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**CORRUPTED BUREAUCRATS: THE MAJOR CAUSE FOR
OBSTRUCTION OF JUSTICE****ABSTRACT**

This chapter will serve as an introduction to the most dynamic debate in the nation today as to whether Corruption plays a major role in the Obstruction of Justice in the Indian Criminal Justice System. While corruption carries different meanings, many authors strive to believe corruption as an act of unethical Behaviour. Preceded by maladministration, Corruption is solely an end product of administration; which if monitored could eradicate the latter.

Do Members of Legislative Assemblies (MLAs) facing pending criminal cases receive favourable treatment in the Indian legal system? Are there opposite effects of winning office, depending on the political alignment with the state ruling party? Is the excruciating delay in the Judiciary proceedings just another way to tamper with the facts, thus obstructing a fair justice system? The presence of an independent and impartial judiciary is a central tenet of democracy. Whilst most democracies establish these attributes in their constitutions, in practice, politicians in office may substantially influence the legal system to promote their interests.

Answering these questions is relevant, not only because a politicised judicial system violates a fundamental human right – equality before the law – but also because it compromises other aspects of society and the economy.

The step-by-step procedure of a court trial in the past shows the Criminogenic nature in the Indian Criminal Justice system, with the involvement of Human Rights Enforcement department to the bureaucrats and politicians in the judicial process. The lack of professionalism by the Police officers tend to transit them from being the nations most trusted security to being a parasite that creates a vicious circle or judicial Mafia in the Criminal Justice System. The overlapping of work assessments which are unclear and the unethical behaviour of the bureaucrats have spread a sense of reluctance in the citizens to approach the police or bureaucrats.

The scope of this study extends to the essentiality of an independent and impartial Judicial system for a smooth functioning democracy and economy. This paper aims to provide evidences in history that shows irrespective of the constitutional guarantee, politicians and bureaucrats of the ruling party have a substantial influence on the legal system on a diverse range of Criminal cases. Furthermore, the cause for abuse of power leading to an obstruction in justice to the innocent will be studied based on evidence from previous cases that portray situations of delay in the judicial proceedings that curb the chance of securing justice.

The study is limited to the understanding of how the involvement of bureaucrats in a case can act as an obstacle to Investigation and Justice in the criminal Judicial system.

INTRODUCTION

India like any other country that were a part of the British colonial system follow similar court procedures wherein the judiciary is separated from the executive completely as per Article 50 of the Indian Constitution. The Indian Criminal Judicial System comprises mainly of these 4 institutions for a legal proceeding, The Law Enforcement (Police), Prosecutors, Court and Prison. An ideal way to compare data between accused who barely win cases and the ones who barely lose would be by analysing the affidavit which is quite complex in India considering difficulty in accessing the data and the tampering of evidence even in the affidavit of people in power charged for various crimes. In order to study the discrimination in legal proceedings between bureaucrats or any person in power over a regular citizen it is essential to observe the difference in legal outcomes that are driven by unobserved heterogeneity. The major obstacle would be the absence of cases wherein the bureaucrats or politicians are actually prosecuted in courts, since they possess the power to access range of resources to avoid litigation.

[1]I concentrate on India, the world's largest democracy, to quantify the impact of political authority on legal results. All candidates running for a state Legislative Assembly are required to report their pending felony trials and arrests prior to elections, thanks to a provision in the Law of Information in Elections that went into force in 2003. Nearly a quarter of applicants for Legislative Assemblies had at least one outstanding court prosecution. I investigate whether members of India's Legislative Assemblies had an undue advantage in court when facing criminal charges. This is analysed in terms of trial pace and outcome.

The piling up of pending cases in the Indian Judicial system that counts up to an estimate of 30 million as per the report of 2020 tends to act as a black mark on the Judiciary. The low ratio of judges to citizens 17:1million could also be considered one of the reasons behind the delay in the justice system. 74 years to Independence and the citizens dependant on the judicial system have to bear the brunt of delayed trial and denial of justice. The legal proceedings suggest every person accused under criminal charges is entitled to be represented by a lawyer irrespective of the social or financial status of the Individual, while this process strives to ensure a chance for fair and just trial proceedings; it could under certain circumstances cause an unexplanatory delay in the provision of justice in matters disregarding the adequate quality evidence against the accused providing ample amount of time to tamper with the evidence.

[2] The Uphaar Cinema crash, the Bhopal gas disaster, and the 1984 anti-Sikh riots are among the other events. It is important for every society's promotion of stability and prosperity that

the judiciary exercises its duties adequately and honestly. Without an independent court, the rule of law is non-existent. The judiciary's effective operation restores democratic confidence in the administration.

