

**How to Cite:**

Vishwakarma, S. (2021). The scope of changes in the criminal law system in India: To eradicate the non-effective provision in statute. *Linguistics and Culture Review*, 5(S4), 2457-2469. <https://doi.org/10.21744/lingcure.v5nS4.2029>

# **The Scope of Changes in the Criminal Law System in India: To Eradicate the Non-Effective Provision in Statue**

**Shaline Vishwakarma**

Academic Tutor & TRIP Fellow, Jindal Global Law School, O.P. Jindal Global University, Sonapat, Haryana, India

**Abstract**--The criminal justice system is an idea founded on judicial principles and constitutionalism. It includes the interaction of many institutions and remedies. An effective criminal justice system is essential for an orderly society and the protection of human rights. However, quite different from this ideology, Indian criminal justice faces many complications such as soaring crime rates, outdated laws, late proceedings, inefficient law enforcement agencies. to name a few. The criminal justice system urgently needs reform measures, based on natural justice and human rights, to rejuvenate the system. These minimal but essential measures include consistent reform of the criminal law, fostering and building trust in a skeptical justice system, curbing abuses of power by the police system, and obvious measures. of the welfare state and it is the moral duty of every citizen of India to obey and respect criminals. judicial system.

**Keywords**--constitutionalism, judicial principle, judicial system, natural justice, state adopts.

## **Introduction**

The idea of the criminal justice system has a sound jurisprudential base which effectuates its working and performance. Any nation, be it howsoever rudiment or advanced in the stages of development, aims for an effective<sup>1</sup> criminal justice system. An effective criminal justice system should not only focus on the means to deliver justice but also on its ends to secure justice and fairness in the outcome. The criminal justice system has a comprehensive structure and mechanism; it involves the work-play of many institutions and organizations. Internally, a criminal justice system is the totality of institutions and organizations related to the three aspects of governance: police, courts and corrective measures. Each element of the criminal justice system is expected to administer justice and not only implement the laws aimlessly in order to be

Linguistics and Culture Review © 2021.

**Corresponding author:** Vishwakarma, S.; Email: [svishwakarma@jgu.edu.in](mailto:svishwakarma@jgu.edu.in)

Manuscript submitted: 27 August 2021, Manuscript revised: 09 Nov 2021, Accepted for publication: 15 Dec 2021

effective (Dauber, 2011; Persak, 2019; Peak, 1989).

The idea and the elements of criminal justice system must reform and improve consistently. This is backed by the fact that society is a dynamic entity and laws cannot remain static in order to function in society. However, dynamism in criminal justice system is not an easy task. It depends on number of factors that may sometimes even operate in isolation of law. The evolution and reforms in the criminal justice system of a country is closely connected to the factors like changing policies, economy, culture and ideology. Nonetheless, theoretically and pragmatically the criminal justice system has to reform, upgrade and experiment to secure a tranquil and ordered society.

Timely reformation of a criminal justice system is a necessity in the society or nation where crime appears or reappears in multiple facets. India is no exception to the above assertion. The ever-rising crime rate, dreaded consequences of the criminal activities on the victim and society and failure of the criminal justice system to deliver has shaken the popular faith in the country. Numerous factors are affecting the efficacy of the criminal justice system in India which is reflected in the working and delivering mechanism of the system. Changes (in nature of reforms) in the criminal justice system has be addressed at the level of making or amending, interpreting or expounding and implementing criminal laws on the one hand and assumption of moral obligation on part of every citizen to abide by the criminal justice system of India on the other hand (Barnes & Kingsnorth, 1996; Szczucki, 2018).

Laws are made for society to engineer social change. It the constitutional and statutory responsibility of the three pillars of the state to ensure that laws function with the same dynamism as that of the society. These pillars of the state have to ensure that criminal laws are abreast with the constitutionalism and jurisprudence of rights and duties. However, it is equally the moral obligation of the citizens of India to abide by the laws and avoid its misuse. Rigidity, non-compliance with criminal laws on the part of citizens makes it difficult for organizations and institutions to fulfil the purpose of the criminal justice system.

