
WHETHER CRIMINAL TRIALS ARE AN EXERCISE IN FUTILITY?

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ABSTRACT:

Indian criminal justice system has a huge backlog of cases. NCRB data show the number of pending investigation and trial is piling up and increasing year after year. This article traces the impact of low conviction rate and the socio legal reason behind it.

Keywords: Low conviction rates, investigation, criminal justice system, pendency of cases.

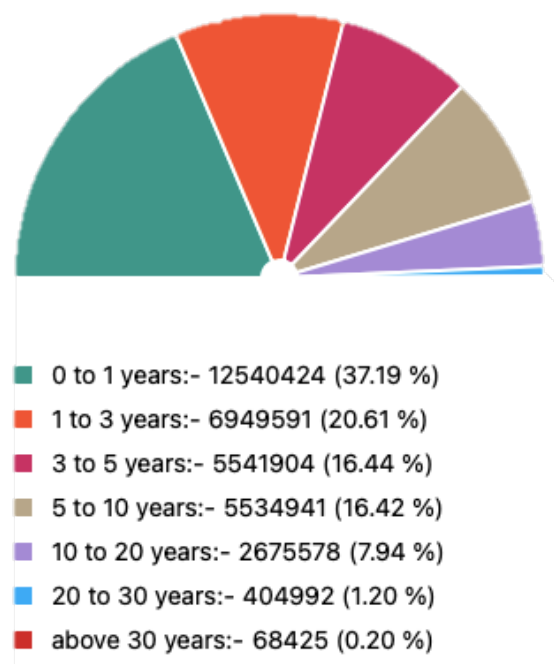
INTRODUCTION:

The criminal justice system serves as a cornerstone of social control. The society considers some behaviors so dangerous and destructive that it either strictly controls their occurrence or outlaws them outright. It is the job of the agencies of justice to prevent these behaviors by apprehending or punishing the transgressors or deterring their future occurrence. Although society maintains other forms of social control, order and structure, such as the family, school and the religions but they have inherent limitations and are designed to deal with moral, not legal misbehavior.

According to Bentham, the fundamental purpose of the law is to prevent mischiefs. The phenomena of crime may have complex socio-economic causative factors and the pathology and psychology of its perpetrators. But the consequence of crime may have far reaching consequences. The criminal jurisprudence therefore does not necessarily dwell or attach importance to the motive of crime and is primarily concerned with the act done with requisite intention or knowledge to constitute crime. So, when Nirbhaya fell prey to the monstrous lust of a pack of wolves on a cold winter night in the capital of the country or where such diabolical acts are committed against such hapless victims, the family is devastated. These offences are symbolic

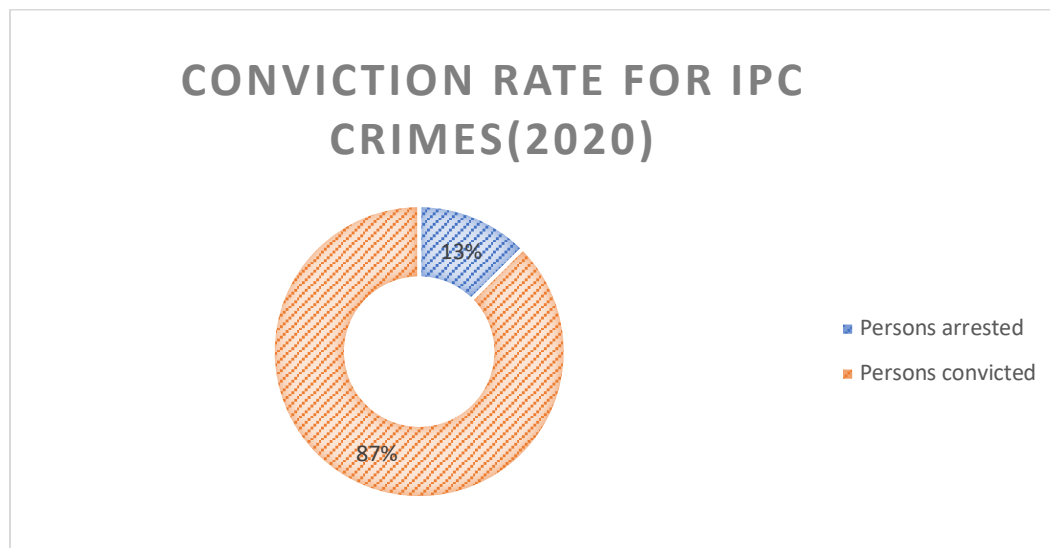
and symptomatic of a diseased society and it does not affect the individual and her immediate family members but leaves a deep scar on the collective psyche of the society and casts an unseen cloud of fear over all women whenever they step out of their home. There is no end to the pathos of the individual and unfortunately in our society it generally casts stigma on the victim without any fault on her part. The statistics of sexual offence as released by National Crime Bureau is frightening and a big question mark on our claim of a civilized society.

