

**FROM CRIME TO PUNISHMENT  
A ROAD TO NOWHERE  
by  
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**Part I**

It should be a matter of real and grave concern that the road which a person accused of an offence is required by law to follow takes so long to traverse that he can be forgiven for thinking that it is actually leading him nowhere. After a person is arrested law begins to take its euphemistic course. But that course is so long, treacherous and bumpy that being made to travel on it is often punishment greater than the punishment proper for the crime committed. In other words, the path from crime to punishment is not straight and smooth, either it is non-existent or it is simply a merry-go-round.

Every crime must be effectively investigated, the accused person immediately apprehended and tried quickly. The impact of punishment is greatly reduced if it is not inflicted while memory of the crime is fresh. In cases where the criminal act was witnessed by a

number of people, well documented by the media, everyone would be keen to know what ultimately happened to the accused. Had he actually done it, and if so, was he awarded suitable punishment. Delays in the criminal justice system, some inherent and others procedural, make it impossible for people interested in the outcome of the case to quickly know the outcome. Passage of time makes them lose interest while media finds other more recent stories.

The road from crime to punishment is a long and tedious one. By the time verdict is actually pronounced the criminal act has become a distant memory and no one really cares anymore. Only the victims of crime remain interested in the outcome of the case. Gradually even they are overcome by cynicism because nothing seems to have happened to the accused person. After a while the accused was released on bail. End of the story. This does not augur at all well for society because it also gives tacit encouragement to the criminal elements. It is,

therefore, very important to understand how the Criminal Justice System (or CJS) has been operating and why the progress of criminal trials is so tardy.

Criminal Justice System can be defined as the set of penal laws and criminal procedure which come into operation when a crime (an act punishable at law) has been committed. CJS tells us how to deal with the person accused of the crime after the crime has been reported, how he is to be arrested and brought before law, what the investigator may do during the investigation (including what he cannot do), what indeed are the rights of the accused person, what happens after the investigation has been completed and the accused is sent up for trial, what are the steps which have to be undergone at the trial before the trial Judge pronounces the accused guilty (or not guilty) and awards sentence, if guilty. Lastly, what the accused should expect while undergoing sentence before he is finally released from CJS.

The accused person enters the system upon

initial arrest and exits either through discharge, acquittal or after completing his sentence. Bail is only released from custody, not release from CJS. The best course of action for the accused person after arrest is to squarely and boldly face trial, prepare his defence well and hope for a speedy acquittal at best or (speedy) conviction at worst. In the latter case, he can plead for minimum sentence and leniency after being held guilty. He can also seek suspension of sentence and release on probation. If this is not possible then he must await correctional remedies of parole, furlough, remission or pardon. But the advice to the accused to submit for trial is meaningless where trials take years to conclude and in the process destroy the best part of a man's life.

The accused may lose his job, may have to sell off his land to pay legal fees and see his family reduced to penury. Our Criminal Justice System is flawed and obsolescent because quick trials are not taking place. The big worry is that the judicial traffic

before the trial courts of law has become so haphazard and unmanageable that accused persons often benefit in more ways than one. They sometimes manage to win over witnesses and secure an acquittal or light sentence. One of the main reasons why the conviction rate is so abysmally low is the slow progress of the trial before the trial Court. Therefore, unless the criminal justice system is revamped and restructured by the policy makers and well understood by all who are concerned with controlling lawlessness and crime, guilty persons shall continue to escape punishment and roam free, unreformed and unrepentant. They would have also exposed many chinks in the amour of law, and punctured gaping holes in CJS which would permit more and more accused persons to escape without condign punishment.

CJS has to work like a well-oiled machine. CJS should demonstrate functional cohesion, its various components must relate to each other and understand each others' role. There should be free

exchange of information between its main participants. The interest of the victims of the crime and the witnesses thereto must be safeguarded. Therefore, it is extremely important to understand the working of CJS, its legal procedures, its main routes, and its important landmarks, if we are to master the system and not remain its victims. Delay today shall lead to criminalization of society tomorrow and this monster shall rise to consume future generations.

The functioning of the system can best be understood illustratively. Nine typical cases, which are usually encountered in the Districts, are given below with possible defences in parenthesis. (i) A group of five men armed with axes attack the complainant and inflict injuries on his head and other parts of the body, head injuries are grievous (medical evidence would be important and open to different interpretations which would determine the final outcome) (ii) A group of men abduct a 17 year old girl and one of them takes her to a distant town and

keeps her with him for a month (the defence may produce love letters and plead consent). (iii) A man shoots at another with a .12 bore gun but does not injure him, yet case is registered as an attempt to murder (the requisite men's era or guilt mind may be absent). (iv) A travel agent takes his fees and expenses from an unemployed man and sends him abroad but that person is unable to settle down, he returns home after a few years and demands his money back (accused may plead that he had fulfilled his part of the bargain it was not his fault if the complainant was unable to make a success of the opportunity). (v) A man agrees to sell his property, receives a considerable advance but gazumps when prices shoot up, the intending purchaser complains that he has been cheated (the seller may plead that it was a civil matter and there had been no intention to cheat). (vi) A young woman, jilted by her boy friend, commits suicide (defence may plead absence of abetment and that the deceased was a timid, weak-hearted person). (vii) A young married woman unable

