



ROLE OF COURTS IN CRIMINAL JUSTICE SYSTEM IN INDIA & GERMANY

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ABSTRACT

The structure, functions and procedures of formal agencies concerned with investigation, prosecution, sentencing or correction refer to the Criminal Justice System (CJS). CJS is essentially a social control instrument. Each society provides an acceptable behavior border between itself, dictated by law. For instance, violence in practice is not behaviorally acceptable, and is therefore legally banned. By enforcing law, the CJS helps society as a whole to ensure that its participants – victims, criminals, witnesses and society as a whole – have acceptable behaviour. By enforcing law, the CJS helps society as a whole to ensure that its participants – victims, criminals, witnesses and society as a whole – have acceptable behaviour. The system's approach depends on the concept of justice the system maintains. In terms of contemporary law, criminal justice is dealt with in a few ways: deterrence, retribution, incapacitation, rehabilitation and reparation.

Keywords: Criminal Justice System, Court, adversarial system, inquisitorial system.

INTRODUCTION

The structure, functions and procedures of formal agencies concerned with investigation, prosecution, sentencing or correction refer to the Criminal Justice

System (CJS). CJS is essentially a social control instrument. Each society provides an acceptable behavior border between itself, dictated by law. For instance, violence in practice is not behaviorally acceptable, and is therefore legally banned. By enforcing law, the CJS helps society as a whole to ensure that its participants – victims, criminals, witnesses and society as a whole – have acceptable behaviour. The system's approach depends on the concept of justice the system maintains. In terms of contemporary law, criminal justice is dealt with in a few ways: deterrence, retribution, incapacitation, rehabilitation and reparation.

In both countries India and Germany, there have 4 vital components of criminal justice system such as police, prosecution, courts, & the prison or correctional department.

Talking about the functioning of all the components of CJS or the process of CJS, first of all the police investigate the case, in which it takes the statements of the victim and witnesses, interrogates the accused, if there is need of a forensic investigation of anything in the case So they gets it done and after finishing the investigation, with the help of the Prosecution Department, Police produced the charge sheet in the court. After that the court either accepts or rejects the charge sheet and on accepting the charge sheet, the court starts the trial after that as it is the responsibility of the government to prosecute the cases in courts, prosecution pleads on behalf of the government. And then finally comes the work of the fourth component i.e. the -prison or correction department. In Germany, same procedure is followed like in India but in simple cases, without prior trial, the Public Prosecutor may ask for a penal order. With no oral proceedings, this simplest procedure allows



for rapid processing of uncomplicated cases. Generally, the competent local Court judges allow the public prosecutor's application. The penal order issued imposes a fine generally (excluding suspended detention) and corresponds to a conviction. It comes into force if no objection is filed by the defendant within two weeks.

Where India uses the adversarial system, Germany uses the inquisitive system. In the adversarial system the role of the judge is primarily that of the prosecutor or an impartial referee between the plaintiff and the defendant whereas in the inquisitive system the judge is actively engaged in the investigation of the facts of the case.

In India, there are mainly 3 criminal laws such as IPC, Cr.P.C. and IEA other than these laws there are several specialized laws to deal with various categories of crime but the laws assign specific roles to various agencies for criminal justice delivery and protection of Human Right's¹ whereas in Germany, the laws which governed the criminal acts are Criminal Procedure Code (Strafprozessordnung, StPO), Criminal Code (Strafgesetzbuch, StGB), Courts Constitution Act (Gerichtsverfassungsgesetz, GVG) and there are other criminal laws as well in Germany.²

REVIEW OF LITERATURE

The article "Crime and Justice in Germany: An Analysis of Recent Trends and Research" indicates on crime & criminal justice trends and examines publications in major areas of crime in Germany. In this article, the author

¹ Thilagaraj, Richard. (2013). Criminal Justice System in India, *Victimization Of Under Trial Prisoners By The Criminal Justice Agencies An Empirical Study* (pp.199-211). Handbook of Asian Criminology.

described Germany's criminal justice system background. Also shown by the authors is the trend of crime and punishment in Germany and the history of crime and punishment. Organized, commercial and corporate crime is also discussed in this article. In the end the authors concluded that there should be a periodic national crime survey in Germany. The government should also take the responsibility of monitoring the crimes.