### **Ailing criminal justice system in India**

The criminal justice system of India has been reeling under many complex conditions since long ago. The crime rate in the country is sharply increasing each year; a constant increase is seen in different categories of crimes like crime against women, children including rape and human trafficking, crime against body and crime against property.<sup>2</sup> Several crimes, including the heinous ones, go unreported in India; there are numerous reasons behind this perpetual phenomenon (DeLisi & Vaughn, 2014; Friedmann et al., 2007). There is a popular maxim in jurisprudence that *ignorance of law is no excuse* however in many cases people are ignorant about the laws and the criminal procedures of the country which makes them incapable of reporting a crime. In other cases family pressure, inhibition, defamation, concern for reputation, undue influence, threats, undue publicity, lack of support system, fear of facing the police and attending courts and many more reasons causes many crimes to go unreported in India. These factors mostly works in cases of offences against women,<sup>3</sup> marriage and children

like rapes, marital rapes, domestic violence,<sup>4</sup> child abuse to name some.

Even when crimes are reported the police gets indulged in malfeasances like refusing to register the report of cognizable crime, harass the victims, conducting slow and inadequate investigation that ultimately results in losing the crucial piece of direct evidences in the case. Eventually, justice seeking mechanism becomes more burdensome when the cases get 'stuck' in the courts owing to pendency or advertent or inadvertent delays caused by the parties. Seeking justice in general and criminal justice in particular has become a tardy exercise under the Indian legal system. Criminal investigation, enquiry and trial have become tedious, cumbersome and time taking process.

The tardy criminal procedures to get justice have in turn opened avenues for dreaded legal, social and economic consequences in India:

- Failure of the criminal justice system and legal ramifications  
Violation of human rights has been the inherent and natural consequence of the failure of criminal justice system to deliver in India. Long duration of investigation and trials and pendency of criminal cases has become a common phenomenon in India. The accused awaiting trials in the prisons suffer violation in terms of some inalienable human rights like right to life and personal liberty including right to fair and speedy trial and freedom of speech and expression. The Supreme Court of India has examined many cases like *Hussainara Khatoon v. Secretary, State of Bihar*<sup>5</sup>, *Sheela Barse v. State of Maharashtra*<sup>6</sup>, in which the under-trial prisoners have been languishing in jails for years without the minimum standard of living including food, hygiene and stay. On the other hand the victims (including their family and near and dear ones) of crime awaiting justice undergoes another phase of victimization while following the criminal procedure. The victimization is worst in cases of victims of sexual offences like rape, sexual harassment and stalking. Many safeguards like protecting the identity of female victim,<sup>7</sup> conducting in-camera trials, forbidding questions that are indecent, scandalous, insulting or annoying<sup>8</sup> have been included in the Indian Penal Code, Criminal Procedure Code and Indian Evidence Act to curb the victimization of sexual offences. However, it is a matter of practical and academic enquiry as to how effectively these safeguards work to restrain victimization in reality. It is naturally implied that when a criminal justice system fails to administer justice, the laws become jurisprudentially redundant. The principles and tenets<sup>9</sup> forming the theoretical framework of the criminal laws become meaningless and ineffective. The criminal laws ultimately operate against the touchstone of rights and duties behind every laws and policies addressing crimes.
- The social impact of the criminal justice system's failure  
Society is the place where crimes occurs and leave a serious and permanent impact. When the criminal justice system fails to prevent, control or punish crimes the society remains at threat. Commission of any crime at anytime can be a predictable fact. On the other hand the recidivists<sup>10</sup> and persons with criminal tendency reverts back to commit crimes again and again. Society thus becomes anarchic and a criminal gets incentives to commit crimes when the criminal justice system becomes ineffective.

- The criminal justice system is in disrepair, and an economic analysis is needed.

An economic analysis of crime shows how the commission of a crime invokes the expenditure process on part of the parties litigating and state against whom the crime is committed. The parties to a criminal case have to bear the economic burden to fight the case, attend courts and pay the fees. It is only after the decision that the victim gets reward in form of compensation<sup>11</sup> to reimburse the economic burden of fighting the case. On the other hand the state has to invest huge sums in maintaining prisons, providing legal aid whenever necessary to the indigent victims of crime. A mitigated crime rate is expected to reduce this unnecessary expenditure in litigating cases.

