

Relevance of the Criminal Procedure Code in the 21st century

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Abstract: With the passage of time and the evolution of the Indian society, various provisions of criminal procedure have become irrelevant now. It is only with the evolution of the society that the law evolves and hence as the time progresses, various provisions of law which used to be very useful in the past either become useless due to the evolution or invention of new technologies or they just become socially irrelevant and do not hold the same utility that they used to. This paper shall be dealing with such provisions by highlighting the utility which they used to possess in the past and also the need for changing such provisions in the light of the technological changes in the society. The paper shall deal with the contemporary issues at hand which are being encountered by the society in the mundane course of affairs. With the emphasis on the reformation and alteration in the provisions of the Code of Criminal Procedure, the paper shall also focus on the day to day problems faced in the administration and the proper working of the criminal justice system due to the obsolete legal provisions which exist as of now.

INTRODUCTION:

The Code of Criminal Procedure² (hereinafter referred to as CrPC) is an old legislation and the provisions enshrined therein were formulated with an intention to provide a proper procedure for criminal proceedings keeping in view the then existing societal situations. The provisions of CrPC as they exist today seem to be socially irrelevant when we analyze them from the perspective of their utility in the light of the existing scenario. The problems like overstretching of trials and due to the faulty procedure of submission of the evidences in a court of law, having to abide by the procedure which is not useful in today's technologically advanced era and some provisions which don't even come in handy when it comes to their application are some of the areas of concern which this paper shall be dealing with. In the light of the recent changes made in the substantive criminal laws of our country³ like the expansion of the scope of the definition of rape, it becomes all the more important to change our procedural laws with. It is high time we altered our age old laws in accordance with the changing trends of the Indian society. The provisions like Section 82, Section 53, Section

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² The Code of Criminal Procedure, 1973.

³ The Criminal Law (Amendment Act), 2013

161, Section 162 and Section 125 need to be changed immediately because the procedural irregularities in these provisions are leading to an ever increasing backlog of cases in the courts. Criminal Law is an area of litigation where even the slightest of backlogs and delays can create huge problems for the parties and sometimes even irreparable loss can be caused to them. The criminal procedure needs to be crisp and should be such that the proceedings in the criminal matters are not delayed. This paper highlights some of the areas in the Code of Criminal procedure where such amendments and changes can be made in order to make the existing criminal justice system more efficient and useful. The very objective of this Code is to make the criminal proceedings clear and unambiguous so that the Executive machinery i.e. the police is able to perform its duties in a manner which actually helps the judiciary increase the pace of justice dispensation system thereby making the whole Governmental machinery more efficient.

This paper shall deal with the nuances, problems arising out of such nuances, procedural irregularities and finally the steps that can be taken to remove them. The paper shall also be dealing with the impact of the inefficient laws on the society and the imbalance which is created due to the same.

IRRELEVANCE OF THE PROCEDURE UNDER SECTION 82:

According to the provisions laid down in this section, "If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation."⁴ Now the procedure prescribed for the publication of such proclamation appears, from the perspective of the present day society of India, to be obsolete and meaningless. The reason for the same is that in the olden times, the police used to reach the residence of the offender (the town or the village) and then used to notify and bring to the attention of the general masses that a proclamation in the name of the offender is being made. The police in accordance with Section 82 (2) (i) (a), used to read out the proclamation in public at some conspicuous place of the town or village concerned and thereby the residents of that locality were made aware of the offence. This was done in order to attach a certain moral stigma with the name of the offender. Now in the present day India this procedure

⁴ THE CODE OF CRIMINAL PROCEDURE, 1973, § 82.

appears to be of very little or no utility whatsoever. Since there are so many other media existing due to the evolution of technology that the residents of a locality can be easily informed without so much wastage of resources and manpower of the police machinery. In fact the police itself do not follow such procedure in most of the town areas where there are resources and technologies that can be used to communicate with the masses without having followed the whole process which is time taking as well as less efficient.

IRRELEVANCE OF THE PROCEDURE UNDER SECTION 53:

The necessity of changing the existing laws related to sexual assault has been felt quite often by the Indian courts in a number of cases. Even the Apex Court has pointed out that inadequacies and inconsistencies of law relating to rape in India and has suggested that the Legislature should bring about the required changes.⁵ The Law Commission has also addressed the problem and after having examined the inconsistencies of the procedure, has suggested that the laws of procedure which are related to rape and sexual assault need a complete overhauling. The report of the Law Commission suggested that Section 53A and 64A should be inserted in the code of Criminal Procedure, 1973⁶. The existing provisions under Section 53 provide that even an accused may request the police to subject himself to a medical test which is referred to as a potency test. There is no indication as to what kind of medical test shall the accused be subjected to. This shall only give the accused an opportunity to create evidences which can create confusion in the case at hand. Even if the accused is able to create an iota of confusion in the mind(s) of the judge(s), the whole purpose of formulating the very procedure is defeated. This provision needs to be changed right away as it does not help either the police or the victim and only creates unnecessary situations which can be misused by the offender.

