LOOPHOLES IN THE CRIMINAL JUSTICE SYSTEM IN INDIA: THE FAILURE TO ADDRESS PRIVILEGED OFFENDERS

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ABSTRACT

The Criminal Justice System in India is founded on the principles of equality before the law, fairness, and the rule of law. However, in practice, individuals belonging to privileged sections of society often exploit their political influence, economic power, social status, and access to legal resources to evade or delay justice. This phenomenon, known as privileged-class deviance, exposes significant loopholes in the criminal justice system and challenges the constitutional guarantee of equal treatment under the law. This article examines the major weaknesses that enable privileged offenders to avoid accountability, including delays in investigation and trial, political interference in investigative agencies, misuse of bail and parole provisions, weak witness protection mechanisms, and judicial bias. Through an analysis of notable cases involving politicians, corporate executives, and celebrities, the study highlights how privilege can influence legal outcomes and undermine public confidence in the justice system. The paper argues that these systemic shortcomings create a disparity between legal principles and their practical implementation. It concludes that strengthening institutional independence, ensuring speedy trials, improving witness protection, and enhancing judicial accountability are essential reforms for achieving a more transparent, effective, and equitable criminal justice system in India.

Keywords: Criminal Justice System, Privileged Offenders, Privileged Class Deviance, Judicial Inequality, Rule of Law, Criminal Justice Reform.

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1. INTRODUCTION

"Injustice anywhere is a threat to justice everywhere"

By Martin Luther King Jr[3]

Justice guarantees social order, fosters and sustains social stability, and enhances the general welfare of humankind. The criminal justice system of India encompasses all government custodial efforts to maintain law and order. Within the criminal justice system are efforts that correlate with what the law defines as the offence of crime, as well as victim and offender accountability, prevention for future crimes, and perhaps more important, the general enforcement of rule of law; in other words, it is the requirement of all states within the criminal justice system to provide compensation for victims or rehabilitate victims and offenders, as well as prevention of future crimes, and judge and adjudicate any and all criminal cases or transgressions that occur. Ultimately, the overall objective of justice is to establish and sustain uniformity of justice throughout the nation. There are many suborganisations that comprise the overall system of criminal justice in India, as well as notable agencies, such as the police and law enforcement agencies, courts and courts of inquiry and appeal, prosecutor offices, public defender offices, probation and parole offices, corrections, and the most important investigative agencies, as well as a multitude of smaller suborganisations. Additionally, enforcement of criminal laws is just one of many administrative organisations. The overall framework of the criminal justice system. The Cambridge Dictionary defines the criminal justice system as “the system in a society for judging people who are accused of crimes, and punishing those who are found guilty”[4]

2. HISTORY OF THE CRIMINAL JUSTICE SYSTEM IN INDIA

The doctrine of 'Dharma,' which placed a strong emphasis on moral behaviour, formed the foundation of ancient Indian jurisprudence. 'Smritis,' 'Puranas,' 'Ramayana,' and 'Mahabharata' were among the texts that described standards of conduct that guided kings who ruled with a dedication to 'Dharma' rather than absolute authority. It clearly distinguished between civil conflicts, which usually concerned property and riches, and criminal offences, like 'Pataka' or

[3] ‘Injustice anywhere is a threat to justice everywhere’, Francine Fernandes, Political (Dis)Engagement https://doi.org/10.51952/9781447317043.ch009 (last seen 17-09-2025)
[4] The Cambridge Dictionary