### **Steps to heal India's ailing criminal justice system**

The above-discussed factors and consequences affecting the criminal justice system are complex and grave. Because India has a huge pluralistic populace, crimes of distinct natures are expected to be occurring in the Indian society. While swelling number of crimes is the biggest challenge to the criminal justice system in India nevertheless certain aspects should also be necessarily addressed to enhance the performance of the institutions associated with the criminal justice system.

Many provisions in the criminal laws (substantive and procedural laws) call for an urgent amendment in nature of alteration or repeal. The obsolete laws, inconsistent with the constitutional and human rights regime, needs to be repealed by the legislature. So also the vaguely defined provisions that give scope for arbitrary exercise of power must be altered or modified. The criminal laws must be flexible enough to incorporate new provisions to tackle anew or changing modalities of crimes. In a similar manner the judiciary is expected to balance the constitutional role of the legislature by justly interpreting, sufficiently elucidating and even striking down any obsolete provision of the criminal laws. The Indian judiciary has played a cardinal role by reading the criminal laws in a manner complementing the constitutional values and norms. The executive agencies, implementing or executing the criminal laws of the land must respect the constitutional limitations. They must not overstep their constitutional domain, bounds of rule of law and principles of natural justice while executing the criminal procedures (Dunlea & Heiphetz, 2020; Crystal, 2001).

India is a welfare state; this makes it incumbent on the state and its agencies to adopt pro bono measures to improve the criminal justice system of the country. It must usher reforms like facilitating the opportunity to seek justice and legal aid. Similarly, it must expand its umbrella protection to rehabilitate and reform the victims of crime and non-recidivist offenders especially women, children and aged people. Lastly, it must be the moral and ethical duty of each and every citizen of India to abstain from breaking laws, give due respect to the rule of law and aid the institutions working in the criminal justice system.

### **Continues changes in the criminal code**

One of the cardinal principles of codification is that laws must be certain and not prone to recurrent and recurring changes. However, this cardinal principle must be read with the need to timely reform the laws. 'Crime' is not a mere actus reus (criminal action) with the contingency of mens rea (guilty cognitive faculty); it is an evil that degenerates the society and advocates immorality. Thus, criminal laws must be adequately flexible to deal with the daunting challenge of any social menace like bride burning, marital rape, child labour, human trafficking to exemplify some.

The Indian Penal Code was enacted way back in 1860 by the First Law Commission of India constituted in 1834 under the chairmanship of Lord Macaulay.<sup>12</sup> It was framed under the guise of colonial regime which is infamous for governing and legislating in India according to their vested interests.<sup>13</sup> One of the best examples to signify the same is the provision on sedition under Section 124A of the Indian Penal Code, 1860. Pt. Jawaharlal Nehru, the first Prime Minister of India, exclaimed that the provision on sedition is a highly objectionable and obnoxious law; the sooner the country gets rid of it the better it is.<sup>14</sup> Thus, the Indian Penal Code requires amendment on the lines that post-colonial compliance with some of the provisions of criminal laws can abrogate the fundamental rights of the citizens<sup>15</sup> (sedition provision unduly curtails the freedom of speech and expression of individuals) and make society intolerant.

An overall analysis of the laws in the Indian legal system suggests that some legislations have indeed become redundant. The 248<sup>th</sup> Report of Law Commission of India has made a comprehensive and exhaustive list of seventy-two union and state legislations that call for urgent repeal by the respective legislatures.<sup>16</sup> Most of the legislations under the list have been enacted during colonial rule in India. On many counts the Indian legal system is highly influenced by common law practices but even the United Kingdom has abolished some obsolete laws that are still duly followed in India. For instance, Section 377, IPC criminalizing homosexuality in India has already been abolished in England way back fifty years (Nahak, 2017; Suacana, 2016; Suryasa, 2019).