IRRELEVANCE OF THE PROCEDURE UNDER SECTIONS 162 AND 164:

Section 161 of the CrPC deals with the examination of the witnesses by reducing their statements into writing. The provision in itself is not defective but the real defect comes into procedure when we read it in consonance with Section 162 (1) which states that such statements so recorded should not be signed by the witnesses. Now without a signature there

⁵ Sakshi v. union Of India, AIR 2004 SC 3566 (India).

⁶ 172nd Law Commission Report, available at: http://ncw.nic.in/PDFFiles/Recommendations_on_amendments_to_the_laws_relating_to_rape_and_related_%20provisions.pdf (Last visited 20 February 2014).

can be no verification of the authenticity of the statements so recorded. Such a provision is irrelevant as the recording of witnesses becomes a futile exercise⁷ since there is no legal sanctity attached to such statements. Such statements can be dismissed by the witness in a court of law as it was not signed in the first place. Thus even if the police record a statement which could have otherwise played a key role in the decision of the matter at hand, the witness can still deny the statements made by him to be untrue. Thus the whole exercise of recording the statements becomes a useless exercise and a waste of resources and manpower.

In order to deal efficiently with the cases of rape and gang rape in our country we need to amend the procedure laid down under Section 164 of the CrPC. The problem with the provisions laid down under Section 164 is that the repeated recording of the statements by the rape survivor and witnesses result into overstretching of trials and hence there is an imminent need to change the same. Instead of following the procedure as laid down in the existing statute, if the statements of the rape victim are recorded directly before a judicial magistrate then it would eliminate the need of the police to record such evidence and the whole process would become more efficient because under the law, the statements recorded by the police are inadmissible and do not attach any legal sanctity.⁸ Therefore if the statements are recorded under Section 164 of the CrPC before a magistrate then they should be treated as deposition of the witnesses and hence admissible at the stage of trial.⁹ Such amendment would definitely reduce the unnecessary extension trial in the cases of rape thereby reducing the duration of the trials and hence providing a fast track procedure for a speedy conclusion of the trial.

IRRELEVANCE OF THE PROCEDURE UNDER SECTIONS 125:

There are several inconsistencies with relation to definitions, limitations and the maintenance amount under this provision. The first and foremost glitch in the provision is the use of the term “divorced wife” since a woman ceases to be a wife after divorce so that makes the term inconsistent and meaningless in itself. When it comes to the limitation part, no threshold has been provided with reference to the maintenance. This inconsistency has been a cause of

⁷ Amitabh Thakur, Sulekha.com, *Need to Change Legal Provisions Under Section 162 CrPC*, available at: http://creative.sulekha.com/need-to-change-legal-provisions-under-section-162-crpc_496979_blog (Last visited on 20 February 2014).

⁸ Ram Singh v. State of Maharashtra, 1999 (Bom) Cr LJ 3763 (India).

⁹ Utkarsh Anand, The Indian Express, *SC seeks views on more changes in CrPC to fast-track rape cases*, available at: <http://archive.indianexpress.com/news/sc-seeks-views-on-more-changes-in-crpc-to-fasttrack-rape-cases/1164916/> (Last visited on 20 February 2014).

many problems of excessive maintenance being claimed since the quantum of maintenance is not decided by taking into account the factors like duration of the marriage. It is a fact that due to the increasing crimes against women in our country, the legislatures as well as the judiciary are focusing on making and interpreting the law in ways which eventually favour the woman. This appears to be fair prima-facie but if we look at the flip side, we realize that due to the laws being more in the favour of women, many women have started misusing the present legal system. Same is the case with this provision. The provision disregards the possibility that in case the husband fails to pay the monthly maintenance due to some genuine inability may be because of a financial crunch or any other exigency; he would be liable to be imprisoned. There should be some fail safe built into the provision according to which it can be made sure that if the husband becomes incapable to pay the monthly maintenance amount on time then he might be able to claim some relief or at least an extension for payment of the amount on the submission of the proof of such financial difficulty.

