

SESSION 3 - CRIMINAL PROCEDURAL REFORMS

21 FEBRUARY 2021 | 5PM-7PM

PANELISTS:

1. Shri G. Kishan Reddy, Minister of State for Home Affairs, Government of India
(Keynote)
2. Dr. Ranbir Singh, Founder and former Vice-Chancellor, NALSAR Hyderabad and NLU
Delhi
3. Dr. MR Ahmed, Former Inspector General of Prisons, Andhra Pradesh

CHAIR: Shri P. S. Ramamohan Rao, IPS (Retd.), Former Governor, Tamil Nadu

ABSTRACT

This webinar was the third leg of the “tripod” of Police, Prosecution and (Criminal) Procedure. There was a general agreement among the panelists that the Criminal Procedures in India are complex and cumbersome and lead to delayed justice, high number of undertrial prisoners, which lead to further problems such as overcrowding of prisons. It was also acknowledged that the treatment of prisoners reflects the ethos of our society. The rules and procedures in India were built on archaic colonial institutions and there is an urgent need for reform and changes to firmly establish the Rule of Law.

PRESENTATIONS BY THE PANELISTS

Shri P. S. Ramamohan Rao, IPS (Retd.), Former Governor, Tamil Nadu

Shri P.S. Ramamohan Rao began his address by noting that although India is about to become the 3rd largest economy in terms of GDP, it still remains a poor country. According to him, economic policy not conducive to growth is one of the main reasons for India's backwardness, this is further exacerbated by the absence of proper Rule of Law in the country. He noted that Rule of Law is essential for the survival and success of any society. Unfortunately, in India the position of Rule of Law has been deteriorating, being the main reason for the poor condition of the criminal justice system.

He further noted that the overarching structure for Rule of Law is the tripod of police, prosecution and judiciary. The Criminal Justice System is governed mainly by the Indian Police Act, Indian Penal Code, CrPC and Indian Evidence Act. In his opinion, The Indian Evidence Act and CrPC are the most important legislations in this regard. He further added that the society has enormously transformed in the last 200 years, in a lot of aspects such as physical mobility, health, economics and industrialisation but not much has been done to change criminal procedural legislations correspondingly. The existence of antiquated laws that have no relation to present day situations is one of the greatest challenges and further highlights the necessary changes that are imperative.

Shri Rao stated that the current legal system is based on complete distrust of the police and their ability to bring offenders to book. He suggested that Criminal procedure reforms should aim at eliminating:

1. Loopholes with regards to evidence
2. Arraigning innocents

He noted the absence of adequate reforms, more specifically, Criminal Procedure reform, threatens rule of law, peace and order in the society. He highlighted that while the Law Commissions have not paid much heed to criminal procedure reforms, surprisingly, organisations other than the law commissions have played a much active role in that regard. He further noted that The Malimath Committee headed by Justice Malimath, in its 2003 report, suggested reforms that may not have been comprehensive but definitely presents a path to improve the system. However, the report has remained on the shelf for the last 18-19 years. He further stated that The Second Administrative Reforms Commission had also suggested significant reforms but the same have also remained on the shelf for long.

The Chair noted that the Indian Criminal Justice System is based on adversarial law, in which charges against offenders should be proved beyond all reasonable doubt, which raises the bar of standard of proof to an enormous level. He also stated that the responsibility to prove the guilt of the offender completely lies with the prosecution, and judges play little role. He stated that our system is a corollary to the principle, “it is better that a hundred guilty persons should escape than one innocent person suffer” given by Benjamin Franklin. He further shared from his own experience that seldom does an innocent person get implicated in a criminal case by the police. It is usually tremendous pressure and sentiment that results in deviant police officers implicating innocent people. However, he further elucidated that a preponderant number of guilty people have not escaped conviction. He also highlighted that cases in India are adjourned many times, just to ensure that all the accused were present for the trial. Many cases do not commence due to the absence of the accused, even when they are represented by lawyers and that further results in delays. He concluded by stating that all the above-mentioned reasons make the Indian criminal justice system dilatory which further defeats the very ends of justice.

Shri G. Kishan Reddy, Minister of State for Home Affairs

Shri G.Kishan Reddy started off by stating that the Home Ministry had constituted a 5-member committee for reforms in May 2020 to examine the Indian Penal Code, Criminal Procedure Code and the Indian Evidence Act. He stated that the need for reforms was mandated by the changing times and the changing nature of crimes. There is ample evidence that the existing criminal laws need reforms. Huge pendency of cases, lack of transparency, cumbersome procedures, lack of human resources, delayed delivery of justice were some of the major issues in this context. He further quoted one of the most fundamental legal maxims, “Justice delayed is justice denied”. He also stated that there are more than 50%-70% pre-trial detainees in many countries including ours. He further suggested that timely investigation of crimes, robust deterrent mechanisms would be instrumental in reducing the crime rate in our country and on that note made a few recommendations:

1. The Malimath Committee recommended in 2003 to improve victim orientation, in the light of the same, victims must get adequate compensation in selected cases.
2. Requirement of more forensic labs in the country.
3. Significant role of government in protecting the evidence.
4. Police burdened with multiple responsibilities, specialised teams for investigation required.
5. Vacancies need to be filled, new posts should be identified, recruitment process for judges needs to be revamped so that bright and talented youth opt for judiciary.