It is presumed that the legislature better understands and appreciates the need of society and its people. Analyzing on the lines of this presumption it can be said that it is the legal and moral duty of the legislature to alter, add or repeal laws depending upon the social needs and changes. Legislations, here, can be called as a tool of social engineering<sup>17</sup> to frame or modify laws that work in a dynamic society. The power and duty to legislate must be necessarily exercised where there is a lacuna in law, persistent mischief, abuse of law or when any issue has shaken the conscience of the society as in case of acid attack, spreading disharmony amongst different sections of society, child rapes and so on.

It is an implied duty of the legislatures not to frame laws vaguely and ambiguously. Vaguely defined provisions serve as a trap to victimize people unnecessarily rather than serving as an incentive to check and punish crimes. The vaguely defined provisions often conflict with the basic human rights of the individuals. One such example of the vaguely defined provision is Section 66A of

the Information and Technology Act, 2000, it often collided and conflicted with the freedom of speech and expression of the individuals. This provisions contained terms like 'offensive', 'menacing', 'annoyance', 'inconvenience', 'danger', 'obstruction' and 'insult' without any explanation of the same being given under the Act, 2000. Recently Section 66A of Act, 2000 has been struck-down by the Supreme Court of India in *Shreya Singhal v Union of India*<sup>18</sup> to put an end to its persistent abuse.

Reformation in the procedural laws is also incumbent whenever the criminal procedure becomes an impediment in the exercise of principles of natural justice or fundamental rights of the citizens. Similarly, amendments in the procedural laws are mandatory to prevent victimization of the victims of crime at the hands of laws. In order to make the administration of criminal justice speedy and cumbersome exercise the legislature can fix a timeframe for the implementation of the criminal procedure. However, the legislature has to be conscious of the fact that setting time limitation does not result in failure of justice. The Criminal Procedure Code, 1973 has not fixed any limitation for the investigation of a cognizable crime. An interpretation of the same suggests that investigation must be carried by the police in speedy manner but not compromising with the motive to bring best evidence before the court of law.

In the past and recent past<sup>19</sup> the Parliament of India has made many reformations in the Indian Penal Code, 1860, Criminal Procedure Code, 1973 and Indian Evidence Act, 1872. Actions or omissions comprising dowry death, cruelty against women, abetment of suicide of a married woman, modification in rape and human trafficking laws and many more have been classified as crimes. It must continue with the same incentive and spirit to combat the challenges that crime poses to the society and individual liberty.

### **Encouraging skeptical judicial approach**

In order to cure the ailing criminal justice system of India, the Indian legal system requires a judiciary that is vigilant, ever-performing and delivering. The higher judiciary of India comprising of the Supreme Court of India and High Courts of the respective states have efficiently undertaken the functions of decision-making and law-making; the law making function of judiciary has become more prominent especially after the advent of Public Interest Litigation in India during the end of 1970s and beginning of 1980s.<sup>20</sup> In terms of law-making function the higher judiciary has been quite successful in filling the lacuna where no law existed beforehand and in laying down binding decisions that have become the law of the land until the enactment of the same. For instance in matters of sexual harassment at work, the Supreme Court of India for the first time pronounced a decision in this regard in *Vishakha v State of Rajasthan*<sup>21</sup> that has been the 'law' in case of commission of sexual harassment at work place until the enactment of Criminal Laws Amendment Act, 2013.

The higher judiciary has been liberally interpreting the provision of 'right to life and personal liberty' to acknowledge many rights that prevents the suffering of victims and accused during the investigations or trials. Such judicial approach has revolutionized the criminal justice system of India. Some of the important

rights carved out by the judiciary in this regard deserve a mention here. 'Right to speedy trial' which ensures that procedural laws that delays the trial is void *ab initio*, has been pronounced in *Sher Singh v. State of Punjab*<sup>22</sup> and *Hussainara Khatoon v. Home Secretary, State of Bihar*.<sup>23</sup> 'Right to speedy justice', as pronounced in *Mose Wilson v Kasturiba*, direct the authorities to undertake their duty in time to prevent the situation going out of control.<sup>24</sup> 'Rights of under-trial prisoners' ensures that under-trial prisoners kept in jail exceeding the maximum prison term awardable on conviction must be released.<sup>25</sup> Similarly in the case of *Mathew v. State of Bihar*,<sup>26</sup> the Apex Court ruled that persons kept in jail or without charge must also be released.

