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A Road Map for Criminal Justice System

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This article is based on the article “A road map for criminal justice system” published in The Hindu on 22/10/2019. The article reflects upon the principles to be followed in reforming the criminal justice system in India.

Recently, Central Home Minister has written to all States, for conducting detailed study and suggesting reforms in the criminal justice system to make Indian criminal laws more people friendly.

Criminal Justice System in India

- Criminal Justice System refers to the agencies of government charged with enforcing law, adjudicating crime, and correcting criminal conduct.
- The criminal justice system is essentially an instrument of social control:
 - Society considers some behaviours 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 behaviours by apprehending and punishing transgressors or deterring their future occurrence.

Objective

- To prevent the occurrence of crime.
- To punish the transgressors and the criminals.
- To rehabilitate the transgressors and the criminals.
- To compensate the victims as far as possible.
- To maintain law and order in the society.
- To deter offenders from committing any criminal act in the future

Evolution

- India has a long history of criminal justice. Since ancient periods different systems evolved and gained prominence in different regions under different rulers.

- The codification of criminal laws in India was done during the British rule, which more or less remains the same even in the 21st century.
- **Lord Warren Hasting** (1774-85) identified the defects and inequities of the then prevailing Muslim Criminal Justice System.
 - He adopted the **triple policy** of the preservation of the heritage as far as possible, reorganization where inevitable and improvements where inescapable.
- However, the major change came with the formulation of IPC.
 - The **Indian Penal Code (IPC)** is the official criminal code of India drafted in **1860** on the recommendations of first law commission of India established in 1834 under the **Charter Act of 1833** under the Chairmanship of **Lord Thomas Babington Macaulay**.
- The **Code of Criminal Procedure (CrPC)** is the main legislation on procedure for administration of substantive criminal law in India. It was enacted in **1973** and came into force on 1 April 1974.

Why Do We Need Reforms

The criminal justice system- both substantive and procedural- are replica of the British colonial jurisprudence, which were designed with the purpose of ruling the nation. Therefore, the relevance of these 19th century laws is debatable in the 21st century. Various reasons for reforming the criminal justice system has been mentioned below:

- **Ineffectiveness:** The purpose of the criminal justice system was to protect the rights of the innocents and punish the guilty, but now a days system has become a tool of harassment of common people.
- **Pendency of Cases:** According to Economic Survey 2018-19, there are about **3.5 crore** cases pending in the judicial system, especially in district and subordinate courts, which leads to actualisation of the maxim **“Justice delayed is justice denied.”**
- **Huge Undertrials:** India has one of the world’s largest number of undertrial prisoners.
 - According to **NCRB -Prison Statistics India (2015)**, **67.2%** of our total prison population comprises of under **trial prisoners**.
- **Investigation:** Police is being a front line of the criminal **judiciary system**, which played a vital role in the administration of justice. Corruption, huge workload and accountability of police is a major hurdle in speedy and transparent delivery of justice.

Malimath Committee Report

Malimath Committee (2000) on reforms in the Criminal Justice System of India (CJS) submitted its report in 2003. It suggested 158 changes in the CJSI but the recommendations weren’t implemented.

The Committee had opined that the existing system **“weighed in favour of the accused and did not adequately focus on justice to the victims of crime.”**

Recommendations

- **Rights of the Accused:** The Committee suggested that a Schedule to the Code be brought out in all regional languages so that the accused knows his/her rights, as well as how to enforce them and whom to approach when there is a denial of those rights.
- **Police Investigation:** The Committee suggested hiving off the investigation wing from Law and Order.
- **Court and Judges:** The report pointed out the judge-population ratio in India is 10.5 per million population as against 50 judges per million population in many parts of the world. The ratio is 19.66 per million people as of 2017.
It suggested the increase in strength of judges and courts.
- **Witness Protection:** It suggested separate witness protection law so that safety and security of witness can be ensured and they can be treated with dignity.
- **Vacations of Court:** It recommended reducing the vacations of court on account of long pendency of cases.

Madhav Menon Committee

Menon Committee on criminal justice reforms submitted its report 2007. The four member panel was set up to draft a national policy paper on criminal justice system.

- It favours the complete revamp of the entire criminal procedure system.
- It has mooted creation of a fund to compensate victims who turns hostile from the pressure of culprits.
- It suggested setting up of separate authority at national level to deal with crimes threatening the country security.

Reforms Needed

Criminal law is considered to be the most apparent expression of the relationship between a state and its citizens. Therefore, any revision to the CJSI needs to be done while keeping several principles in mind, which are described below:

- The reason for victimization ought to be given a major thrust in reforming laws to identify the **rights of crime victims**.
For Example: Launch of victim and **witness protection schemes**, use of victim impact statements, increased victim participation in criminal trials, enhanced access of victims to compensation and restitution.

- The **construction of new offences** and reworking of the existing classification of offences must be guided by the principles of criminal jurisprudence which have substantially altered in the past four decades.
 - For Example:** Criminal liability could be graded better to assign the degree of punishments. New types of punishments like community service orders, restitution orders, and other aspects of restorative and reformatory justice could also be brought in its fold.
- The **classification of offences** must be done in a manner conducive to management of crimes in the future.
 - Many chapters of the IPC are overloaded at several places. The chapters on offences against public servants, contempt of authority, public tranquility, and trespass can be redefined and narrowed.
- **Guiding principles need to be developed** after sufficient debate before criminalising an act as a crime.
 - Unprincipled criminalisation not only leads to the creation of new offences on unscientific grounds, but also arbitrariness in the criminal justice system.
- The **discretion of judges** in deciding the quantum and nature of sentence differently for crimes of the same nature should be based on principles of judicial precedence.

Conclusion

Criminal justice is in a state of policy ambiguity. India needs to draft a clear policy that should inform the changes to be envisaged in the IPC or CrPC. All reforms will be in vain unless simultaneous improvements are made in the police, prosecution, judiciary and in prisons.

Our policy makers need to focus on **reformatory justice** in order to bring all around peace in the society.

Drishti Input

Criminal Justice System in India (CJSI) has been in a state of peril. Identify the major issues and suggest policy measures to reform the CJSI.