

Perjury and Criminal Justice System

The acquittal of the accused in the notorious Best Bakery case has once again exposed the weakness of our criminal justice system. Swaminathan Aiyar in these columns made a strong plea for stringent action against perjury in order to restore the sanctity of the judicial process.

Clearly, the willingness to speak truth under oath before a court, and the capacity to punish perjury are the key ingredients of due process. In fact, most western liberal democratic societies endured because of this habit of speaking truth under oath. The conduct of Richard Nixon and his many senior aides in watergate scandals led to deep political crisis not so much because their initial acts were grave, but because the American people disparaged their attempts to obstruct justice. Even then, none of the persons deposing dared to lie under oath. That is how the infamous watergate tapes were unearthed, and finally proved to be the undoing of Nixon.

Again Bill Clinton faced the mortification of impeachment process and lame duck presidency because of his readiness to lie his way out of trouble before the public and the court under oath.

Jeffrey Archer's promising political career in Britain was rudely cut short twice – once for lying to the public, and the second time for perjury. In fact, he had to serve a prison term, and was released only recently for good behaviour after years in jail.

Then why do we lie under oath habitually? Obviously it is wholly unsustainable to argue that Indians have no respect for truth. In reality, Indians generally speak the truth in their own habitat and among peers. But when it comes to trials in a court, the same people do not think twice about lying under oath.

There are two deep-seated causes for such strange propensity to perjury. First, the alien justice system imposed by the colonial rulers is both incomprehensible and inaccessible to people. In such a hostile and bewildering environment, truth is always a casualty. The normal inhibition imposed by peers disappears in a dilatory process in alien language. Touts and professional witnesses who lie under oath for a price have thus flourished. Things have come to such a sorry pass that even to establish real facts the prosecution habitually resorts to false witnesses!

Second, our adversarial criminal justice system inadvertently encourages and rewards cheating and other unsavoury practices in order to 'win' the case. When evidence before the court is all that matters and the judge is more a passive umpire and not an active seeker of truth, the lawyers have a field day. It is the reputation and skill of the advocate, not the merits of the case or truth, which often lead to 'victory'. Therefore, careful tutoring of witness, inducements, and involved arguments have become acceptable practices over a period of time. As most people anyway despair of ever obtaining justice

through formal courts, what happens in courts has become largely inconsequential to society. The schism between societal mores and behaviour in courts has widened over time.

Certainly we need to award exemplary punishments to people guilty of perjury. The law does provide for imprisonment up to 7 years and fine (section 193 of IPC). In cases of capital offences, the imprisonment may extend to ten years. But, given the near-universal practice of perjury, no court considers perjury a serious offence any longer! Therefore, we need to look at two more solutions.

First, we need a system of local courts with summary procedures in local language for most simple cases. These local courts must function like the justices of the peace (JPs) in Britain, or "People's Courts" in the US, and adopt people-friendly procedures. And they should hold court and hear cases in the community and at the scene of offence or cause of action as far as practicable. People will start speaking truth under oath only when judicial process becomes accessible and intelligible. Most people will never perjure themselves in front of their peers. Once a culture of respect for due process, and trust in courts, is restored, perjury will be regarded as an unacceptable offence by society.

Second, we need to move towards a more activist role for the judge. The judge must be enabled to actively pursue truth, and must not be a silent witness to lawyers' antics. And he should be permitted to admit all credible evidence keeping in mind the circumstances of the case, without any fetters. While the standard of proof in criminal cases must continue to be proof beyond reasonable doubt as now, the special rights accorded to the accused – the right to remain silent, and no recourse to appeal if prosecution fails – should be withdrawn. These steps along with independent crime investigation under judicial supervision will make the search for truth more easy, and justice more likely. Some of the recommendations of Malimath Committee to this effect deserve serious consideration.

A society which cannot enforce its own laws will soon degenerate into a lawless and violent society. The string of prosecution failures in some of the heinous cases in recent years must propel us into well-considered, decisive action to reform our criminal justice system.

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