sin. The Dharmashastra of King Manu listed many crimes, such as robbery, theft, and bodily damage[5]. The Mauryan era saw the establishment of a sophisticated criminal justice system that included harsh punishments like death and mutilation. This system was expanded upon throughout the Gupta era, which combined guilds, folk assemblies, and royal power in conformity with "Dharma Shastras." With its emphasis on retribution and particular punishments for offences like stealing, the Mughal Empire restored some stability after a period of invasions[6]. The Indian Penal Code of 1860 and the Code of Criminal Procedure of 1861 were two major effects of British colonial authority that greatly influenced India's current criminal justice system. [7] It is vital to implement a victim-centred and restorative approach, which is evidenced by the many Law Commission Reviews and expert committee initiatives for reform of the criminal justice system in recent times. An example of this is the Malimath Committee Report (2003), which highlighted the need to balance victims' expectations with the accused person's rights. The Bureau of Police Research and Development's Draft Indian Penal Code (2020) is also an example of the move to update the language, offences, and punishments specifically. A community/culturally-accommodated approach gave way to a state-centred, codified approach, then to a rights-holding, participatory legal system, which is what differentiates the development of the criminal justice system in India. However, the significant influences of colonialism, culture, and rules include persistent challenges, especially in the administration of punishment theory and practice.[8]

2.1 The Criminal Law in India

The Ministry of Home Affairs in India has promulgated three new laws - Bharatiya Nagarik Suraksha Sanhita, 2023, Bharatiya Nyaya Sanhita, 2023, and Bharatiya Sakshya Adhiniyam, 2023 - which will come into effect from July 1, 2024. They will replace British-era laws such as the Indian Penal Code, the Criminal Procedure Code, and the Indian Evidence Act, and establish a framework to instil a victim-centric outcome. They also enhance national security and facilitate the examination of digital and electronic evidence, marking a new dawn in how

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[5] Historicizing The Criminal Justice Administration In India: Tracing Its Evolution In British Colonial Era Of 1947 By Abhijeet Nandyhttps://Www.Nujs.Edu/Wp-Content/Uploads/2023/04/Vol-7-Issue-4-7.Pdf Last Seen 03/07/2025)

[6] Criminal Justice System in India With Special Reference to Punishment Theory, Akshit Sharma, Srm University, International Journal of Research Publication and Reviews Journal.

[7] Criminal Justice System In India - History, Objectives, Components, Constitutional Provisions & More Https://Testbook.Com/Ias-Preparation/Criminal-Justice-System-In-India (Last Seen 03/07/2025)

[8] Criminal Justice System in India with Special Reference to Punishment Theory, Akshit Sharma, Srm University, International Journal Of Research Publication and Reviews Journal.

we regulate evidence and engage with the modern world. They help the organisation in managing potential legal risk, improving business processes, and investigating matters.[9]

There is no concept of "privileged offences" in the Bharatiya Nyaya Sanhita (BNS). Instead, Chapter 3 of the BNS describes "general exceptions", which list the circumstances in which an act that is generally considered a crime is legally exempt. These are legal protections that apply to everyone in specific circumstances, not just special provisions for particular individuals. In a legal context, "privileged" does not refer to unique, privileged offences, but rather to exceptions or exemptions from liability.

3. WHAT IS PRIVILEGED CLASS DEVIANCE?

3.1 Privileged Class Deviance

Deviance is defined as any wrong behaviour that is not legally enforceable; it includes any behaviour, activity, or action that goes against the formal or informal beliefs or rights of any norm. Simply said, those who have or are granted privileges to look after the good of society are departing from the rules of society. A privileged class exists when someone is given a special right, advantage, immunity, or power that allows them to say or write anything without fear of legal repercussions or defamation. This allows them to easily manipulate situations and defy social norms that are difficult to find[10].

