

INDIAN COURTS V. FOREIGN COURTS: A COMPARITIVE ANALYSIS

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INTRODUCTION

Criminal justice system in India includes a lot of interdependent parts of the court and different levels of a trial procedure. A substantive analysis of the court system of India and developed countries of the world has been done in this research project. Defining the criminal justice system, the functioning of the various existing criminal justice system in the world i.e. the Indian criminal justice system and the criminal justice system of the developed countries such as France and the United States of America is dealt with. All the systems are compared in detail and articles are analyzed. Many a times the reliability of decisions given in different system is compared and criticized; criticism of all the systems has been dealt with. After the research, the author comes to a conclusion that the procedure differs in all the systems and in all the countries but the objective and the result delivered by all of them is same i.e. to prevent crime and punish the criminals.

RESEARCH OBJECTIVES

The objective of doing this research is to have an understanding of the flaws of the Indian Judicial System when compared to the judicial systems of the developed countries. For that, the objectives are as follows:

- To have a clear understanding of the Indian Judicial system.
- To understand the ongoing problems faced in the criminal judicial system.
- To understand the need of adoption of certain procedures from Judicial System of other developed countries.

RESEARCH METHODOLOGY

The research methodology used for this research is the doctrinal as well as the comparative method. Criminal justice systems around the worlds function and work differently. A

comparative analysis of the criminal justice systems of India and developed countries like France and the United States of America has been done.

RESEARCH QUESTIONS

The research paper aims to answer the following research questions

1. After an analysis of Indian Criminal Judicial System and France Criminal Judicial system, where does India lie in supporting its victims in criminal cases?
2. Where does the Indian Criminal Judicial System fall short in comparison to the United States of America's Criminal Judicial System?

LITERATURE REVIEW

The book "Crime and Justice in India" which was published in the year 2013 contains a detailed analysis of crime and justice in India. This book makes an attempt to examine India's crime problem and also examines how its criminal justice system has responded to emerging challenges and opportunities.

The book 'Comparative Criminal Justice: Making Sense of Difference' was published in 2010. In this book, author looks at why we should study crime and criminal justice in a comparative and international context, and the difficulties we encounter when we do.

Also various articles were used where the Indian criminal justice system and criminal justice systems of developed countries like France and the United States of America have been compared thoroughly and the drawbacks of the Indian system have been highlighted.

1. AFTER AN ANALYSIS OF INDIAN CRIMINAL JUDICIAL SYSTEM AND OF FRANCE CRIMINAL JUDICIAL SYSTEM, WHAT'S THE PRESENT CONDITION OF INDIA IN SUPPORTING ITS VICTIMS.

ANALYSIS OF CRIMINAL JUSTICE SYSTEM OF FRANCE AND INDIAN CRIMINAL JUDICIAL SYSTEM

The Criminal Justice System is the process by which outlaws are arrested and are given punishment in according to their crime, followed by levels of investigation to collect evidence. After which charges are made, a respondent and an appellant comes forward, trials

are conducted and sentencing is provided if the respondent is found guilty or acquitted if he is found innocent.

Criminal offenses are often investigated by going through the facts of the case and/or incidents, situations, scenarios, the follow up stories, examining the witness, cross questioning the approvers if any to prove the guilt of the individual or the respondent. A thorough and detailed investigation is conducted systematically following a procedure made by law, maintaining time to time details, scrutinizing information to get at a decision to prosecute the individual who has committed the criminal offense. In most of the criminal judicial systems, the accused is believed to be an innocent until proven guilty. Hence the burden of proof always lies on the appellant side.

A trial is a judicial analysis of the issues between the parties, that is the appellant side and the respondent side, if they are of law or facts, brought in front of the court, before a judge. To determine the guilt of the respondent in the criminal proceedings, evidence is thoroughly examined by the judge. It is the duty of the judge to analyse the evidence and apply the needed laws upon it and not only this but to examine the facts presented before him and determine the outcome of the case.

VARIOUS STEPS OF CRIMINAL TRIAL IN FRANCE:

Arraignment: At the arraignment, the defendant gets to the knowledge of the charges against him, and then he either pleads guilty or not guilty before the judge. If the accused pleads guilty, the judge will either declare a sentence in accordance with the rules governing the sentencing. If the accused pleads not guilty then the judge decides a date for next stage.

