false rape allegations should not be viewed as a peripheral matter of little concern to those who are seriously concerned with the way in which rape complaints are handled by the criminal justice process. It is not only an important issue for those concerned with the treatment of complainants, but it also has implications for suspects and defendants. The actual rate of false allegations may also be highly relevant to the future direction of legal policy.

It is also evident that police officers report on the basis of highly questionable assumptions concerning appropriate or expected complainant behavior and responses to rape. In order to address this particular issue, the actual rate of false allegations is much less important than educating police officers regarding the range of normal responses exhibited by rape victims. Education, however, should not be limited to police officers and should include prosecutors and forensic medical examiners.

A concocted story: A case report: ⁵

A leader of Servhind Congress Party in Chandigarh stated that he along with his daughter went for shopping in Punjab Red Cross Bhawan, Chandigarh. He parked his car outside (in front) of the Red Cross building. After shopping he sat on the driving seat and his daughter was sitting on

the neighboring seat. When the sales girl brings the packet purchased by the leader, he heard a huge sound and he could not understand what happened. He came out from the car and found that a bullet has been lodged on the rooftop of the vehicle just above the driving seat.

The issue in this case was to determine whether the hole present on the rooftop of the flat car was caused due to a bullet and if so, whether the same has been caused by the 9 mm fired bullet allegedly recovered from the rooftop of the car at the scene of occurrence, the bullet recovered was having regular rifling with no extra marks at any other part. Firearm was not recovered from the scene of occurrence, in an effort to simulate the hole present on the rooftop of the flat car, the scene was reconstructed at the alleged spot, test firings were conducted on similar type of metallic sheet from different ranges, and the possibility of hole caused due to bullet falling freely under gravity was also examined. On reconstruction and examination of the alleged scene of occurrence and nature of hole present on the rooftop of the car, it was observed that there were no possibilities of causing similar type of hole due to firing from the surroundings of the flat car. The hole present on the test fired metallic sheet were also not found consistent with the hole present on the rooftop of the flat car. Hence, by means of forensic examination and reconstruction of the scene of occurrence, it could identify a fabricated case of shooting on a flat car. The case under reference shows how ballistic observations could play a very important role in deciding a particular case.

Role of Police

So far as criminal proceedings are concerned, the majority of allegations of perjury are made against the police. This is inevitable. They are responsible for prosecutions and are the witnesses most likely to be believed by magistrates and jurors. But they are by no means the only potential offenders. Other witnesses may have very strong motives for giving false evidence. Co-defendants may want to unload guilt on each other, persons who would otherwise fall under suspicion and attract charges against themselves may have a vital interest in establishing another's guilt. Witnesses to identification are particularly prone to swear to certainty at the trial when before the trial they were by no means sure or had given conflicting descriptions when first interviewed.

In Jury cases the truth or falsity of the evidence given is examined and finally decided in the course of the trial proceedings. Depositions are handed over, the prosecution evidence is given first and the defense normally has time and opportunity to produce its own evidence in opposition. Nevertheless occasions often arise when it is impossible for the defense to discover and prove that vital evidence was perjured until after the trial, particularly when it is produced without notice. The defense can ask for an adjournment, but it may not be granted. In the case of police evidence, it may be impossible to prove perjury, even after the trial, without access to documents and records which the prosecution will not disclose. In magistrate's courts, the defense may have no advance notice of the evidence to be given by prosecution witnesses, and is this severely handicapped.⁶

Robert Reiner rightly remarked that policing is an inherently conflict ridden enterprise. Therefore, the police has a professional responsibility demanding from them the highest standards of conduct, particularly those of honesty, impartiality and integrity.⁷

Yet another potential cause which shatters public confidence in police is the increasing interference of politicians in the working of the police. Once the politics enters this department, it paralyses the police arm for the enforcement of the law thus putting merit to near in competency and dishonesty to the front.

It is no exaggeration that the present deterioration in law and order situation in India is primarily due to these forces which have demoralized the Indian police.

In zeal of criticizing the police, people generally overlook the gravity of situation and seriousness of the offender's crime and blame the police squarely for inaction or atrocities. The police, therefore, feel hesitant in initiating stern action against the law-breakers.

Unfortunately, the relationship between the police and magistracy in India lacks mutual trust and confidence. In quite a large number of cases police evidence is not considered sufficient and honesty of the police is doubted by the judicial officers. Needless to say that there is a need for these two agencies of criminal justice to work in close harmony and trust for each other.

Police cases mostly fail because of the lack of public co-operation. People in general are reluctant to come forward as witness and assist the police in apprehending criminals.