Privileged class deviance means crime committed by the privileged class of society, or crime committed by a powerful person of society.[11]Privileged class deviance focuses upon the relation between the privileged, power and their deviant behaviour. In simple words, it means crime committed by educated and cultured, high-class persons, who are well-clad and would not normally be reckoned as criminals. These persons utilise their economic and social status as a cover for their crimes.[12]

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[9] A Critical Study OnThe Advantages And Challenges In Implementing The Three New Indian Criminal Laws (2023) Dhruv Vijay, Anangpuria Law School, Dhauj, Alampur, Faridabad,Indian Journal of Law and Legal Research

[10] PRIVILEGED CLASS DEVIANCE AND ITS IMPACT ON THE ELECTORAL PROCESS, Written By BHANUKESH B, JOURNAL OF LEGAL STUDIES AND RESEARCH Volume 6 Issue 5 – ISSN 2455 2437 October 2020

[11] Privileged Class Deviance ByAD. SHARVARI V. VAIDYA 2nd Edition 2013 ISBN: 978-93-80231-29-7

[12] Ibid

Howard Becker identified four categories of deviant behaviour, which include:

a. False accusing is when someone falsely or incorrectly accuses another of doing something.

b. Deviance committed by the individual in question is referred to as pure deviance.

c. Deviance committed in secret is referred to as secret deviance.

d. Complying[13]

Privileged Class Deviance is the term used to describe the deviant behaviour of members of a privileged class, such as teachers, doctors, engineers, and attorneys. These people frequently take advantage of their position of power and prestige for their own benefit, which hurts other people. Official or governmental deviance, professional deviance, trade union deviance, landlord deviance, police deviance, electoral process deviance, and gender-based violence are just a few of the deviant behaviours that can result from this.[14].

3.2 Types of Privileged Class Deviances

- Professional Deviance
- Official Deviance
- Police Deviance

Professional Deviance: Every profession has certain standards, ethics, norms, rules, and regulations. Professional deviance occurs when these are disregarded and lead to a breach of the rules, code of conduct, etc. To put it simply, professional deviance occurs when someone violates their rights while working in a respectable profession and commits any criminal activity. The term "profession" encompasses a wide range of occupations, including those in law, medicine, education, engineering, and teaching. Poor people's lack of education, information, and literacy is the primary cause of such aberrant behaviour because they lack the

[13] Labelling Theory And Symbolic Interaction Theory (Criminology Theories) Criminal Justice Https://Criminal-Justice.Iresearchnet.Com/Criminology/Theories/Labeling-Theory-And-SymbolicInteractiontheory/4/

[14] Https://Www.Legalserviceindia.Com/Legal/Article-7751-Comparative-Study-Of-The-Treatment-Of-Privileged-Class-Prisoners-And-The-Other-Prisoners-In-India.Html

necessary understanding of the subject, believe specialists, and are easily duped by them.[15].

Official Deviance: Deviance committed by authorities, including legislators, judges, and bureaucrats, is referred to as official deviance.[15]These are the ones who take care of the welfare of society; because of them, society is in a controllable state.

Police Deviance: Deviance that is committed by the police department or by a police officer qualifies as police deviance. In any given society, police agencies are powerful and essential because they uphold the law and take law enforcement action when someone breaks it. The police department's main responsibility is to protect the public from unlawful activity; if they break the law, then it is likely that the public will follow suit. The Indian Police Act of 1861 was passed to restructure the police force and ensure that it operates effectively and without engaging in any unlawful activity.[16]

The most common sort of aberrant conduct noticed among the various privilege classes might be summarised as follows: Accepting bribes, misusing one's position, and abusing the role. Engaging in fraudulent activities, demonstrating a lack of enthusiasm and political will, and committing common offences, including embezzlement, tax evasion, black market dealings, and stockpiling, among others[17].

4. MAJOR LOOPHOLES IN THE CRIMINAL JUSTICE SYSTEM

The criminal justice process in India starts when a police officer files a First Information Report (FIR) in response to a complaint. The police may choose to detain the accused following a thorough investigation. When sufficient evidence has been obtained, a charge sheet is prepared and submitted to the court.[18]. The judiciary, an independent entity, is responsible for ensuring a fair trial and upholding the rule of law. District and sessions courts often deal with municipal crimes, whereas the High Court handles more serious criminal cases. The Supreme Court is the

[15] PRIVILEGED CLASS DEVIANCE AND ITS IMPACT ON THE ELECTORAL PROCESS, Written by BHANUKESH B, JOURNAL OF LEGAL STUDIES AND RESEARCH Volume 6 Issue 5 October 2020 Privileged class deviance by AD. SHARVARI V. VAIDYA 2nd edition 2013.