A skeptical judiciary is the need of the hour which can reasonably and judiciously decide cases to reform and improve the criminal justice system in India. A mere argument that judiciary must not overstep its constitutional functions is not sound to curb or criticize the judicial system which has been successful to an extent in updating the criminal laws with constitutionalism and human rights. Judicial innovations to improve the criminal justice system must not be viewed as 'overstepping' or 'anarchic' in nature. For, the legislation cannot be expected to solve each and every problem, especially the urgent and immediate issue ([Plyth & Craham, 2020](#); [Feld & Voigt, 2003](#)).

Though the judicial system is reeling under many serious issues like pendency of cases, delay in trial and corruption being the prominent one, the public needs to impose faith in its working. In recent times the judicial system has shown brevity to address fragile issues like questions on legitimacy of homosexuality<sup>27</sup> and recognition of transgender<sup>28</sup> that were either ignored or considered taboos in the past. At the same time the Indian judiciary must also stand to the expectation of common man and administer justice no matter what may come. It must not venture in unnecessary verbal or implied tension with the other branches of state namely the Legislature and Executive. Any organ of the government is at its best when it imposes self-restraint and performs the constitutional duties and judiciary is not an exception to this virtue.

### **Absolute suppression of the abuse of power by the administration**

It is the constitutional and statutory duty of executive agencies like police to observe the cardinal principles of criminal laws while executing them. They must comply with the rule of law and must not indulge in any arbitrariness or nepotism or favoritism while investigating the cases. They are bound by the tenets of the Constitution and principles of natural law that forms the base of the criminal procedure. They must perform their duty to collect the relevant<sup>29</sup> and best evidence in a timely manner. At the time of arrest the police officer must follow the guidelines of arrest as laid under Section 41A to 41D of the Criminal Procedure Code. Soon after the arrest the person must be taken to the nearest Magistrate in accordance with Section 57 of CrPC. As per the provision on remand under Section 167, CrPC the accused should not be detained in police custody for more than fifteen days for the purpose of investigation.

Despite such provisions laid down under CrPC the police have shown utter abuse of power in matters of custodial violence, torture and custodial deaths. The

practice of custodial death has led to the evolution of Constitutional Tort in India whereby the judiciary not only punishes the perpetrating police officer but also imposes exemplary fines on him. The decision of *Nilabati Behra v. State of Orissa*<sup>30</sup> is a landmark verdict that reminds the police system to strictly follow the law and not venture to temper the human liberties in a civilized society.

The police system in India has become utterly infamous for fake encounters. India has witnessed at least more than five hundred and fifty encounters in the last four years. The Government figures shows that the top five states<sup>31</sup> in encounter cases are the naxal-affected ones.<sup>32</sup> Illegal encounters not only attracts legal repercussions such as unlawful killing by the police officers, violation of rule of law and human rights abuse but also evokes societal wrath against the blatant misuse of power. The Supreme Court has issued important guidelines<sup>33</sup> in 2014 to check and control the rising number of encounter cases in India. Some of the important checks include the registration of FIR after encounter, investigation by Crime Investigation Department (CID) or other independent agencies in the case. In all the encounter cases magisterial enquiry must be conducted expeditiously and guilty police official must be dealt legally and departmentally.

In addition to the above-discussed issues which calls for immediate reforms, there are other situations too where the police officials have indulged in malpractices. Some of these are custodial rapes (the infamous Mathura case of 1972 that led to the amendment of Section 375 and 376 IPC to include custodial rape), arbitrary arrests, handcuffing in violation of the orders of the Supreme Court and many more. Thus, it must be remembered that powers conferred on the police officials are proportionate to their duties. They must be exercise with self restrain and in spirit to facilitate the purpose of fair investigation and trial.

### **The state adopts measures to strengthen the foundation of the criminal justice system**

India is a welfare state where justice, including the social and economic justice, must inform every institution of national life.<sup>34</sup> The state is directed under the India Constitution to secure that operation of legal system promote justice on basis of equal opportunity. The state must provide free legal aid to ensure that opportunities of seeking justice are not denied on the grounds of economic disability. In furtherance of these constitutional goals the state is expected to undertake certain requisite pro bono measures in the laws, policies and judicial decisions.