He further shared Prime Minister Shri Narendra Modi’s vision that bringing reforms in the criminal justice system needs to be a participatory exercise, and should not be restricted to formulating new laws but also repealing outdated and antiquated laws and should aim at making laws simple to comprehend. He highlighted that reforms for all components of the criminal

justice system were required. He further shared that the government was making full-fledged efforts for enhancing criminal justice infrastructure and the new structure of criminal laws would have the interests of citizens at its core. He highlighted that the Triple Talaq Act, POCSO Act, Cyber Security Laws, Forensic Science laws were some of the efforts that had been made in order to take a step towards a better future of criminal justice in India. He also noted that the 5 member committee would incorporate opinions from all stakeholders, and the government aimed to organise seminars in law colleges and other institutions. He further opined that the consultative process required participation from experts and active citizens from all corners of the country. He concluded by stating that “the Prime Minister’s dream of building an Atmanirbhar Bharat would only work if we move towards building a Crime Free Bharat.”

Dr. M.R. Ahmed, Former Inspector General of Prisons, Andhra Pradesh

Dr. M.R. Ahmed began his address with a strong and insightful quote by Nelson Mandela, *“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”* and an eminent criminologist, *“If you want to see the culture and civilization of a country, go and peep inside the jail”*. He also quoted Mahatma Gandhi, *“Hate the sin and not the sinner”* and *“Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care.”*, to set the tone for his presentation.

The focus of Dr. Ahmed’s address was undertrial prisoners. He enumerated the major issues with regard to undertrial prisoners in India, including prison overcrowding, prolonged detention, unsatisfactory living conditions, lack of treatment programs, indifferent and inhuman attitudes towards them, inadequate care for mental and physical health, staff shortage with poor training, non-availability of proper legal-aid, absence of rehabilitation and lack of oversight.

Dr. Ahmed further narrowed his focus onto prison overcrowding, which he identified as the most critical problem and its main causes are: unnecessary and indiscriminate arrests, criminalizing some abhorrent behaviour that can and should be addressed in the social domain, slow judicial process and the general lack of awareness regarding the process, prison as the first choice rather than the last especially for minor offences and minimal use of other sentencing options.

To throw greater light on the issue, he provided some statistics regarding prisons in India. The actual capacity is about 4,78,000; the number of undertrials as of 31 December 2019 was 3,30,487 which makes up for about 69% of the total prisoners, which is considered very high. Dr. Ahmed noted prison overcrowding is not a recent challenge, rather a chronic issue in the country. Considering the composition of undertrial prisoners, 63.7% of them are involved in offences against the human body, 28.1% offenders are involved in property offences and the rest in minor offences.

In terms of the period of imprisonment, the break up is as follows:

Period of Stay	Proportion (in %)
< 1 year	74.08
< 3 months	36.99
> 5 years	1.52
3-5 years	4.25

2-3 years	7.69
1-2 years	13.5

Dr Ahmed elaborated that prison overcrowding further leads to many issues such as Human Right violations, and stress on the part of the prison staff and administration. One critical point raised by Dr. Ahmed was that even though India universally recognizes that prisons are institutions for reformation and rehabilitation, there is a lack of focus on the same due to the large population of the prisoners. Reformation and rehabilitation could be achieved only if incarceration motivates and prepares the offender for a law abiding and self-supporting life after the release.

After highlighting the problem of overcrowding, Dr. Ahmed suggested some possible solutions. The primary concentration must be on non-custodial measures, which has not been given much thought in India. Some alternate mechanisms exist at the pre-trial stage such as fines, diversion from judiciary, bail and release on personal bonds. An interesting solution proposed was House Arrest, which is practiced in many countries such as the US or the UK, using electronic monitoring technology, particularly for offenders who are not a threat to society.

The principal questions that need to be asked, according to Dr. Ahmed are, whether the person is a threat to society and if so, do they need to be imprisoned? He stressed on the fact that a prison can never be a good place. It damages and contaminates people. Jail is a place with negative vibes and not the place for reformation by taking the person out of a society. He quoted Justice Venkatachaliah, “an ordinary short-term offender enters a prison as an undergraduate and exits as a postgraduate”. The speaker lamented that there is no classification and segregation system being scientifically implemented in the prisons, inevitably leading to the contamination. While

concluding, Dr. Ahmed remarked that how we treat our own people is important and a prison must always be the last resort.