[16] ibid

[17] Constitutional Provisions Regarding To Privileged Class Deviance, Sadhana UmaSankar Prasad, Volume 1, Issue 3, DIP: 18.02.014/20160103, https://ijsi.in/Archive/vol1iss3/18.02.014-20160103.pdf (last seen 18/09/2025)

[18] CRIMINAL JUSTICE PROCESSES, Navigating the Stages of a Criminal Trial in India December 9, 2023https://thelaw.institute/criminal-justice-processes/stages-criminal-trial-india/ (last seen 18/09/2025)

highest in the country. [19]As mentioned above, the criminal justice system must enforce its own process. When it fails, criminals escape without any excuse and commit new crimes. This applies to privileged criminals. Furthermore, there are various loopholes in the criminal justice system through which privileged criminals escape and get away with it. Delays in investigation and prosecution, influence over investigative agencies, judicial bias and pressure, political patronage and immunity, bail and parole abuse, and weak witness protection are considered to be major loopholes.

4.1 DELAY IN INVESTIGATION AND TRIAL IN PRIVILEGED CLASS CRIME

In the Supreme Court, it was noted that even though the investigating agency had revealed a prima facie case against the public servant, the corruption cases against the public servant were frequently postponed because the competent authority refused to grant or delayed sanction. The Court ruled that the competent authority must grant a sanction if it is convinced that the evidence presented to it is adequate for the public servant's prosecution, as sanctioning prosecution is not a quasi-judicial duty[20].

Actor Sanjay Dutt was arrested in connection with the 1993 Mumbai blasts for illegal possession of weapons, including an AK-56 rifle, under the Terrorism and Disruptive Activities (Prevention) Act (TADA) and the Arms Act, 1993. [21]Although he was initially involved in the blasts, the Supreme Court acquitted him of the terrorism charges after finding him guilty only of illegal possession of weapons, but sentenced him to five years in prison. He was released on bail after a long legal battle, and the Supreme Court upheld his conviction for illegal possession of weapons in 2013.[22]

The fodder scam took place in the state of Bihar, and it is said that the fodder procurement scam took place during the rule of the then Bihar Chief Minister Lalu Prasad Yadav in 1990.

Later, some lawyers filed a public interest litigation in the Patna High Court. Hearing the petition, the High Court ordered the Central Bureau of Investigation (CBI) to investigate the scam. Various stages of investigation were conducted for about 13 years in connection with

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[19] Hierarchy of Criminal Courts and their Jurisdictionhttps://www.legalserviceindia.com/legal/legal/article-5099hierarchy-of-criminal-courts-and-their-jurisdiction.html(last seen 18/09/2025)
[20] Vineet Narayan v. Union of India, (1998) I SCC 226
[21] SLP(CRL) NOS .1834-35 of 1994
[22] AIR 2013 SUPREME COURT 2687

this fodder scam. After that, Lalu Prasad Yadav was sentenced to 5 years in prison and a fine of Rs. 25 lakhs was imposed. As a result, Lalu Yadav was disqualified from the post of MP as per the Supreme Court's decision, as a result of which he became ineligible to contest elections for 6 years[23]**.**

4.2 WEAK WITNESS PROTECTION

Jessica Lal, a model based in Delhi, was murdered as she was probably serving drinks at a nightclub when she refused Manu Sharma, the son of a top politician, a drink. Witnesses saw what happened, but after the trial, the one who had pulled the trigger, Manu Sharma, was acquitted. Many important details were presented during the trial related to how witnesses were intimidated and evidence lost and how wealth also comes into play with influencing the police while a witness was intimidated by some bouncers at a party in Delhi where Jessica was murdered when she refused one of them alcohol requests the trial saw evidence, lost, and dozens of witnesses turn hostile where the trial ended and Sharma was acquitted by the trial judge in 2006 after public outrage and media activism where at least one daily newspaper calls for justice and demanded a retrial in the Delhi high court, The High Court heard the case, found Manu Sharma guilty, and sentenced him to life in prison in December 2006, not much later that sentence was upheld by the Supreme Court. In fact, by June 2020, Manu was released for good behaviour.[24][25]