How much our criminal justice system has succeeded to punish such offenders shall be revealing from a cursory look at the following statistics. As of 2020 according to *National Judicial Data Grid*, Supreme Court had 60000 pending cases. As of September, 2023 there are 33750448 pending criminal cases in India, out of which 21159256 cases i.e., 60% is more than a year old. Some criminal cases remain pending with the victims at the doors of justice for more than three decades.



Source: *National Judicial Data Grid*

According to *National Crime Report Bureau*, for IPC offences out of the 4424852 persons arrested 634229 persons were convicted in India in 2020. This makes conviction rate to less than 15%.



The pendency rate of cases is two fold: one at the police investigation level and then at the Court's level. We have to keep in mind that the pendency rate albeit high does not give a true picture of the crime which goes unsolved. There is a tendency to not report the crime in the first place. Thus, due to the low level of trust on police, pendency rate becomes artificially low.

The victim centric jurisprudence is slowly evolving in our country and the gazes are now turning to perpetrators of crime. Criminal trials have a purpose and to fully appreciate its purpose and put into right perspective the consequence of crime has to be felt with all sensitivity.

Before we take stock of the hard statistics of conviction that stare at us, it will be desirable to look into individual cases and their repercussion. True we ought not to hate the criminal but the crime, and then benefit of doubt has to be given in favor of the accused so that not a single innocent person is condemned. But the cause cannot become a justification for as the roman saying goes that all crimes can be justified. Or let us take another example when the fence starts to eat the field or the shepherd turns against its own lamb as it happened in different scams where the head of the government on whom the public reposed their trust swindled away the public fund the question of justice haunts us. There can be different perspectives from which the criminal justice system can be looked. It can be looked from the angle of the accused who is guaranteed fair trial under the rule of law embodied in the constitution of India. Then there is the individual victim of the offence who equally deserves a speedy punishment to the perpetrator of the offence. On the one hand we

have individual victims and their wrecked family who are visible and they carry the scars of crimes on their body and mind throughout their life.

In *Arjinder Singh and others v State of Punjab (2016)* the Hon'ble Supreme Court observed that the scar rape defiles the soul of the victim.

In acid attack cases there is disfiguration of the body which is not only a scar on the person of the victim but also on the society where such offence is committed. There is an endless catalogue of crime that ravage the society and law-abiding individuals and families find themselves to lose the sole bread winners and loved ones. Then there is invisible victim of the crime that is in the form of the society and state. In 70 years of our republic, we have seen one sitting prime minister being gunned down while in office. Apart from this there is one former PM Rajiv Gandhi who fell to the terrorist lot during an election campaign. Apart from this there are an estimate 3500 numbers of officers and men in duty who fell to the assassin's bullet. There is an increasing spiral of crime which will be evident from the statistical data released by National Crime Bureau.

Gary A. Haugen in his book *the Locust effect* terms this in the following words:
“without the world noticing, the locust of common criminal violence are now ravaging the life and dreams of billions of our poorest neighbors... it seems that we are approaching a pivotal moment in history where agreement is beginning to emerge that if we do not decisively address the plague of everyday violence that swarms over the common poor in the developing world, the poor will not be able to thrive and achieve their dreams ever. .. crime and violence have emerged in recent years as major obstacles to the realization of development objectives.... the freedom from crime and violence are key components of development. Freedom from fear is as important as freedom from want.”

With the fundamental rights guaranteed under Part III of the Constitution the question we may dwell upon is whether today as a citizen of a democratic republic can we breathe in an air free from fear of crime? The answer can be a resolute no and for this we do not need to the statistics to say but the very statement of Chairman of *National Commission of Women* made on 6th January 2021 after the Badaun rape and murder incidence is a testimony of the invisible fear that pervades

the women in the country so much so that the only solution she saw was self-imposed restriction on movement of women. How can we say we live in a free world if State cannot ensure the freedom of movement for half the country's population.