Dr. Ranbir Singh, Founder and former Vice-Chancellor, NALSAR Hyderabad and NLU Delhi

Before beginning his address, Dr. Ranbir Singh provided a disclaimer that his statements were a reflection of his own opinion and from his personal experience. Dr. Singh identified and elaborated fifteen major thrust areas when it comes to Criminal Procedural Reforms. They are as follows:

1. Reduce large-scale criminalization of society: Dr. Singh noted that our country has a multitude of laws that criminalize many acts and they are only increasing in number. 75 lakh people are arrested every year by the police and this further leads to problems such as prison overcrowding.
2. Need to rework on bail provisions: a major proportion of prisoners are undertrials, as noted by Dr. MR Ahmed.
3. Ensure that the procedures conform to Human Rights: when the laws such as the IPC were drafted, the Universal Declaration of Human Rights had not been guiding principles.
4. Ensure speedy justice by reclassifying offences and simplifying trials: >70% of crimes are petty in nature and do not require elaborate trial procedures.
5. Assimilate principles of Alternative Dispute Resolution wherever possible. Redesigning provisions related to compounding of offences and pleas bargaining are also possible solutions, as suggested by the Malimath Committee. There is a need to look into why

principles of plea bargaining did not work in India while they do in other countries. There is a need to urgently adopt important recommendations from the Malimath Committee.

6. Facilitate and simplify reporting of crime: technology can be used to enhance transparency and accountability and speedy disposal of cases.
7. Need to relook at victim jurisprudence: inventing tools for complete justice to the victims, including short-term and long-term rehabilitation including victim compensation and security needs.
8. Ensure gender justice, remove gender inequality and remove bias from procedures and the law.
9. Introduce Witness Protection laws
10. Link number of criminal courts to the number of crimes reported.
11. The framework that allows for multiple appeals across the three tiers of courts needs to be revisited: the multiple system of appeals is being misused to prolong proceedings, and is leading to loss of fear of the law.
12. Training of investigators in the police force, as recommended in the Soli Sorabjee Committee report.
13. Reforms related to perjury are required: the public is not truthful before courts.
14. Need for deployment of scientific technology: especially to fight cyber crimes. These crimes also require separate police stations and specialized Investigating Officers from the field.
15. The Office of the Public Prosecutor in India is weak: The government needs to attract the best talent for the office.

To conclude, Dr. Singh mentioned that although it is pertinent that these reforms are undertaken, one must not be hasty about the process.

PANEL DISCUSSION

The Chair sought the views of Dr. Ranbir Singh on specific methods to expedite trials, to which Dr. Singh responded with the recommendation that there must be proper schedules that the courts, particularly the trial courts, must adhere to for speedy and timely delivery of justice and to clear the backlog of cases. The Chair noted that around 28-30% of under-trial prisoners are those accused of committing offences against property. They are generally itinerant offenders without any permanent residence. Production of such offenders in the court would not be possible without their imprisonment as no one will give surety for them or they would escape upon release. But the same is not the case for offenders against the human body, solutions alternative to imprisonment can be explored for them. Dr. Singh then emphasised that quick attendance of the suspects and witnesses before the investigating officers and courts must be ensured for a speedy trial. The Chair added that production of witnesses before the courts is of more consequence than production before the police as investigation of any case irrespective of the complexity rarely exceeds one year as opposed to trials that last decades. Dr. Singh and the Chair reached a mutual agreement on the fact that there is a need to adopt certain elements of the inquisitorial system in the trial procedure such as a more proactive role for the presiding officer. The Chair then questioned the necessity of appearance of the accused for commencement of the trial when he/ she is represented by a lawyer, especially in cases where the accused is wilfully defaulting in order to protract the trial proceedings. In this regard, he proposed that such a requirement can be dispensed with when the accused is represented by a lawyer. Dr. Singh responded that such a recommendation could be a potential solution. The Chair further highlighted that witnesses lose interest in the judicial procedure due to dilatory procedures and not just because of the lack of a protective framework for witnesses. Dr. Singh added that the treatment of witnesses in the courts is another cause for concern.

The Chair then sought the opinion of Dr. M.R. Ahmed on the feasibility of reverting to the old system of having a sub-jail for each Magistrate's Courts where under-trials can be kept in order

to simplify the process of production of accused in the court. Dr. M.R. Ahmed, however, pointed out that only a few sub-jails have been closed where the population of prisoners was very low, as low as 1-3 prisoners. These prisoners were shifted to the corresponding district jails and production can be ensured without considerable inconvenience. This was necessitated due to acute shortage of staff in the central and district jails. Additionally, Dr. Ahmed also stated that the advent of video linkages between prisons and courts has further ensured that the court processes other than trial are conducted without the physical presence of the accused in the court. The Chair then posed a question on separation and joinder of cases. He proposed, and Dr. Singh concurred with him, that the trial in a case with multiple accused may be concluded and a sentence be passed even in the absence of a few of the accused if they are wilfully defaulting from appearing in court.