In 2002**, Salman Khan** crashed his car into pavement dwellers in Mumbai, killing one person and injuring four others. He was charged with culpable homicide and other offences, including allegations of drunk driving. In 2015, a Sessions Court found him guilty and sentenced him to five years, only for the Bombay High Court to later acquit him in 2015, commenting on the absence of evidence and contradictory statements from witnesses. [26]The case became a widely publicised case study of how privileged offenders can abuse their wealth and status and legal loopholes to evade punishment. It also challenged and raised serious questions about equality before the law and fairness in India's criminal justice system as a whole.

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[23] 2008 (2) AIR JHAR .
[24] Manu Sharma v. State (NCT of Delhi) (2008) 5 SCC 230
[25] Salman Salim Khan v The State of Maharashtra, CRIMINAL APPEAL No. 572 of 2015

4.3 POLITICAL PATRONAGE AND INFLUENCE OVER INVESTIGATING AGENCIES

Coalgate (Coal Allocation) Scam: (1993 and 2011) Between 2004 and 2009, during the UPA (United Progressive Alliance) government, a major political and financial scandal occurred in India, where coal blocks were wrongly given to companies. The allocation happened without a clear bidding process, causing an alleged loss of ₹1.86 lakh crore, based on a 2012 CAG (Comptroller and Auditor General) report. At that time, Prime Minister Manmohan Singh also held the position of coal minister. The CBI investigated the scam. In 2014, the Supreme Court cancelled 214 coal block allocations, ruling them illegal. The scandal greatly harmed the UPA government's reputation. It sparked legal actions and led to changes in the coal allocation system. Additionally, the Supreme Court has criticised India's top intelligence agency, referring to it as a "caged parrot" for its leaders. This criticism followed the Supreme Court's review of a nine-page affidavit submitted by the CBI, which was reportedly altered by the Law Minister and the Attorney General of India.[26]

4.4. BAIL AND PAROLE MISUSE

The way bail and parole are misused by the privileged class in India's criminal justice system is really troubling. There are times when influential people manage to get lenient rulings or slip away from facing consequences. This kind of privilege not only undermines the rule of law but also chips away at public trust in the system. That's why it's crucial to establish stronger checks and balances before allowing anyone to be granted bail or parole**.**

In Gurbaksh Singh Sibbia v. State of Punjab, a former minister and other government officials accused of corruption requested and were granted anticipatory bail at the discretion of the court.[27]

Concerns regarding the relationship between privilege and legal leniency were raised in Sanjay Chandra v. CBI, where prominent corporate executives were granted bail in spite of grave accusations in the 2G Spectrum Scam[28].

J. Jayalalithaa, the former chief minister of Tamil Nadu, was sentenced for having

[26] Manohar Lal Sharma v. Principal Secretary & Others, (2014) 9 SCC 516
[27] ILR (1978) 1 PUNJ 109
[28] AIR 2012 1 SCC 40

disproportionate assets and was granted bail and parole under contentious circumstances. She was accused of receiving preferential treatment because of her position[29].