to bear the pressure of her husband for more dowry commits suicide but her father implicates husband's parents, married sisters and brothers-in-law as well (implication of the extended family would definitely be challenged). (viii) A young married woman commits suicide when she is unable to conceive but her father complains that she was treated with cruelty by her husband (the accused would certainly term the case as suicide simpliciter). (ix) A group of five men, variously armed with sticks and bricks, attack their enemy who dies of a solitary fatal gun shot would, later a sixth gunman is named and arrested (the defence would plead that the number of accused had been inflated to rope in maximum number of men).

The above cases are pregnant with all kinds of possibilities and flaws which could be exploited by the defence and may form the basis of applications for quashing of the FIRs recorded by the police or the charges framed by the Court. All such proceedings would be commenced by invoking the inherent powers of the High Court. The court may or may not

admit the matter. But any sensible defence lawyer would quickly recognize that the flaws could be better exploited at the trial. Therefore, the proper advice he may give to the accused would be to wait for the right opportunity, seize the moment and strike at the prosecution case. But how will the lawyer be able to convince his client about this when he cannot assure him that the opportunity would come his way very soon. For a man in custody every day counts. The trials in all the above cases would, under the present set of conditions, would be spread over atleast two to three years. Therefore, the accused may like to try and seek relief from the High Court and may even, through some legal subterfuge, get a momentary stay, although he may ultimately have to face the trial. The accused would nevertheless clog up the High court with his frivolous pleas and delay the trial by dislocating the time schedule fixed by the trial Court. In the process the cause of speedy trial would have suffered immeasurable harm.

## Part II

Delays in CJS have given rise to rather strange mindsets. One of them is- accused persons should be arrested (or taken into custody) very quickly because crime is rising and no one is safe. Accused persons should be denied bail (regular or anticipatory) because society must be saved from their depredations and the right signal should be sent to the public. Ultimately most accused manage to secure bail and get released from custody either because the investigation has extended beyond a certain period (60/90 days) entitling them to statutory bail or because their trials are not making any progress. Lay persons see it differently. They see pre-trial custody as punishment, denial of bail as justified and release on bail as almost akin to an acquittal. This is a strange phenomenon. Why have people become conditioned to regarding Custody as punishment and release from custody as acquittal? It is probably because CJS is not producing quick and

effective results.

Another curious mindset is to treat any person wanted by the police for investigation as a person who must have committed the offence, otherwise why should the police be after him. The investigator is fair and impartial. He is not an enemy of the wanted person. Since the accused is not surrendering before the police, he must be guilty. Lay persons forget that only a criminal court can pronounce a person guilty and that too after trial in accordance with law. Every accused person is presumed to be innocent until proved otherwise beyond a shadow of doubt. Interestingly, even learned newspaper editors often pronounce persons guilty basing their verdict on reports appearing in the media. This is popularly known as a media trial. These opinions have no evidentiary value but tend to influence public opinion, prejudice both the prosecution and the defence, apart from being completely contrary to the basic doctrine of *audi alteram partem* (none shall be condemned unheard). All this is done in exercise of freedom of

the press, by conveniently forgetting the rights of the accused person to a trial, leave alone a fair and speedy one.

The ineffectiveness of CJS can be further illustrated by what often happens before the appellate courts hearing appeals filed by convicts. As well known, appeals are routinely admitted for hearing but the hearing never comes. This delay invariably entitles the convicts to be released on suspended sentence and bail. Persons convicted of assault, dowry death, rape and attempt to murder, secure suspension of sentence and bail often before they have undergone even 1/4th sentence. A convict sentenced to three years or less receives automatic suspended sentence from the trial court itself. Appeals take many years, sometime even a decade to be heard. Convicts get bail, and if by some strange chance they are unable to convince the court to grant bail, they often complete their sentence (with liberal doses of remissions granted by the State). Therefore, they return home after serving sentence even before

their appeals are heard. And CJS lies shattered by the way-side. The entire process of CJS which had involved police investigators, prosecutors, Judges, lawyers, witnesses, Jail Superintendents and a host of other supporting staff shows up as an exercise in extreme futility. The State exchequer has been rendered the poorer for it and while defence counsel have gone laughing all the way to the Bank.

CJS consists of several independent and separate departments or agencies of the State. These are broadly: Police (to investigate the case and arrest the accused), Prosecution (to represent the State before the Court), Trial Court (to conduct the trial), Jail (to hold the accused persons in custody as under-trials or as a convicts).

All departments of CJS have distinct and separate functions to perform as far as the accused person is concerned. Each of these functions must be concluded quickly, barring of course, the sentence

which must run its full course. The above four agencies are like a team in a relay race. Each runs its distance and then passes the baton to the next member of the team. The order in which the team runs the course is always the same: Investigator ? Prosecutor - Judge - Jail Superintendent.