In regard to plea-bargaining, Dr. Jayaprakash Narayan cautioned that while it is a needed practice certain safeguards are essential so as to avoid exploitation of the accused in the hands of the more powerful prosecution as seen in the American experience.

QUESTIONS AND COMMENTS

Dr. MR Ahmed, while replying to a question on Section 436A of CrPC as a way out to release under-trials who have served more than half of the maximum sentence that could be awarded to them and whether the provision has been utilised optimally, noted that Section 436A had not made much of a difference as far as prison authorities are concerned, the under-trials were continuously on the rise. He highlighted the need for other measures. He also mentioned that there are high level under-trial review committees at the state level which meet quarterly and look into cases of prisoners who have been in jail for more than 3 months and take appropriate action. However, section 436A is not applicable to under-trials accused of multiple offences or heinous crimes. He clarified that the figures on the proportion of under-trial prisoners are misleading as they do not reflect the continuous inflow and outflow of such prisoners. Further,

he stated that only about 5-6% of the undertrials have multiple cases against them, and the rest are being released by the courts if they have been imprisoned for about 3-4 months. He further noted that offenders against the human body are generally considered safe for release on bail as they are unlikely to commit the offence again, which is also the reason for the successful functioning of open prisons in the country.

Dr. Ranbir Singh while replying to a question on the required changes in bail provisions mentioned that the bail provision has been misused and this highlighted the need to look into the recommendations put forward by High courts and Supreme Courts. Shri Ramamohan Rao added that when an accused released on bail absconds from courts, it results in delays of trials and therefore suggested that if an accused is wilfully absent from the trial, the trial should still be completed based on the representation of his lawyer or amicus curiae.

Shri Ramamohan Rao while replying to a question on ADR and compounding commented that the ADR mechanisms are applicable to economic offences and not in cases against the body.

While replying to a question on striking the balance between protecting the rights of the accused and ensuring justice delivery in the light of the Malimath Committee recommendation of allowing confessions to police officers of the rank of superintendent of police and above, he mentioned that the balance is disturbed because there was a fundamental distrust of the police. He opined that distrust of the police was the reason why people were not ready to accept confessions before police officers. He argued that such mistrust is unreasonable especially since confessions recorded by Forest Officers and Railway Protection Force officers are admissible in court. He also highlighted that since confessions were now recorded in videos which can be made admissible as the preliminary measure. He also mentioned that the police officers were not given sufficient time for investigation due to which extra-legal methods were resorted to in exceptional cases, by the police. He further recommended that magistrates should investigate

murder cases as a part of their training so that they are able to comprehend the difficulties in investigation faced by the police.

While replying to a question related to alternatives to imprisonment, Dr. M.R. Ahmed gave the example of Indonesia's system of deterring drunk drivers by making such drivers undertake community service in trauma wards of hospitals where victims of accidents resulting from drunk and careless driving were admitted. He also gave examples of alternatives developed by the Scandinavian countries - day fine systems, community attendance centres, probations and periodical imprisonment.

To a question on which reforms are to be prioritised, Shri Ramamohan Rao distinguished between incremental reforms and basic reforms. He opined that the recommendations pertaining to lowering the standard of proof for minor offences and those pertaining to summary trials must be implemented on priority. Case management, alignment of jurisdiction of courts and police stations, and other administrative reforms must also be considered as important systemic reforms.

Dr. Jayprakash Narayan added a concluding remark stating that the fundamental principle of democracy is to *"Empower, but hold them to account"*. Therefore, the police must be adequately empowered by making confessions recorded by police officers admissible in evidence but with appropriate safeguards in place. He cited the example of the intricate accountability mechanisms in place in the Australian state of New South Wales.

CONCLUSION

The current state of the criminal procedures in India are inhibitory to meeting the larger objective of serving justice. There are large procedural delays, sometimes deliberately by the accused by exploiting loopholes. Overcrowding of prisons is prevalent, particularly due to the large number

of undertrials and there is little focus on justice to the victim in more ways than just convicting a perpetrator. There is a large gap in the state capacity and one important solution to this is a certain degree of decriminalization and solving some issues within the social domain than the judicial.

The panel recognized that most Indian institutions are asynchronous with the present times and needs of the society. There is thus an imminent need for reform, and the panel suggested many pragmatic solutions for the same. A word of caution was also provided by Dr. Singh that while there is an urgency for reform, haste must be avoided.