4.5 JUDICIAL BIAS AND LACK OF ACCOUNTABILITY

India's CBI charged Warren Anderson, the former UCC chief, and others with murder in relation to the Bhopal gas disaster in 1987. They were dropped in a civil settlement in 1989, but criminal proceedings were permitted to go on by the Supreme Court in 1991. Anderson did not show up in court, was declared a fugitive, and extradition proceedings were initiated. Although in 1996 the Indian defendants' charges were minimised, Anderson's were not. The United States declined India's extradition request in 2004 on the grounds of not being furnished with enough evidence. In 2010, some Indian officials were found guilty of negligence. Anderson's extradition was still underway when he passed away in 2014, and he never stood trial in India[30]**.**

4.6 THE CRIMINAL LEGAL PROVISION AND GAPS.

Indian law, in its criminal provisions, would not have conferred upon any sort of separate legal framework for "privilege class criminals." Such a set of criminals would come within the purview of general criminal laws and special laws relating to their deviations, like tax evasion and embezzlement, probably the new Bharatiya Nyaya Sanhita (BNS). However, the system is riddled with certain lacunae, like delay in prosecution, non-awareness amongst the enforcement officers, and the lesser number of specialised courts which are capable of handling complex cases of white-collar crimes generally related to the class.

India's legal infrastructure provides a number of safeguards and loopholes that the privileged class can avail itself of. Principal provisions are CrPC Sections 437, 438, 439 (bail),[31] Section 197 (pre-sanction for prosecuting public servants),[32] and special laws such as PMLA, in which the onus of proof lies on the accused. Gaps encompass inadequate enforcement in white-collar offences, excessive delay in trials, hostile witnesses, and discretionary prosecution. Also,

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[29] J. Jayalalithaa v. State of Tamil Nadu Special Leave to Appeal (Crl.) No. 7900 of 2014
[30] https://www.legallyindia.com/supreme-court/today-31-years-after-bhopal-gas-tragedy-these-8-cases-thatshow-justice-is-still-a-mirage-for-the-victims-20151203-6930 By SCOI Report (last seen 26/09/2025)
[31] Section 481 Of The Act Relates To Maximum Period For Which An Under-Trial Prisoner Can Be Detained.
Section 482 Of The Act Relates To When Bail May Be Taken In Case Of Non-Bailable Offence.
Section 483 Of The Act Relates To Bail To Require Accused To Appear Before Next Appellate Court.
[32] Section 218 of BNSS

provisions like 6A of the DSPE Act demand a sanction to investigate senior bureaucrats who have been attacked for creating a "privileged class". Judicial lack of accountability and transparency also results in unequal justice.

5. CONCLUSION

India's criminal justice system, based on the constitutional concept of "equality before the law", tends not to prosecute the privileged class to the same extent as the underprivileged class. While the law is equal in theory, enforcement and implementation are often biased by socioeconomic status, political clout, and availability of legal resources.

The incidents cited, ranging from the evasion of timely justice by high-profile politicians and celebrities to trial delays, discriminatory judicial discretion, bail abuse and failure to provide witness protection, highlight the fundamental structural weaknesses and discretionary loopholes that enable the system to handle high-profile criminals. These failures not only encourage the continued exclusion of the privileged but also undermine public trust in legal institutions.

The lack of judicial accountability, weak enforcement of white-collar crime laws and excessive political and bureaucratic interference in trials represent systemic concessions that run counter to the principles of democracy and justice. This two-tiered functioning of justice – one for the elite and the other for the common citizen – enforces social inequality and fosters destitution among the people.

This system needs to be urgently overhauled, through:

1) Institutional changes in the Bureau of Investigation to ensure autonomy and impartiality;

2) Special fast-track courts for economic crimes;

3) Increased bail and parole restrictions on high-profile criminals;

4) Rigorously implemented witness protection schemes;

5) Transparency and accountability in judicial proceedings;

6) Above all, a change in culture in the judiciary and enforcement machinery, prioritising justice over status.

An equitable and efficient criminal justice system is not just about punishing criminals – it is about providing equal treatment under the law, regardless of one’s status, power or prestige in society. Only when the privilege that protects wrongdoers from accountability is terminated can we say that justice is not just an idealised concept, but a reality that everyone experiences. However, India's criminal justice system has various loopholes. Moreover, India's criminal justice system has consistently failed to punish those who have been privileged.