Mathur, K. (1992). The State and the Use of Coercive Power in India. *Asian Survey*, 32(4), 337-349. doi:10.2307/2645150

Poblete-Cazenave, Rubén, Crime and Punishment: Do Politicians in Power Receive Special Treatment in Courts? Evidence from India (January 15, 2020). Available at SSRN: <https://ssrn.com/abstract=3698918> or <http://dx.doi.org/10.2139/ssrn.3698918>

The Logical Indian spoke to Majeed Menon, a senior lawyer, a member of the Rajya Sabha, and a member of the Parliamentary Standing Committee On Law And Justice, to learn more about what causes delays in providing justice in India, particularly in light of the Nirbhaya case. "Removing obsolete laws and repairing loopholes in modern laws is another critical need," Menon explains. "A lot of laws enacted decades ago have lost their utility today and continue to be misused." We must quickly close gaps in a variety of current legislation to prevent them from being abused."

Menon says of the investigative agencies, " "Investigating agencies, such as the police, need extensive instruction in the workings of the courts and legal system. Victims endure for a long time as a result of shoddy and biased criminal investigations."

[3] The protocol that must be performed as well as the duties of an officer while performing an arrest such as Preventive arrests are addressed in Section 151 of Chapter XI. It allows police to apprehend anyone without a warrant or orders from a Magistrate if they suspect they are going to commit a cognizable crime. The Code bestows these powers on the police in order to assist them in enforcing the law, preventing violence, arresting criminals, reassuring the society, and pursuing justice.

The duties and powers granted to the police when making arrests are detailed in Chapter V of The Code of Criminal Procedure (hereinafter referred to as the Code). Sections 41 to 603 are included in Chapter 5. Police are given several powers within these sections, including the ability to arrest anyone without a warrant, arrest anyone who refuses to include his or her name or place of residence, search the place that the arrested person may have entered or is suspected of entering, chase the offender to other jurisdictions, search the arrested person and seize offensive weapons, and finally, the power to capture an affluent person.

It is difficult to strike a balance between the dignity of the victim and public needs at the same time. The arrest laws enshrined in the Code of Criminal Procedure³ give the police drastic and disproportionate force, which is also being abused for personal gain to this day. Illegal arrests can only delay justice, but they also violate Articles 21 and 22[16], which guarantee fundamental freedom of all citizens under the Constitution.

There are many ways to manipulate the actions of legal actors and thereby impact judicial procedures. Bribery, military intervention, and other non-political risks are the three forms of strategies. Bribes may be given to law enforcement and other officials of the former type. Administrative officials for example, judges, lawyers, or court personnel to derail court hearings, misplace testimony, or secure favourable punishments. In the second category, leaders take advantage of their privileged status and proximity to other non-monetary tools to have an effect on legal results. Bribes and threats can theoretically be made by any person. Democratic intervention,

on the other hand, is only available to bureaucrats (or people connected to them). This political clout will allow lawmakers to use bribery or threats to influence legal officials.

Furthermore it is found that in order to curb corruption, the assessment process should be made in such a way that the criminal justice system conducted by bureaucracy shall strive for the smooth, efficient and responsible functioning of the Law enforcement .

[3] <http://www.legalserviceindia.com/legal/author-3385-randeepdahiya.html>

How the dominion power vested in the bureaucrats results in abuse of power?

[5] On December 16, 2019, Nirbhaya's mother, Asha Devi spoke to The Logical Indian, she was devastated and miserable. In deep despair, she said, "I am fighting every day, it's like a never-ending intermission before justice is delivered. My daughter was taken away from me, and the perpetrators deserved to be brought to justice years ago."

While the world thought Nirbhaya would finally rest in peace since justice had been served when the Supreme Court ordered for the hanging of the 4 convicts on 23rd March, 2018 to avoid any form of delay by further appeals from the convicts. This failed when an appeal for separate hanging was filed that caused an excruciating delay in justice being served when the date of hanging was changed multiple times .

The Solicitor-General argued that the convicts had been “exploiting the system” for years in order to postpone their sentences. He was dissatisfied with the way the sessions court kept changing the deadlines for executions. On February 5, 2020, the Delhi High Court asked the convicts to exhaust all of their options within seven days, he said. In turn, the convicts violated the injunction by petitioning the Supreme Court and the President. By deferring their execution dates, the trial court towed them along. Their execution was scheduled for March 3 on the previous death warrant. However, this was postponed after Gupta lodged a curative petition in the Supreme Court, backed by a mercy petition to the President.

[6] Another piece of news shook the world in 2017. Kuldeep Singh Sengar, a politician and BJP MLA, was accused of raping a minor Dalit child. Perhaps more concerning was the fact that this was not the first instance of a member of the legislative branch acting in this manner. In reality, political parties often have a variety of MPs and MLAs who are facing or have faced rape charges. What happened afterwards, on the other hand, proved to be even more disastrous. A minor girl of 17 years at the time, was abducted from her village in Uttar Pradesh and raped by BJP MLA Kuldeep Singh Sengar, his brother Jaideep alias Atul Singh, and others on June 4, 2017. She was discovered 17 days later, on June 21, 2017, in the village of Auraiya, 116.8 kilometers from her home village of Mankhi.