It would also be useful to recall that the Criminal Procedure Code itself has laid down a time frame for various procedural functions. Accused must be produced before a Magistrate within 24 hours of arrest. Investigations must be completed within 60/90 days of arrest otherwise the accused persons are entitled to be mandatorily released on bail. Trials before Magistrates if not concluded within 60 days entitle to accused to bail. Trials must be Conducted on day-to-day basis. Every accused person is entitled to expect that his trial shall at least conform to the above schedule. The sad part is that this rarely happens. When the accused feels that the case is getting delayed frustration sets in and he starts to

devise (with the aid of clever counsel) ways and means to secure bail. CJS should work so fast that accused persons do not get the time to seek bail or temporary reprieve but look forward to acquittal after a quick trial or minimum sentence, if convicted. And after sentence he may seek correctional relief's of parole, furlough, remission or pardon.

Therefore, every effort should be made to ensure that CJS works in harmony between its various departments and the legal relief's that accused can obtain are also quick and effective. This naturally includes speedy trials/appeals. Trial courts are overburdened with heavy workload. There are too few courts who have to cope with a gigantic quantity of work, therefore, trials necessarily get delayed. To this may be added the additional factor of witness turning up but returning home unexamined and finally failing to turn up altogether. Trial judges getting transferred without completing the trial commenced before them. Many accused manage to delay their trial by seeking

frivolous adjournments in order to overcome uncomfortable situation or tackle inconvenient witnesses. Accused also file petitions before the High Court on flimsy pretext and manage to obtain stay of their trial. Often these petitions take a long time to be decided once stay has been granted. This caused further delays. Primacy in criminal cases must be given to CJS as envisaged by the Code of Criminal Procedure and other related enactments which together embody all the rights that accused persons enjoy and are a complete code. Petitions under Arts 32/226 of the Constitutions or under S. 482 Cr. P.C. to enforce fundamental rights many a time deviate the course of the trial and whittle down CJS in a manner that could never have been intended by the framers of law. Therefore, interference in investigations and trials must be kept to the bare minimum. The accused persons have the right to make legal and constitutional submission before the trial court or before the appellate court in appeal. The trial procedure should not be short-circuited when it is

already suffering from massive voltage fluctuation and load-sheddng. Therefore, primacy of the trial courts must be retained and where necessary more powers should be bestowed on these courts. In cases where accused complain of violation of basic fundamental rights as laid down in judge made law, unless grave prejudice has accursed, trial courts can always look into the matter while deciding the case. Recourse to High Court for enforcement of these rights becomes counter-productive as far the working of CJS is concerned. Whereas the accused can only be tried by the trial courts, any order passed by the High Court in the case can never have the effect of declaring the accused guilty or innocent, unless the FIR itself and the proceeding flowing there from are quashed. Supremacy of the trial courts must be maintained.

The effectiveness of CJS is measured largely by the speed with which the investigation, inquiry or trial are conducted. In each of the nine illustration given above the trial should not last for longer than five

hours at the very outside or one working day. But experience shows that the trial shall creep on and on for two to three years. Its slow progress can well be imagined ?one working day stretching for three years. It would leave anyone and everyone aghast. Therefore, a way must be found to insist that every criminal trial court must conduct all criminal trials on a day-to-day basis, without adjournment and conclude trials as expeditiously as possible. This can be done but would require considerable effort on the part of all departments of CJS to accomplish this task.

In the ultimate analysis CJS strives to arrive at the truth. After the true facts have been determined the question, which arises, is what to do if the accused has been found guilty, how he should be punished and how indeed should he be reformed. The integrity of CJS depends up the sense of devotion to duty demonstrated by its various functionaries. Therefore, there should be regular training and refresher courses for all those who are

involved in CJS. There should be seminars, workshops and updates involving all the concerned departments.

The manner in which a society treats crimes and criminals affords the surest index of its cultural growth and development. Sir Winston Churchill made the following observation in 1910:

"The mood and temper of the public with regard to the treatment of crimes and criminals is one of the most un-failing tests of civilization of any country. A calm dispassionate recognition of the right of the accused, and even of the convicted criminal against the State, a constant heart-searching by all charged with the duty of punishment.?. Tireless efforts towards the discovery of curative and regenerative process, unflinching faith that there is a treasure if you can only find it in the heart of every man-these are the symbols, which, in treatment of crime and the criminals, mark and measure the stored up strength of a nation and are sign and proof of the living virtue

in it." (quoted from the minority view of P.N. Bhagwati J. in Bachan Singh v. State of Punjab A.I.R. 1982 Supreme Court 1325 at p. 1359)

The Indian State must demonstrate that it treats all its citizens with dignity and respects the rights guaranteed to them by the Code of Criminal Procedure and Articles 14, 20, 21 & 22 of the Constitution. These rights have by now become well recognized and need no reiteration except to the extent that these rights must be enforced and the functionaries of CJS should realize that they are responsible for upholding the legal and constitutional rights of accused persons.