In India, the acquittal rate of prisoners is very high compared to the conviction rate. The reasons behind such a low conviction rate in India were stated in the report submitted by the Malimath Committee on Reforms of the Criminal Justice System, the Government of India, the Ministry of Home Affairs headed by Dr. Justice V.S. Malimath. The reasons behind the low conviction were reported to be the technical or non-compliance with any procedural provision or inadequate proof or non-examination of material witnesses, errors in the prosecution and other related factors have also led to acquittals. This amounts to failure of the Courts to search for the truth to do justice.

Investigation is basically an art of unearthing the truth for the purpose of successful detection and prosecution.¹

The Apex Court in *State of Bihar v. P.P. Sharma*², explained various steps involved in investigation, in the following terms:

Investigation consists of diverse steps.

1. to proceed to the spot,
2. to ascertain the facts and circumstances of the case;
3. discovery and arrest of the suspected offender,
4. collection of evidence relating to the commission of the offence which may consist of:
 - a. the examination of various persons including the accused and the reduction of their statements into writing if the officer thinks fit (Section 161, Cr.P.C.),

¹ Sanjeev Nanda v. State 2012 (8) SCC 450

² 1992 (1) SCC (Suppl.) 222

- b. the search of places and seizure of things necessary for the investigation to be proceeded with for the trial Section 165, Cr.P.C., etc.) and
- c. recovery of the material objects or such of the information from the accused to discover, in consequence thereof, so much of information relating to discovery of facts to be proved. (Section 27 of the Indian Evidence Act).

In *Jamuna Chaudhary v. State of Bihar*³, the Hon'ble Apex Court held: The duty of Investigating officer is to bring out the unvarnished truth and not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction.

The investigating officer is the arm of the law and plays a vital role in the provision of Criminal justice and law and order maintenance. Therefore, the police investigation is the foundation on which the entire construction of the criminal trial rests- a mistake in the chain of investigation will lead to a miscarriage of justice and the prosecution includes acquittal. Therefore Investigating Officer's duty is to determine evidence, to determine evidence, to derive the truth from the half-truth or garbled narrative, to link the chain of events. The investigation is tedious and tardy process. Therefore, the police officer was granted ample authority in the field of the investigative process, allowing him or her great latitude to exercise his discretionary power to make a successful investigation. It is by his action that law becomes an actual positive force.⁴ Sometimes, crimes are committed in silence and in high places of dexterity. The investigation officer will have to collect information from undisclosed or unknown sources and there is no fixed procedure for conducting investigations to link each phase in the prosecution case chain by gathering evidence except to the degree that the Code of Criminal Procedure or the Evidence Act or the Constitution specifically forbids it.

In view of the arduous task involved in the investigation he has been given free liberty to collect the necessary evidence in any manner he feels expedient, on the facts and in given circumstances. His/her primary focus is on the solution of the crime by intensive investigation. It is his duty to ferret out the truth. Laborious hard work and attention to the details, ability to sort through

³ (1974) 3 SCC 774

⁴ Ibid

mountainous information, recognised behavioural patterns and above all, to co- ordinate the efforts of different people associated with various elements of the crime and the case, are essential. Diverse methods are, therefore, involved in making a successful completion of the investigation.”⁵

Few of the reasons for low Conviction:

Hostile witness:

Jessica Lal case and Priyadarshini Mattoo murder cases are (un)popular examples where the accused person had to be acquitted because of witnesses turning hostile. Protection of witness might contribute in increasing the conviction rate. In developed societies enough forensic evidence is collected by the police and case is not entirely dependent on the oral evidence of the witness. This reliance on scientific technique leads to high conviction rate in the developed countries.

Poor investigation by the police, lack of forensic capabilities:

Need for scientific investigations: The police are helped by scientific input in solving a variety of crime cases. In view of the rising acquittal rates in India due to faulty and unreliable investigations, the new state of the art equipment is the need of the hour.

In a plethora of cases, the Hon’ble Supreme Court pointed out the need for scientific investigation by the investigative agency and deprecated the pattern of failure on the part of the investigating agencies to gather relevant evidence leading to the acquittal of the accused as a result of inefficient and untrained investigating officers who, in a very casual, reckless and untrained manner, take the investigation into account. With the advancement of science and technology, it is high time for a team of well-trained experts to investigate innovative and scientific approaches and not merely through an ill-equipped, overburdened and restricted team of investigation officers.