The next day, on June 22, 2017, a FIR was filed, despite the police officers' hesitation to do so. And after the victim's screams, the main accused was not identified in the police's First Information Report. When they insisted on Sengar's name being included in the report, the police allegedly threw them out of the station. The Indian Penal Code, 1860, sections 363 (kidnapping) and 366 (kidnapping a woman to force her marriage) were fined. However, no action was done, and her cries went unheard by the authorities.

[5] <https://www.thehindu.com/profile/author/Krishnadas-Rajagopal-236/>

[6] <https://blog.ipleaders.in/author/diva/>

The victim's father was beaten black and blue by the legislator's brother and co-accused Jaideep alias Atul Sengar and others on April 3, 2018, and footage of the incident was posted on social media for everyone to see. In the recording, the victim's father can be heard shouting out Atul Singh's name, but the latter isn't even listed in the police report. On 9th April, 2018, the victim's father succumbed to his injuries, owing to the police beatings. The post mortem report mentioned the cause of the death of the man to be “ blood poisoning”, along with injuries on his body.

A few days later, the key witness of the case, Yunus, died under mysterious circumstances on 18th August, 2018. No post mortem was done by the police.

[7]The gruesome incident in a village in Uttar Pradesh's Hathras district sparked outrage on social media. On September 14, a 19-year-old woman was reportedly gangraped and fatally assaulted by four people. She died in a Delhi hospital two weeks later. With the incident jolting the public's conscience and public figures calling for swift justice for the accused, the Uttar Pradesh police appeared to rush to put the case to a close. They were unusually hasty in cremating the victim's body without first obtaining her parents' permission. The position of the police is still being scrutinized.

The alleged gangrape and violent assault on the victim brought to mind cases like the Nirbhaya gangrape and murder case in Delhi in 2012, and the gangrape and murder by burning the victim in Hyderabad in 2019.

All these cases show irrespective of the intensity of the crimes committed any involvement by the bureaucrats amidst the proceeding sowed a loophole in our judicial system that if not denied justice caused a delay and damage to the fair and speedy trial. While in the Hathras Rape Case forcible cremation of the victims body at an odd hour of 2am without the consent of the parents rises various questions in the proceedings of the said case.

[7]<https://www.indiatoday.in/author/prabhash-k-dutta>

Machal Lalung is the most egregious example of judicial incompetence. Lalung, a 23-year-old Tiwa tribe member from Morigaon, Assam, was arrested in 1951 on false charges of "causing

grievous injury." He was sentenced to ten years in prison by the court. He was admitted to a mental hospital in Tezpur due to health problems, where he was overlooked. Doctors certified him fit in 1967, and he was sent to a Guwahati prison, where he spent nearly four decades. He was released in 2005 after local human rights organizations took his plight to the National Human Rights Commission's attention. It was discovered that he was sentenced to prison for an offense that he did not commit.

When we consider the cases above, one question arises: "Did they really get justice?" While Optimistic people would call it justice, and even fewer would disagree. However, it is perplexing to me. I say, when anyone commits a felony, he should be punished appropriately, but what if the accused was sentenced 10 years, 20 years, or 30 years after the crime was committed due to delay in the proceedings with the help of the resources possessed by people in power. Is it still called Justice?

CONCLUSION

Astonishingly there is a rising intolerance for corruption. People have become sick of avarice on a scale that flies in the face of reason. For the law to be effective in scaring politicians, the legal system must be totally overhauled so that verdicts are reached in a reasonable time frame.

The interminable legal delays that cause most offenders to corrupt the system are the best explanation for bureaucrats' audacity in the face of corruption. Corrupt officials, on the other hand, will swan around for years, running for office and holding it for several terms before being prosecuted. Pavan Varma, a writer and former diplomat, claims that the prevalence of corruption in India is due to a strain of amorality in our culture: a tendency to accept rule-breaking and corner-cutting in the pursuit of riches and influence. In *Being Indian*, he writes, "Of course, corruption is not unique to India." "What makes it special is the degree of recognition and the inventive forms in which it is maintained," he says. Indians don't believe in sterile conceptions of decency... Their definition of right and wrong is based on effectiveness rather than absolute morality."

The ability to bribe their way into medical school or a government job has become a valuable skill and asset, allowing practitioners to obtain coveted government positions and postings. This is exactly why we have physicians and other people who are unqualified and incompetent.

Without stashing away undeclared profits, most Indian companies cannot thrive or stay competitive. Almost anyone who has sold a home has received a portion of the payment in cash and avoided paying taxes on it. Huge amounts of hidden money still exist in our economy.

This ailment is exacerbated by India's generally patchy law enforcement. The remedy is to keep the Central Bureau of Investigation free of political intervention and to protect whistleblowers, witnesses, and journalists reporting on corruption cases.

The government must recognize that rising corruption has the potential to stymie India's growth story. To untangle it, a strong political will is needed. The political class may become complacent in the absence of a strong civil society or an independent judiciary to check government control. Every path, it is said, begins with a single move. However, we have a long way to go to rid society of the termites of corruption, and longer sprints may be needed as time seems to be running out.