In this article, the author has done a comparative study of criminal laws of US, UK and Germany. The author has told in this article that how the system of criminal justice works in the US, the court system in the US is divided into 2 systems, that is, federal and state, both of which are independent. After this the author has explained about the criminal justice system of the UK, the UK does not have a unified federal system, means a system consisting of England and Wales. Different systems work in Scotland and Ireland. Similarly, many other courts and tribunals work in different jurisdictions. Finally the author has explained Germany's criminal justice system; the district attorney himself initiates an official investigation when there is a potential presence or occurrence of a crime. Apart from this, the author has told many other things about the criminal justice system of all countries. (Mandal, Sweta. (2020))

In this article, a comparative study in India and Germany on the criminal justice system has been done by the author. In this article 2 systems have been explained i.e. accusatorial system and inquisitorial system,

² https://germanlawarchive.iuscomp.org/?page_id=750



how accusatorial system works in India and inquisitorial system works in Germany. It has also been told in this article by the author that how the India and Germany progressively developed alternative techniques for resolving disputes (ADR). In this article, the author has described the past growth and current state of both the countries. In this article, a comparative analysis of both the countries has been done regarding the criminal justice system and what can be improved in it. (Bajpai, M. (2018))

In this article the 'Richard Thilagaraj' has mentioned the criminal justice system of India. The author has told what the role of the federal government is and the police force in India, what is the power of the police. What is the role of the judiciary, how the courts and public prosecutors work. About 'Lok Adalat' and 'Alternative Dispute Resolution' have also been told by the author in this article and in the end the author has told that there are still many challenges in India in the criminal justice system, in which there is a great requirement for improvement.

Anita Yadav has tried to explain in this article what is the administration of the criminal justice system and how it can be improved. The author has tried to tell what are the components of the criminal justice system & also what are the shortcomings in them and how they can be overcome.

STATEMENT OF PROBLEM

The main duty of the government is to protect people's rights and freedom. It is also the duty of the government to punish the guilty and protect the innocent. For this purpose, in every civilized society where there is a rule

governed by law, there is a criminal justice system.

A fair procedure is the basis of the criminal justice system. The criminal justice system aim is to provide public justice, to punish the offender and to observe that the trial is completed sharply so that the witness can testify before his memory expires. In the administration of justice, the courts must always try to preserve people's public faith by ensuring the perception of human rights in administering the criminal justice system.

Role of courts is very vital in the criminal justice system. The Court's primary task is to provide for fair, equal, fast, and impartial justice. Judges must perform their duties very carefully and diligently in order to ensure that public trust in the court procedure does not become undermined. Hon'ble Apex Court in the '*Kartar Singh v. State of Punjab*'³ held that 'Right to speedy trial' is an essential part of Fundamental Right 'Right to life & liberty' under Article 21 of the Constitution. In Article 21 of the Constitution, the true and fair trial is a sine qua non.⁴

The function of courts in the criminal justice system is not limited to punishing but also to protect the human rights and legal rights of criminals and victims. But now in view of the complex judicial process of the Indian people, there are many reasons for this, such as one, the cases here go on for a long time in the court, secondly, the judiciary has not been completely fair, due to some biased judges, the judicial process The image is getting tarnished. If we talk about the first reason, then the biggest reason behind the judicial process taking more time is that there is a lot of shortage of judges in the country due to

³ 1994 SCC (3) 569.

⁴ Nahar Singh Yadav & Anr. v. UOI & Ors., (2011) 1 SCC 30.



which the cases remain pending for a long time, the courts give adjournments in the cases again and again etc. An important reason behind the loss of people's confidence in the judicial process is also that we have seen many times how and what kinds of troubles an innocent person has to face from the police process to the end of the judicial process. It has also been seen many times how an innocent person is arrested by the police in mutual rivalry or in connivance with the other party and he is also punished by the court and when he appeals to the High Court or the Supreme Court and then it comes to know that the person was innocent, he has been wrongly punished by the session court, even though the High Court or the Supreme Court also provides compensation to the innocent person for being in jail for many years, but that compensation is given by him to the jail can't get back the time that he/she spent. Compensation also cannot even compensate him and his family for the humiliation he had to face in the society. In *Maneka Gandhi v. Union of India*,⁵ Hon'ble Apex Court said that 'no one should be subjected to arbitrary arrest, detention, or exile.' Placing undertrials with convicts who are presumed innocent violates the rationality test under Article 19 or fairness under Article 21.⁶ Lay judges in Germany are selected through a highly political and discriminatory process. Therefore, the selection of judges should be done in a fair manner because the judiciary is a fair and independent organ of any democratic country.