Release (bail) hearing: The accused that is in custody during the arraignment must be released on conditions provided to the judge, if not objected by the prosecution attorney. And the objection must be satisfactory. If the accused fails to comply with the conditions, new charges may be imposed.

Preliminary inquiry and trial: If sufficient proof is provided by the appellant to move the case to the court, then only the trial starts. First, it is determined, if there is enough evidence to issue a trial and second, proving that the criminal actions were committed by the accused beyond a reasonable doubt, in both cases, the Prosecuting Attorney and the legal representative of the defence call and cross examine the witnesses, including the victim or victims, and provide evidence along with its advanced arguments in support of their

respective cases. If the evidences submitted before the court seem to be not adequate at the preliminary stage then the charges against the accused are left and the case is dropped, whereas if similar circumstances arises at the time of trial, the accused is then and there acquitted of all the charges framed against him by the appellant.

Sentencing: If the accused is found guilty by the court of law, then the judge award sentence depending upon the intensity of the crime committed or asks for the pre-sentencing report. This report is made by the parole officer where the actions and the social behaviour of the accused in the society will be dealt and the victim is informed about the nature and seriousness of the offence.

In France, the victim is always given the most priority. The Criminal Judiciary System of France has an established victim support centre in every state of the country. Every time a case is registered in a court, the victim support centre gets the information of the offence. Crimes involving battery or assault or rape or domestic violence etc, affects a victim both physically and mentally, because of which the victim suffers from mental or physical impair or in some cases when the social reputation of the victim is damaged. Under such circumstances the victim support system, provides free aid to such individual.

PROCESS OF CRIMINAL TRIAL IN INDIA

India has an established and well functioned statutory, administrative and judicial framework for handling trials of the criminal cases. Indian Penal laws and judicial proceedings related to the same are primarily governed by three major Acts:

1. The Indian Penal Code, 1960 (IPC);
2. The Code of Criminal Procedure, 1973 (Cr.P.C.);
3. The Indian Evidence Act, 1872 (IEA).

The features of the trial in all three of the said procedures can be divided into the following stages:

1. Making of charge or providing of notice: It's the first stage of the trial, when a case is put forward in a court, the court expresses a suspicion against the accused that has not been properly justified, and the court frames the charge and proceeds to a trial.

2. Recording of prosecution evidence: when the charges are framed, statements of witnesses are recorded then they are examined and later questioned by the opposition. This is known as examination-in-chief and cross-examination.

3. Statement of accused: the accused is given a justifiable opportunity to explain his side of the incriminating facts and circumstances of the case.

5. Final arguments: This is the last stage of the trial. The prosecutor shall summarise and give its final statement of the prosecution case and the accused is entitled to answer.

6. Judgment: After the conclusion of arguments by both parties, the judge gives his final judgment.

In Indian judiciary system, while providing justice is the aim of the statute, but during the implementation of such judicial procedure, the victims are ignored. Even though justice is provided to the victims, but the sufferers are never supported in our country. There is no victim support system established by the government in our country. Victims during the trial, when they are both mentally and physically vulnerable, they are cross questioned, sometimes insulted by the defendant's legal representatives. Therefore there should be a victim support centre established in all the court including the lower courts, so that the victims would be provided with some support and courage to fight for themselves and they could rebuild their lost reputation and individualism.

2. COMPARATIVE ANALYSIS OF AMERICAN CRIMINAL JUDICIAL SYSTEM AND INDIAN CRIMINAL JUDICIAL SYSTEM

1. JUDICIAL TRANSPARENCY:

In the United States of America, the public has an open access to the Court Electronic Records (PACER) which provides federal-court case files and dockets, over the Internet to the general public since 1997. Accessibility and availability of case files encourages the judicial officers to act lawfully and fairly and do not allow them to take undue advantage of their positions during a case proceeding. It also does not allow the lawyers to malpractice and misconduct during a court proceeding. This provides a platform for academics and the media to keep an eye on the court of law and give an overview to the general public. This helps people for swift control over the proper functioning of the court. This is an essential tool against corruption in the judiciary system.

In India, when people asked for transparency from the government, it provided us with the Right to Information Act; a statutory code given to the citizens of India to exercise their rights, so that they can acquire any information from the government. The judiciary supports this act and expects other bodies of the government to follow it. But when it comes to the functioning of the act on the judiciary, it has recommended, that the judiciary should be excluded from the act. Therefore the judiciary is taking undue advantage of the powers bestowed upon it by the constitution of India and it displays that it is acting above the law at its own discretion.

