



ABHINAV SEKHRI

The disintegration of the criminal Justice system

A problem solving system handled by the executive is taking shape; establishing truth through trials has ceased to exist

A well established textbook on the principles of criminal law in the United Kingdom painstakingly establishes various theoretical bases for justifying what should be a crime — that it should involve some harm, must carry a certain degree of seriousness, and so on. But then, revealingly, it undoes this edifice in a single section by telling us that at the end of the day, criminal law and crimes are whatever the state says it is. In India, this political nexus is arguably more pronounced: A majority government makes the laws and controls the investigative machinery, which means that not only does it define what a crime is but it can also selectively pursue only those crimes which it cares about and forget about the rest.



In disarray across India

Pursue those crimes to what end, you ask. Ultimately, the idea of “crime” is hollow without the accompanying punishment. The loss of liberty upon imprisonment we are all taught to dread. However, it is often forgotten that this punishment can only arise upon a judgment of conviction at the end of a trial. There is, then, a synergy between the crime, its pursuit by an investigation, and the calling to account of those found guilty, which is colloquially referred to as a criminal justice system. And wherever one looks across India, it is in a shambles.

The morbid happenings in the State of Uttar Pradesh are but one stark example of just how bad things can get. A notorious gangster was involved in a gunfight with police, fled, and was later captured from another State. In the meanwhile, the news was awash with stories alleging corrupt links of the accused to public servants. As his entourage made its way back to Uttar Pradesh, there was an “encounter” and the accused was shot dead.

There was a crime, several crimes in fact. The State police decided to pursue it. However, there was no waiting for a trial to condemn the accused and sentence him; punishment was swiftly meted out by the police itself. So much so, that an erstwhile Supreme Court Judge felt that the State’s version of events made it appear as if it did not even care whether the encounter story was believed or not.

Extremes in Uttar Pradesh

If the Vikas Dubey encounter death demonstrated a willingness to punish without condemning an accused through trial, Uttar Pradesh has also demonstrated a willingness to condemn without any trial. It passed a law enabling the publishing of massive hoardings with the names and personal details of persons allegedly involved in the destruction of property caused in riots following the anti-Citizenship Act protests. But, here is the thing: all of this is before a court convicted them for these acts. Rather, the power to condemn was sourced not from a judicial order, but from the power to level allegations, which is wholly executive in scope. In this fashion, the police became judge, jury, and executioner.

Of course, these instances are where the State decided to pursue alleged crime. There are many cases where it turns a blind eye to incidents of violence, either indefinitely or for long enough. A young girl was brutally assaulted and left to die when she was found by her family on September 14 in the village of Hathras, Uttar Pradesh. The same family did what anyone would do — report the incident to the police while they rushed their

daughter to a hospital. Only, here, despite the injuries being evident, the police did not register a case for hours, and even then did not include the serious offence of rape. Of course, where the police was not willing to register this single case of rape, it has swiftly registered at least 19 cases regarding an alleged conspiracy to use the incident for political purposes to show the State in a bad light.

Govt.-judiciary disconnect

There are clear, discernible tendencies which these examples from the State of Uttar Pradesh only serve to demonstrate. These are, first, the growing disconnect between the government and judiciary in matters of criminal justice; second, the bolstering of executive power as a result of this growing disconnect, and third, the unsurprising imitation of executive mindedness by the judiciary. The result of this, I argue, is a transformation from a criminal justice system, to a problem solving system.

The Crime in India data for 2019 (<https://bit.ly/34pB7VK>) confirm a trend that has been on display for decades now: our police are seemingly super efficient, but our courts are super slow. Let us continue with Uttar Pradesh as an example. Its police have a pendency rate for cases at just above 15%, but the courts have pendency rates just above 90% (for IPC crimes). And, worryingly, these are not the worst figures. What this means is that as police forces keep adding to the docket every year, the courts are becoming ever slower in their ability to conduct trials and pass judgments.

This exacerbates the natural time gap between the incident and any potential punishment, and reduces the importance of courts in the criminal justice system. Among other things, this disconnect also reduces whatever value condemnation through trial might have had, as people move on and so does life in almost all cases. Just how severely this tendency is magnified in an era defined by the 24hour news cycle is anyone's guess.

How does a system fill this gap between incident and eventual judgment? By slowly legitimizing the idea of punishments without condemnation or any kind of being called into account. All that matters, is solving the problem, and moving on.

This system where judges lose sway is where the executive gains more power. It is the arrest, and not a conviction, which becomes the seminal moment in the criminal process. Victims do not even think as far as proving anything in court, at times, and all that matters is arrest and an indefinite incarceration, or even an encounter if the allegation is heinous enough. At the same time, the executive tries to legally bolster powers of pretrial arrest and custody, while also arrogating to itself more powers to punish without condemnation— asset forfeiture being a key power.

Presumption of innocence

The transformation stands complete, when judges try to regain some of their lost footing by trying to imitate the now popular branch. Courts become happy to look at facts, in detail, at the stage of bail itself. What is more, courts also become willing to help arrive at settlements through this stage by using incarceration as a bargaining tool to force errant accused persons to make reparations. In doing so, courts actively replace facts established through cross examination of a witness with her untested allegations that the police decided to pursue, because even courts no longer have the time for the process either. The presumption of innocence be damned, so long as the problem is solved and a victim can go home satisfied.

Amidst this pandemic and the spiraling chaos that it has brought, there has been a comforting background score that has steadily played on. This is the systematic disintegration of any criminal justice system worth its name across India, and its gradual replacement with a problem solving system where initial accusations and their handling by the executive branch becomes most critical and values such as the presumption of innocence and establishing truth through trials have long ceased to exist. That certain States are at the vanguard of this progression could, perhaps, cynically be seen as yet another symptom of their development which makes many others envious.

*Abhinav Sekhri is a lawyer practicing in
New Delhi*