

CLUES TO REFORMING CRIMINAL JUSTICE SYSTEM

Muhammad Mumtaz Dogar

Our complicated criminal justice system which generally starts from registration of FIR denies justice or delays it. If the justice is delayed it is also denied. Smoothing the bumpy road to justice is not difficult though. We are just required to review the criminal justice system which was established by our British rulers and which we are still following, and to consider what England is doing for its citizens now.

A group of senior police officers and prosecutors recently visited London to study its criminal justice mechanism and found it delivering by all means. Ours was found simply hopeless.

Here are some glimpses of the two systems. In Pakistan, reporting of crime to police is extremely difficult. The victim is required to visit the police station and submit his signed application to SHO. It depends on the SHO to register such crime in a specific register, or not. If it is entered in a register maintained in the police station, it is called FIR -- the first information report-- and then law comes into action. If the SHO refuses to register the crime, the applicant approaches court to seek direction in this regard.

In a number of cases, the matter of non-registration of cases goes up to the Supreme Court of Pakistan. The question is: why it is so difficult and complicated and why it is so simple in England?.

In England, the victim reports a crime generally on telephone and the police start investigation. If declared unfounded, the case is closed by for which no permission of the court or magistrate is required. If the English police find the case fit for trial, they prepare its report and send it to the prosecutor for decision. If the

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prosecutor concludes that there is no real prospect of conviction, he closes the case. The victim is then informed of the decision by the prosecutor. However, if the case is fit for trial, the prosecutor frames charges and on the basis of the charge-sheet the prosecution presents its evidence to prove the charges.

In Pakistan, the approval of court is required to drop the case even if the accused is not sent for trial by the prosecutor. Court permission is required to close even a false case. It is fundamental principle of criminal justice system that the judge cannot become the investigator or prosecutor. The reason is that when the judge summons the accused not sent for trial by prosecution, he becomes a party to the case. Practically in Pakistan, all those accused not sent for trial by prosecution but summoned by the court are acquitted after facing the travail of trial. This overburdens courts and hinders the process of criminals' trial. Precious court time is wasted in trial of those not wanted for trial and in disposal of cancellation reports (discharge reports). On the other hand, thousands of prisoners are languishing in jails without conclusion of trial This is one of the major reasons behind police reluctance in Pakistan to register FIRs.

In England, there is no specific book for registering FIRs. People are not required to visit police stations to submit duly signed written applications for the FIR as is required in Section 154 of the Code of Criminal Procedure here. Investigation begins after an incident is reported by any means (telephone, SMS, e-mail etc). There is no distinction of cognisable and non-cognisable crimes to the extent of reporting of crime, its investigation and, if required, all cases are investigated. All offenses are cognisable and there is no magisterial permission is required for investigation.

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In Pakistan, the distinction of cognisable and non-cognisable is the root cause of many problems. In a cognisable case, police takes action and the accused may be arrested if found guilty, whereas in non-cognisable ones, the complainant is referred to the court and investigation and arrest cannot be made without orders of magistrate. One of the prime motives for fabricating false criminal charge is this distinction. In order to move the police to take action in the matter, the complainant comes forward with a concocted story to make it cognisable case to seek redress against his opponent. The next disadvantage is that when a complainant gets no relief from police and complaint is either summarily rejected or results in protracted proceedings, he feels disappointed and takes law into his own hand with the result that it leads to the commission of more serious offences.

In England, the suspects are interviewed through tape recorder upon their arrival in the police station. And this interview is admissible as evidence. Statements of witnesses are signed by them on oath before the investigating officer. Whereas in Pakistan statements of witnesses are not signed under Section 162 of the Code. Police make people witnesses who do not know as to what statements have been recorded by police on their behalf. As a result, either the witnesses do not own their statements recorded by police or are not able to give evidence in terms of that statement. The accused get benefit thereof. If the statement of witness is signed and the witness retracts it during trial, even then, the court may rely upon the statement of witness given during investigation, if it is signed.

In Pakistan, if police recover the robbed articles, law compels them to make recovery in presence of private witnesses. If police are not able to arrange

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witnesses, the recovery is seen with a pinch of salt whereas in England, there is no such requirement to prove the recovery and statement of police is considered sufficient. There is no concept of daily case diary and police focus on collection of evidence.

In England, there is no concept of pre-arrest bail. In other words, an accused cannot obtain pre-arrest bail from the courts but arrest by police is linked to evidence. Further, there are custody time limits and a person cannot be detained for an indefinite period. Police and prosecution have to frame charges against the accused in a certain period, otherwise the accused is released. Due to this pressure, police are quick in investigation. If the prosecution, agreeing with the police, successfully charges the accused within custody time limits, the trial commences and is conducted without adjournment. In Pakistan there are no custody time limits. There are time limits to submit the charge sheet before the court within specified time but there is no time limit for conclusion of trial. The judge has to achieve his target of units and units are also earned by disposing of miscellaneous work i.e. cancellation reports / discharge reports / conducting trial of accused not sent for trial and placed in column no.2 etc although the judge is not supposed to perform these functions. There is a need to prescribe custody time limits and conclusion of trial by the court.

These are yawning gaps which hinder inexpensive and expeditious justice. They also provide opportunity to the police and those involved in the criminal justice system to easily mint money or shirk work. The lacunae in law also overburden certain segments of system diverting their attention from their core functions. There is a need to review our criminal justice system, especially the Code of Criminal

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Procedure and Qanun- e-Shahadat Order. We should redefine the functions of different institutions and mechanism for performing their functions.

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