2. JURY

In the United States of America, its citizens take part in judicial decision-making. The jury system has ignited a sense of judicial responsibility amongst its citizens. The Judiciary functions with the jury while they both play an important role in getting into a judgement.

Execution of the jury system in India was not successful due to the problems like corrupt and biased jurors. The Government of India abolished the jury system in the case *K. M. Nanavati v. State of Maharashtra*¹. The case was dismissed as the jury's decision was biased. As a result of which, the jury system was abandoned. But even after that the corruption in the Indian judiciary system has not been dealt with. The judge of any court, even at the lowest level is not answerable to any direct post and has a possibility of being biased. The Courtrooms of Indian Criminal Judiciary System resemble a one-man show where citizens barely interact with the judicial system.

3. RECORDING SYSTEM IN COURTS:

In the famous case of *Chandler v. Florida*, 449 U.S. 560 (1981), the U.S. Supreme Court held that “states may adopt rules allowing digital photography and video recording of an ongoing proceeding in their courts”². Since then, all 50 states have established the practice of in-court recordings. This helps the judicial proceedings to be more accessible to the general public and media, as an outcome of that, it helps in spreading significant awareness of court proceedings and etiquette to the public. As the media and the public get to know each and every step of the court proceedings, therefore this creates accountability and transparency on the part of the judge of the court. This stops the judge from being biased for either of the

¹ 1962 AIR 605 1962 SCR Supl. (1) 567

² *Chandler v. Florida*, 449 U.S. 560 (1981)

party and being corrupt, because if he/she tries to take an undue advantage of their post, it will be noticed and they will be held liable.

In India, even after filing various PIL or Public Interest Litigation to the Supreme Court, the system has ignored and has not addressed the essential need for in-court recordings. This makes most of the citizens of India unaware of judicial proceedings, court etiquette and functions of the Court. And thus allows judges to be biased and corrupt. Since the general public is always unaware of the court's functioning. Therefore a judge does not stand accountable for its actions.

5. COURT CLERKS AND STAFF:

The staffs of both judicial and administrative play a very important role in the administration of justice in the United States of America. The united states judiciary system always has the resources and do find it very essential to train its judicial and administrative staffs so that they can act professionally to be public friendly and cooperative. They are recruited after a series of tests and examinations. They are responsible for the accomplishment of many important works in pre trial proceedings, legal research, drafting and other court operations. Because of the efficiency of these staff in completing their works, this helps lowering the burden of the court and allows the court to function even more efficiently and enables them to pay more attention towards administration of justice.

But when it comes to India, it has no such provision for the training of the judicial and administrative staffs. There is an urgent need of trained and efficient judicial staff in the Indian judicial system. This is because presently, there are more than 29.7 million cases pending only in the lower courts. And there is an additional 3.9 million cases in the Supreme Court and high courts of India. Therefore it is an urgent need to have more and more trained staff in the judicial system of India so that it could function more efficiently and smoothly.

In 2012, The Indian Law Commission Report on Expeditious Investigation and Trial of Criminal Cases against Influential Public Personalities stated how the administrative staffs were inefficient and mentioned the low number of working staff in the Indian Judicial System. Thus making it a major factor in barricading the effective assistance to judges.

6. FEES OF LAWYERS:

In the United States, they follow a system of “contingent fee”, which is that a legal representative of either of the sides can charge a kind of fees for its services only if there is a favourable result for their client. Thus, in this system, a fee charged for a legal representative’s services is paid only if the lawsuit is successful, which means the judgement is in favour of the client or is favourably settled out of court. Contingent fees are normally calculated as a percentage or portion of the client’s net recovery. Thus if a client loses its case, he/she does not have to pay penny to their respective lawyers. This kind of system helps and encourages people to fight for their legal rights in the court of law. This allows people belonging to any kind of financial background, get proper legal aid from a good legal representative as there is no financial transactions involved during the pendency of the case. And if a person does not win the case, he does not have to pay anything to his/her respective lawyers.