Absconding culprit and trial in absentia.

Accused take help of the legal loopholes like Section 299 of CrPC, which required re examination of witnesses despite deliberate evasion on the part of the accused on the previous recording of

⁵ Sanjeev Nanda Versus State 2009 DEL 2345

evidence/date of recording of evidence. The scheme of CrPC enshrines salutary provisions so that the accused is not condemned unheard.⁶ But like other rights the right of being heard, is not an absolute right and is subject to exceptions under Section 291, 205, 291, 293 and 317 of the Code of Criminal Procedure.

In the opinion rendered by Lord Bingham it has been observed that, ‘if a criminal defendant of full age and sound mind, with full knowledge of a forthcoming trial, voluntarily absents himself, there is no reason in principle why his decision to violate his obligation to appear and not to exercise his right to appear should have the automatic effect of suspending the criminal proceedings against him until such time, if ever, as he chooses to surrender himself or is apprehended’.⁷

Disconnect between prosecution and investigation.

Long drawn-out trials and delayed justice. Generally, no fixed time period for the conclusion of trial, because of which many times there isn’t a timely examination of the witness and loss of important evidence.

Criminal trials are plagued by the withdrawals of accused at different stages of investigation, inquiry and trial thereby causing delay in the adjudicatory process and may, at times, ultimately lead to scuttle the trial itself.⁸

In *Surya Baksh Singh v. State of U.P* it was observed that there is an alarming and sinister increase in instances where the convicts have filed appeals to circumvent and escape the sentences awarded against them. “The Criminal justice delivery system is being held to ransom by convicts who have developed the devious and dishonest practice of escaping punishment or sentence by filing appeals, obtaining bail or suspension of sentence and thereafter disappearing beyond the reach of the arms of the law. Given the woeful success rate of the prosecution, if even relatively niggard number of convicts is permitted to circumvent their sentences, crime is certainly to envelop society”⁹

⁶ Ibid

⁷ Ibid

⁸ Choudhary Gautam Kumar, “Absenteeism from Criminal Justice: A plea for reform”

<<https://www.scconline.com/blog/post/2020/10/10/absenteeism-from-criminal-justice-a-plea-for-reform/>>

⁹ (2014) 14 SCC 222

Lower Conviction in SC & ST Act offence and for offences against women. In *Hardam Singh and Others v. State of Punjab (2019)* the Court noted that even though statistics published by National Crime Record Bureau show a high rate of incidence of crimes is evident but at the same time there has been no increase in the conviction rate in crime against women.

The invisible victim of the crime is not only the society but also the fragile ecology in which we live.

In financial fraud cases trial don't even take off. Vijay Malya, Nirav Modi are recent examples before us. And even if they do start the accused are easily acquitted, as we saw acquittal D Raja and Kanimozhi in 2 G which involved scam of 70,000 crore.

In a justice system conviction of a criminal is the ultimate test. It is the certainty of punishment and not severity which deters citizens from committing crime. There is a plethora of penal codes with increasing stringency of sentence over the years but the rate of conviction presents a dismal picture of the state of affair.

In 2018 Amendment to CrPC was made and Section 18 A was inserted to help speed up the investigation procedure and reduce pendency of case.

18-A. No enquiry or approval required- (1) For the purposes of this Act:

(a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or

(b) the Investigating Officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply;

(2) The provisions of Section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or direction of any Court.

One of the side effects of the low conviction rate is also that the society starts to lose faith in the rule of law and start taking matters in their hand, as we have seen in case of Hyderabad rape victim

and Vikas Dubey fake encounter.

People and society who are wronged ought to be better assured that the removing the bottlenecks. Trials are becoming a farce because of the slow and tardy trial. The trends discussed show deficiency of criminal justice system. There is a need and scope for further improvement in the procedure for better serving the ends of justice. Let's see what bringing in new Bhartiya Nyaya Sanhita, 2023; Bhartiya Nagarik Surakhsha Sanhita, 2023 and Bharatiya Sakshya Bill, 2023 does to this picture. Only time will witness whether the change coming our way is cosmetic or becomes an instrument for real justice.