OBJECTIVES OF THE STUDY

1. To compare the criminal justice system in India & Germany.

2. To ascertain what's the role of courts in India and Germany in the criminal justice system.
3. To know what problems faced by peoples during judicial process in criminal justice system.
4. To identify the loopholes in criminal justice system in both countries India & Germany.
5. To suggest how role of courts can be improved in criminal justice system.

SCOPE & LIMITATION

The scope of the research revolves around the powers and role of courts in criminal justice system in both countries India & Germany. The research also focuses on the laws which governed in India & Germany under criminal justice system.

The study examines the role of courts in the system of criminal justice. This study also deals with the Indian and German criminal justice system. This thesis highlights Indian and German laws and agencies involved in the criminal justice system. The study is limited to the role of courts to provide justice and hear cases fairly and speedy. The research is based on analysis of primary legal materials like the relevant Acts, rules, regulations, case law as pronounced by the Supreme Court and secondary materials like books, reports, journals, various websites etc.

RESEARCH QUESTION

1. What is the procedure in criminal justice in India & Germany?
2. In the current criminal justice system, what are the loopholes?
3. Which systems followed by India and Germany in the criminal justice system?

⁵ AIR 1978 SC 597.

⁶ Sunil Batra v. Delhi Administration, 1980 SCR (2) 557.



4. What's the role of courts in both countries India & Germany in the criminal justice system?
5. How do courts function to hear criminal cases in India and Germany?

HYPOTHESIS

After comparing the Indian and German criminal justice systems, it is understood that in Germany criminal justice system is better. Role of courts in both countries in India & Germany in criminal justice system is not same. The biggest problem before the people is that they have to struggle a lot to get justice. In India, there are not enough judges to hear the cases whereas in Germany lay judges are not selected in fairly manner. There is a need to give more powers to judges in a criminal justice system in both countries.

RESEARCH METHODOLOGY

The research methodology would be doctrinal in nature employing qualitative methods of research. The analysis will be done taking into what problems have to face peoples in criminal justice system. The project would also include what improvements can be done to the system of criminal justice. The research would rely upon both primary & secondary sources of data. Primary data would be gathered from Governmental reports, suggestions of Commission, related documents and Memorandums, and so forth and Secondary information gathered from the books, journals, research papers, articles, and so on.

CONCLUSION

After a comparative analysis of the India and Germany criminal justice system, and the role of judges in it, it is understood that the judges in Germany are much better than India in the system of criminal justice. In India,

where the cases go on for a long time after the registration or after the charge-sheet is filed in the court, the same is not the case in Germany, where the cases are resolved sooner than in India. Proceedings before local courts typically take the shortest time, As per 2019 report published by the federal Ministry of Justice and Consumer Protection cases are completed in an average of 12 months and if proceedings in grand chamber courts act as first instance court end almost twice the time in 26.8 months and then in regional appellate court it takes 17 months from entry to prosecution level including the period of time at first instance court but at the court of appeal takes 4.9 months. If we Higher Regional Court act as a Court of Appeal on points of law then it takes 23.2 months from entering at the level of prosecution which includes the previous court stages. It takes only 1.3 months from entering at the level of the Higher Regional Court. As written procedure mentioned in section 349 of the StPO, 90% of the appeals are dismissed on the points of law, which is the main reason for the early disposal of appeals in the Higher Regional Court.

So, it is clear from this that, there is a difference in the role of courts in the system of criminal justice in India and Germany. Where cases in Germany end in 2 years on average at each level, there is no such time limit in India. Therefore, in India also a time limit should be fixed for speedy disposal of cases like provisions have been made in some special Acts for speedy disposal of cases. The courts also have to understand their responsibility that they should dispose of the cases as soon as possible, otherwise hope of getting justice of the people also ends when it takes more time to get the matter resolved. It is also the



responsibility of the government that it should work for the speedy justice to the people, so first of all the government has to increase the number of judges so that people can get justice soon and people's trust in the judiciary is not reduced. In 2003, Malimath Committee also recommend in their report that there should be an increase in the number of judges, separate criminal divisions in high courts and appoint expert judges in criminal law, etc.

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