In brief, the present day Indian police system confronts a hostile people, angry legislators, questioning judges and hysterical victims. It is however, submitted that mere hostility or ruthless criticism of police cannot improve police efficiency. The major problem for the modern police in India, therefore, is to inspire the public to appreciate the police values. The general impression is that the policemen are inefficient, brutal, corrupt and lawless. They should be brushed aside and encouraged to discharge their duties honestly, sincerely and faithfully so as to promote welfare of the community.

Role of Judiciary

Expressing his concern for delays in disposal of criminal cases, the Former Chief Justice of India, Dr. A.S. Anand as he then was, in his address at All India Seminar on Judicial Reforms, inter-alia, observed;

“Failure of judiciary to deliver justice within a time-frame has brought about a sense of frustration amongst the litigants....Human hope has its limits and waiting for too long in the current lifestyle is not possible. Some feel that judicial system has shown appearance of cracks and fatigue but I am an optimist and do not share the view that judicial system has collapsed or is fast collapsing.”⁸

Defective investigation because of innocent person being booked along with the guilty or manipulated case diary not only delays the trial but brings disrepute to police and results in consequential acquittal. The failure of the police witness, especially the investigating police officer, to appear before the courts on the dates fixed leads to postponement of trial for several days.

The prosecutor takes adjournment from one court on the plea of his being busy elsewhere, and the trial court has to adjourn the case in the interest of justice and fair play. This is highly objectionable but widely prevalent practice in the Indian courts. No personal ground except

personal illness of the lawyer should be entertained for the adjournment of the case. The lawyer's absence without an alternative arrangement should be treated as misconduct.

The lawyers have an important role today in preserving confidence of the people in the independence of judiciary thereby ensuring rule of law. There are three pre-requisites for the prevalence of the rule of law. They are a strong Bar, an independent judiciary and an enlightened public opinion.⁹

Miserable plight of clients at the hands of lawyers on the one hand and poorly paid ministerial staff of the court on the other, have shaken the confidence of common man in the institution of court which is an instrument of justice. The corrupt practices and exploiting tactics of these professionals make it difficult for a common man to get justice in a court of law.

The large number of cases pending in criminal law courts over-burden the work of magistracy to such an extent that the Judges hardly find sufficient time to be devoted for each case. This has repercussions on the quality of judgment delivered by the courts. Needless to say, this is adverse to the cause of justice.

The philosophy of impartial justice is envisaged in appeals at three different levels, namely, the district, the state and the federal level, with the result convictions are prolonged to years or even decades to bring the guilty to the prison cell or to the gallows for their criminal acts.

It is common knowledge that very few members of the public who are present at the scene of occurrence are willing to come forward to depose in courts because of long waiting for evidence to be recorded, adjournments on flimsy grounds, brow beating of genuine witnesses by over zealous defense lawyers and inadequate compensation for the loss of day's earnings. These are the biggest hurdles in getting public witnesses, which are so essential for getting the accused person convicted in criminal cases.

These shortcomings can be remedied by streamlining the judicial system where at present the judge acts as an "umpire" and not inquisition trying to arrive at truth.

It must, however, be reiterated that the judges, in imparting justice are no doubt guided by the settled principles of law but the public opinion exerts considerable influence on judicial proceedings.

Summing up the role of courts in the administration of justice, suffice to say that India today is passing through an age of social questioning. Here is need for legal institution and courts to earn reverence through the test of truth.

Wrongful convictions:

In 2002, over one million adults were convicted of felonies in the United States. One survey of Ohio criminal justice officials estimates that wrongful convictions occur in about 1 of every 200 felony criminal cases. However, DNA testing of criminal suspects suggests that the percentage of wrongful convictions may be much higher.¹⁰

More important factors such as eyewitness error, which were likely to cause wrongful indictments in DNA test cases, continue to produce wrongful indictments in criminal cases where there is no testable biological evidence.

The United States judiciary has been aware for some time of the problem posed by eyewitness error. For example, the United States Court of Appeals for the Second Circuit stated: "There can be no reasonable doubt that inaccurate eyewitness testimony may be one of the most prejudicial features of a criminal trial. Juries, naturally desirous to punish a vicious crime, may well be unschooled in the effects that the subtle compound of suggestion, anxiety, and forgetfulness in the face of the need to recall often has on witnesses. Accordingly, doubts over the strength of the evidence of a defendant's guilt may be resolved on the basis of the eyewitness seeming certainty when he points to the defendant and exclaims with conviction that veils all doubt."¹¹

Conclusion:

There are various factors which are responsible to hamper the role of enforcement functionaries in delivering fair justice to the people. Role of society plays a pivotal role in influencing

witnesses and ultimately in justice delivery system. These things requires to be checked by law and enforcement functionaries by providing proper legal measures and mechanism.

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