In India, good legal representatives are very expensive to hire, as they normally charge between Rs. 5 lakhs to Rs. 15 lakhs per hearing. Because of such huge amounts being charged by Indian lawyers during the pendency of a case in the court of law, common men are reluctant and hesitant to get involved in legal proceedings because they simply cannot afford it. Thus in India, if we see into the present scenario, even if the Indian constitution sees each and every person as equal and are provided with the right to be heard, the justice is only reserved for the rich class. As a person who does not have a financial support, cannot afford a descent lawyer. Even if a person belonging to a poor background does get involved in a legal case. Even after spending all his money, there is no guarantee of him getting the judgement in his favour.

The main motto of Criminal Judicial System of India is to provide equal protection of law to all of its citizen. But nowadays, this principle is only bounded to the law books and has no applicability in the real world. Justice does not come cheap in India, because of which the poor cannot afford it. As we are going to observe the same in the case of Surendra Koli v. State of Uttar Pradesh.

ANALYSIS OF SURENDRA KOLI'S DEATH SENTENCE

Surendra Koli v. State of U.P. Ors³ also known as Nithari case

In the year of 2005 and 2006, many children went missing from Nithari village in Gautam Budh Nagar district, Uttar Pradesh. Many of such children were alleged to have been killed by Surendra Koli. Surendra was a servant of a businessman Maninder Singh Pandher at his residence. After a lot of investigation about the missing children, many of the children's skeletal remains were discovered from a drain near Pandher's house. After the investigation, it was stated that as many as nineteen girls and women were raped and killed. The case was then transferred to the Central Bureau of Investigation in January 2007.

After a thorough investigation, conducted by the Central Bureau of Investigation, Surendra Koli was charged with rape, abduction and murder in 16 cases while Pandher was summoned as a co-accused in 8 cases and then the case was forwarded to a special court. The Special court awarded them death sentence for the rape and murder of 14 year old girl, Rimpa. On appeal in the Allahabad HC, the court upheld the death sentence of Koli but acquitted Pandher.

Then the case was forwarded to the Supreme Court. In 2011 Supreme Court confirmed death penalty of Koli observing it as rarest of the rare case. He filed a revision petition before Supreme Court which was also rejected. Death warrant of Koli was therefore issued. He was to be hanged on 8 Sept. 2014 which was stayed while posting the revision petition of Koli on 28 Oct. 2014.

Supreme Court again upheld the death sentence. Before confirmation of the death penalty by the Supreme Court in Rimpa murder case, the Central Bureau of Investigation, court awarded death sentence to Surender Koli in other four cases of rape and murder and was also given a fifth death sentence. A petition challenging the acquittal of Maninder Singh Pandher by the High Court in the murder of Rimpa Haldar was then pending before the Supreme Court.

LEGAL REPRESENTATION:

Since Surendra Koli did not have a sound financial status. Therefore he was provided a lawyer by amicus curiae (lawyers on legal aid panel) to defend him. As the lawyer provided by the government, Koli was not able to hire a good lawyers of his own choice in the cases in

³ Surendra Koli v. State of Uttar Pradesh (2011) 4 SCC 80

which he is awarded the death penalty. Koli during case proceedings, repeatedly moved an application for a new defence lawyer alleging that the provided lawyer was not competent enough, because of which he was awarded a death sentence.

On the other hand, Pandher with his influence and financial strength was able to hire very capable and well reputed lawyers to defend him.

The judgement stated that Koli to be sentenced to death in five cases out of which the Supreme Court confirmed his death sentence in one case. But the question to be raised in this case that the only strong evidence against Koli till date, was his confession to the magistrate under Section 164 of the Criminal Procedure Code; he later retracted and withdrew from his confession stating that there was torture involved while he gave his confession. Even signs of torture were neglected by the magistrate. No medical examination was done of Koli before and after confession.

CONCLUSION

The Indian Judicial System provides for various opportunities and enshrines the value of justice and fair trial. But with a focus of providing justice, it has been neglecting the victims of the criminal cases. After observing the infrastructure and aids, which are being provided by the France Criminal Judicial System, Indian judiciary should add the victim support centres for the victims. India being a democratic state, so the right to information is a fundamental right provided to all the citizen of India. And the Indian judiciary being a part of the state should come under the law made by the state. After a comparative analysis of the United State of America's Criminal Judicial System and the Indian Judicial System we can summarise that Indian Judiciary should adopt some of the prevailing laws of the America's Judiciary system such as the accessibility of case files of an ongoing proceeding. Allowing cameras and allowing recording of judicial proceedings to make it easily available for the general public. So that this would eradicate corruption and biasness of the judges.

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