As far as the laws are concerned there exist numerous legislations<sup>35</sup> where the victims of crimes, juveniles, first time offenders, divergent are allowed to reform and rehabilitate through protective and corrective measures like shelter homes, remand homes and open prison system, paroles respectively. It is suggested that similar provisions must be made for the victims of prostitution, human trafficking, forced labour, child abuse too. Further, the rehabilitative and reformative steps of the state must be executed in toto, in letters and spirit by the government and its instrumentalities (Ramadani et al., 2021; Konopelskyi et al., 2021). It is advisable that the judiciary must also monitor and direct the government when it fails in its duty to reform the victims and nonrecidivist



criminals.

The judiciary has already incorporated pro bono public measures through the Public Interest Litigation<sup>36</sup> but it must ensure that trials are speedy and fair to dispense justice. The undue delays in deciding cases must be discarded by the judicial system. It must take additional care to decide the cases on the execution of death penalty in time. On one hand the judicial system has been the loadstar of human rights in India on the other hand it must not dilute its stand by adding to the suffering of the convict and his family living in the fear of hanging and execution.

### **Conclusion**

The ailing criminal justice system requires the medicine of timely reformation and implementation of criminal laws in India. This cure is necessary to maintain a social order in which constitutional values of justice, liberty, and freedom are secured. Besides, criminal law is an important facet of the constitutional regime; it must be working as a living law<sup>37</sup> to facilitate the working of the Indian Constitution.

There are many glitches in the functioning of the criminal justice system in India which are beyond the scope of discussion here. No matter how menacing the problems may be, the three branches of government must be at work to remedy and uproot them. As a welfare state, India is equipped with all the benevolent measures to make justice a reality in the Indian legal system. No person, irrespective of his status or position, can be denied a representation before law to seek justice.

The principles of criminal jurisprudence forming the base of the criminal justice system has to be strengthened by the state and collective will of the people. Laws have never been self-sufficient to usher changes unless society is willing. A dynamic society must have the spirit to obey laws and aid the state in effectuating the legal measures. An efficiently functioning criminal justice system is the need of the hour when India is facing daunting challenges like corruption, poverty, and ignorance in its march towards development.

### **Acknowledgments**

Firstly, I would like to thank my mentor, she help me to choose the topic and guided me in research and reviewing the paper. The reason I was able to complete this dissertation was the exceptional support of my supervisor. Next, I would like to thank my parents and my friends who supported me during this difficult time. Every time I was not able to think of something or running out of ideas or was not able to convert my ideas into words, they helped me to come out of this problem. Without their support, it would have been a tough task to complete this paper. Next, I would like to thank Linguistics and culture review. I am grateful to two For their valuable comments on the earlier version of this paper.