CONCLUSION:

The provisions of CrPC as we have them now are age old and they do not cater to the needs of the present day Indian society. The provisions as provided under Section 53 about the proclamation of the offender in his locality (town or village) have become totally irrelevant from the perspective of the societal advancements. The police would only end up wasting resources and manpower and there would be no fruitful result obtained out of the whole exercise. Thus, in the place of following the prescribed procedure what can actually be done is that the police could use the social and news media for making the information reach the masses who reside in the locality of the offender. Social media like the social networking sites could play a revolutionary role and change the whole process all together. Such social networking site provide facilities to give out notifications and share informations with the public at large and even target a specified public instead of the world at large, thereby making the process a more streamlines and efficient one. Though the above approach comes with a few challenges that not everyone on the locality of the offender would be notified according to the procedure suggested above since the poor people who do not have resources enough to afford a computer or lack the basic technical expertise to be able to use one would not be able to receive the information. It is at this point where the role of news media comes into play. The news media can reach both the rich as well as the poor. Since the newspapers are a very efficient media for circulating certain information publically. On the other hand, for those

who can afford television sets, the police can broadcast a message in the locality of the offender as to the information which needs to be imparted as mentioned under Section 82, thereby saving a lot of resources.

When it comes to the trial of the cases related to sexual assault and rape there is an immediate need for reduction in the time taken by the courts in the determination of the guilt of the offender. Practically speaking, the current procedure is ineffective and only leads to an increased number of cases being piled in the courts which only increased the backlog of cases in an already overburdened judiciary.¹⁰ Therefore, all such provisions which unnecessarily stretch the time taken by the courts to determine the guilt of the offenders should either be amended and altered or completely removed from the CrPC. The provisions as laid down under Section 162 and Section 164 which relate to the recording of the statements of the witnesses hold no importance as far as the legality and the legal sanctity is concerned. This provision can neither be altered to provide that the statements recorded by the police should not be signed by the witnesses nor can it be said that the existing legal provisions should remain as they are since they are doing no harm to the criminal justice system as such. Thus, the only effective solution to this problem can be the deletion of the clause altogether. Since making the provisions for the statements to be signed by the witnesses would only violate the provisions of the Indian Evidence Act.

A very amusing situation arises when an offender seeks to go through a medical test in the cases of rape or gang rape and is thereby subjected to a potency test which later on becomes a strong ground for the offender to go scot free. The provisions of Section 53 seem to be irrelevant and ineffective as far as the potency test is concerned. The aforementioned provisions do not provide any solution whatsoever for this problem and thus it only helps the offender to escape the hands of justice leaving the victim in a plight of misery and without any adequate remedy. It is in such situations where the very basic principle of criminal justice system that is 'retributive justice' is defeated and the victim is left unsatisfied and justice is undone. Therefore, the provisions as provided under this section should be amended and a definition explaining the kind of medical test should be inserted into the provision which could channelize and put under proper scrutiny, the medical test of the offender. As mentioned earlier, the provisions under Section 125 which relate to the maintenance of a

¹⁰ Shailesh Gandhi, GOVERNANCENow, *Backlog of court cases can be cleared in far less than 320 years*, available at: <http://www.governancenow.com/news/regular-story/backlog-court-cases-can-be-cleared-far-less-320-years> (Last visited on 20 February 2014).

divorced woman seem to be quite irrational and therefore they need to be altered as well. The legislature should include an upper limit as to the maintenance that can be granted by the courts to the divorced woman and there needs to be a failsafe built into the provision that in case the husband is unable to pay maintenance due to some unavoidable circumstances or financial crunch then he should, at the submission of the proof of his inability, be granted an extension in the time period in which he can deposit the maintenance money.

In a nutshell, the CrPC in totality consists of a lot of provisions which need to be changed in the light of the changing trends of the society. With the evolution of the Indian society and the advancements in technology, these provisions have become useless and the process involves a lot of manpower and resources which could otherwise be saved if proper technology and resources are used at the proper place. Apart from the provisions discussed in this paper, the CrPC provides a lot of discretionary power to the police as well. For instance, Section 151 of the Code provides so much power at the hands of a police officer that he can arrest any person at the apprehension of disturbance of peace in the society. Now, the disturbance in the peace and tranquility of the society is a very vague and absurd premise for determining the guilt of a person. So what actually happens is that a lot of innocent people are arrested at this pretext and later on even if that person is proved to be innocent, a permanent social stigma is attached to his name and his reputation in the society gets spoiled. Thus, if all these inconsistencies need to be altered and removed from the CrPC, only then can we have a criminal procedure that would cater to the needs of the Indian society as it exists today.