## References

- Barnes, C. W., & Kingsnorth, R. (1996). Race, drug, and criminal sentencing: Hidden effects of the criminal law. *Journal of Criminal Justice*, 24(1), 39-55. [https://doi.org/10.1016/0047-2352\(95\)00051-8](https://doi.org/10.1016/0047-2352(95)00051-8)
- Crystal, J. (2001). Criminal justice in the Middle East. *Journal of criminal justice*, 29(6), 469-482. [https://doi.org/10.1016/S0047-2352\(01\)00110-6](https://doi.org/10.1016/S0047-2352(01)00110-6)
- Dauber, N. (2011). Anti-Machiavellism as constitutionalism: Hermann Conring's commentary on Machiavelli's *The Prince*. *History of European Ideas*, 37(2), 102-112. <https://doi.org/10.1016/j.histeuroideas.2011.01.005>
- DeLisi, M., & Vaughn, M. G. (2014). Foundation for a temperament-based theory of antisocial behavior and criminal justice system involvement. *Journal of Criminal Justice*, 42(1), 10-25. <https://doi.org/10.1016/j.jcrimjus.2013.11.001>
- Dunlea, J. P., & Heiphetz, L. (2020). Children's and adults' understanding of punishment and the criminal justice system. *Journal of Experimental Social Psychology*, 87, 103913. <https://doi.org/10.1016/j.jesp.2019.103913>
- Feld, L. P., & Voigt, S. (2003). Economic growth and judicial independence: cross-country evidence using a new set of indicators. *European Journal of Political Economy*, 19(3), 497-527. [https://doi.org/10.1016/S0176-2680\(03\)00017-X](https://doi.org/10.1016/S0176-2680(03)00017-X)
- Friedmann, P. D., Taxman, F. S., & Henderson, C. E. (2007). Evidence-based treatment practices for drug-involved adults in the criminal justice system. *Journal of substance abuse treatment*, 32(3), 267-277. <https://doi.org/10.1016/j.jsat.2006.12.020>
- Konopelskyi, V., Merkulova, V., Hrytenko, O., Pogrebna, K., & Muradyan, H. (2021). Procedure and conditions of life executing punishment: Essence and tendencies of reform in criminal executive legislation of Ukraine. *Linguistics and Culture Review*, 5(S4), 1769-1789. <https://doi.org/10.21744/lingcure.v5nS4.1851>
- Nahak, S. (2017). Penal mediation policy of land criminal offense resolution in the outer courts of Indonesia. *International Research Journal of Engineering, IT & Scientific Research*, 3(2), 123-130. Retrieved from <https://sloap.org/journals/index.php/irjeis/article/view/539>
- Peak, K. (1989). Criminal justice, law, and policy in Indian country: A historical perspective. *Journal of criminal justice*, 17(5), 393-407. [https://doi.org/10.1016/0047-2352\(89\)90049-4](https://doi.org/10.1016/0047-2352(89)90049-4)
- Persak, N. (2019). Beyond public punitiveness: The role of emotions in criminal law policy. *International Journal of Law, Crime and Justice*, 57, 47-58. <https://doi.org/10.1016/j.ijlcrj.2019.02.001>
- Plyth, P. S., & Craham, C. P. (2020). Translation affects literary and cultural systems: how to observe the features of translation?. *Applied Translation*, 14(1), 29-37. Retrieved from <https://appliedtranslation.nyc/index.php/journal/article/view/1141>
- Ramadani, S., Danil, E., Sabri, F., & Zurnetti, A. (2021). Criminal law politics on regulation of criminal actions in Indonesia. *Linguistics and Culture Review*, 5(S1), 1373-1380. <https://doi.org/10.21744/lingcure.v5nS1.1651>
- Suacana, I. W. G. (2016). The gender equality and justice of Balinese women in traditional life. *International Journal of Linguistics, Literature and Culture*, 2(3), 45-55. Retrieved from <https://sloap.org/journals/index.php/ijllc/article/view/117>

- Suryasa, W. (2019). Historical Religion Dynamics: Phenomenon in Bali Island. *Journal of Advanced Research in Dynamical and Control Systems*, 11(6), 1679-1685.
- Szczucki, K. (2018). Ethical legitimacy of criminal law. *International Journal of Law, Crime and Justice*, 53, 67-76.  
<https://doi.org/10.1016/j.ijlcj.2018.03.002>

---

<sup>1</sup> 'Effective' here connotes a system which not only exists ideologically but also practically; a system that works and delivers.

<sup>2</sup> Crimes in India (1953-2012), National Crime Bureau Records, available at: <http://ncrb.gov.in/> (Visited on March 29, 2015).

<sup>3</sup> Special Correspondent, "Majority of Rapes go Unreported: MPs" *The Hindu*, Aug. 27, 2013.

<sup>4</sup> Samrat Phadnis, "Cases of domestic violence go unreported", *The Times of India*, Dec. 20, 2013.

<sup>5</sup> AIR 1979 SC 1360.

<sup>6</sup> AIR 1983 SC 378.

<sup>7</sup> Section 228A, Indian Penal Code, 1860 (Act 45 of 1860).

<sup>8</sup> Section 151 and 152, Indian Evidence Act, 1972 (Act 1 of 1872).

<sup>9</sup> The cardinal principles of criminal jurisprudence includes the following the tenets- proving the guilt of accused beyond reasonable doubt; giving the benefit of doubt to the accused; fair and speedy trial to the accused and victim; right of representation and fair hearing.

<sup>10</sup> 'recidivist' means the hardened criminal who has recurring tendency to commit crime.

<sup>11</sup> Section 357, Criminal Procedure Code, 1973 (Act 2 of 1974)

<sup>12</sup> Early Beginnings, Law Commission of India, available at: <http://www.lawcommissionofindia.nic.in/main.htm#a1> (Visited on March 22, 2015).

<sup>13</sup> The argument can be sustained and justified by analysis various legislations on material resources like Land Acquisition Act, 1897; the Indian Forest Act, 1927 which shows how the colonial system modified the Indian society through laws that facilitated their governance and revenue augmentation.

<sup>14</sup> Manoj Mitta, "Jawaharlal Nehru wanted sedition law out as early as 1951" *The Times of India*, Sep.11, 2012.

<sup>15</sup> The Indian Constitution containing Part III on Fundamental Rights was framed at the same time when Universal Declaration on Human Rights, 1948 was been framed, thus, it imbibes all the features of human rights that are inalienable and cannot be abrogated by governmental action.

---

<sup>16</sup> Law Commission of India, 248<sup>th</sup> Report on Obsolete Laws: Warranting Immediate Repeal (Interim Report), (September, 2014).

<sup>17</sup> Roscoe Pound, one of the prominent jurists of Sociological School of law, gave the idea of social engineering. He envisaged law to be tool of social engineering; functioning in the society like a mechanism.

<sup>18</sup> MANU/SC/0329/2015.

<sup>19</sup> The Criminal Law (Amendment) Act, 2013 (Act 13 of 2013).

<sup>20</sup> Precedent is an important source of law according to Sir John Salmond in *Salmond on Jurisprudence*. Precedents are of two types – Deductive and Inductive. ‘Deductive Precedents’ are those where the judge deduce a decision from the existing principle/s of law whereas in ‘Inductive Precedent’ the judge has to make law at the point where there is a lacuna in law, absence of legal provision, conflicting provisions, necessity for an immediate provision or an open question of law not predetermined by the legislations or courts.

<sup>21</sup> AIR 1997 SC 3011.

<sup>22</sup> AIR 1983 SC 465.

<sup>23</sup> AIR 1979 SC 1360; AIR 1980 SC 1819.

<sup>24</sup> AIR 2008 SC 379.

<sup>25</sup> Hussainara Khatoun v. Home Secretary, State of Bihar AIR 1979 SC 1360.

<sup>26</sup> AIR 1984 SC 1854.

<sup>27</sup> Naz Foundation v Government of NCT of Delhi, (2011) PL May S-32.

<sup>28</sup> National Legal Services Authority v Union of India; decided in 2014.

<sup>29</sup> Section 5, Indian Evidence Act, 1872 (Act 1 of 1872).

<sup>30</sup> AIR 1993 SCC 1960.

<sup>31</sup> Uttar Pradesh (138), followed by Manipur (62), Assam (52), West Bengal (35), Jharkhand (30), Chhattisgarh (29), Odisha (27), Jammu and Kashmir (26), Tamil Nadu (23) and Madhya Pradesh (20).

<sup>32</sup> Sandeep Joshi, “555 Fake Encounter Cases Registered Across India in Last Four Years” *The Hindu*, Jul. 15, 2013.

<sup>33</sup> People’s Union for Civil Liberties v State of Maharashtra, Criminal Appeal No.1255 Of 1999

<sup>34</sup> Article 38, The Constitution of India, 1950.

<sup>35</sup> The Domestic Violence Act, 2005 (Act 43 of 2005); The Juvenile Justice Act, 2000 (Act 56 of 2000), Probation of Offender Act, 1958 (Act 20 of 1958); The Narcotic Drugs And Psychotropic Substances Act, 1985 (Act 61 of 1985).

---

<sup>36</sup> 'Pro bono' measures adopted by the judiciary includes the steps to facilitate justice delivery system. It includes dilution of locus standi; epistolary jurisdiction; laches.

<sup>37</sup> 'Living law' is the term used by Ehrlich, one of the proponents of Sociological School of Law, to connote a law that is dynamic and interrelates with social change.