

The Bullock Cart Age Laws in the Jet Age

Crying For Radical Reforms

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Inarguably, the Criminal Justice System is in a mess. The four major parts of the Criminal Justice System viz., Police, Prosecution, Courts and Prisons have not lived up to the expectations of the people. The victims of crime do not get quick justice from the system. Due to the pressure of work and other myriad reasons, the police reluctantly register cases and thereafter take inordinate time in completing investigations. The Courts as they too have enormous pendency, take years to decide the cases. And on top of that in 96 per cent serious crimes, accused are acquitted. As a result, there is overall cynicism in the public about the functioning of the Criminal Justice System.

No doubt the Police and Judiciary are over burdened with the sheer magnitude of the cases; many of the ills of the system are directly attributable to the archaic laws enacted over a century ago. Though the Malimath Committee on Reforms of Criminal Justice System has made a large number of recommendation for revamping the system, the following provisions in the Cr.P.C. if suitably amended, will go a long way in making the Criminal Justice System in tune with the need of the hour:

Section 62 Cr.P.C. pertaining to Service of Summons:

Problem: This Section of the Cr.P.C. mandates that a Police Officer alone can serve summons. At a conservative estimate about 15,000 policemen in this country are daily engaged in serving of summons. Since this work can easily be carried out by outsourcing to the postal authorities or private couriers at a fraction of the existing cost, the manpower saved will be available for performing core function of the Police viz., Prevention & Detection of crime and maintenance of public order.

Amendment Needed:

In Section 62 of Cr.P.C. the following sub-section (4) be added:

“(4) notwithstanding anything contained in this code or in the rules framed there under, summons may also be served to the accused or to witness by registered post with acknowledgement due, or by courier service with acknowledgement due or by e-mail or by any other means of communication either personally or through technology whether Information Technology or otherwise.”

(Editor: This is also the recommendation of the 3rd project group of the AP R&D Cell)

Sections 82 and 83 Cr.P.C. regarding Proclamation and Attachment of person absconding:

Problem: It is the experience of investigating officers that the rich and influential accused involved in serious crimes abscond once the process of law is initiated against them. During investigation there is no provision of law regarding proclamation of offenders and the attachment of their properties to compel their appearance before the investigating officer. The existing provision of the Cr.P.C. allows proclamation and attachment of persons absconding only after filing of the charge-sheet.

Amendment Needed:

To overcome the problem, add sub-section (4) to Section 82, as follows:

“(4) the provisions of sub-section (1), (2) and (3) of this section shall be applicable when the Investigating Officer files an application before the Court even when the case is under investigation or during trial”.

Section 102 Cr.P.C. pertaining to power of Police Officers to seize certain property:

Problem: The Section empowers a Police Officer to seize any property which is suspected to have been stolen. However, this Section does not mention seizure of documents or other record of evidentiary value for the purpose of investigation, enquiry or trial.

Amendment Needed:

To overcome the aforementioned problem, the following sub-section (4) may be added:

“(4) the provisions relating to search and seizure are applicable in respect of documents and other record which have got evidentiary value for the purpose of investigation, enquiry and trial of a case”.

Section 317 Cr.P.C. regarding Recording of evidence of witnesses only if all the accused are present in the Court:

Problem: It has been found that in many cases the accused absent only with an intention to delay the trial especially when they know that there is strong case and in all probability they are likely to be convicted. The net result of the misuse of this Section is delay in trial and piling up of cases.

The solution to this problem is to provide for recording of evidence of witnesses in the absence of such accused or defence counsel and to treat it as evidence.

Amendment Needed:

Add sub-section (3) to Section 317 of Cr.P.C. as under:

“(3) if the Court is satisfied that any accused or the defence counsel intentionally or knowingly or in pursuance of some design failed to attend the Court during trial, the court may proceed with recording the evidence of witnesses during trial in the absence of such accused person or the defence counsel; and in such a case, such evidence recorded in the absence of the accused person and defence counsel shall be treated as evidence against such accused person”.

Section 451 Cr.P.C. regarding Disposal of Property:

Problem: Except the properties which are subject to speedy and natural decay, have to be retained until the completion of trial. This provision has led to a situation where Police Stations have virtually become junk yards. Since the completion of trial takes years, during this long period most properties get rusted or their parts get stolen. As a result they are of no value to any one.

The simple solution to this problem is that on the requisition of a Police officer, a Magistrate may prepare a report mentioning all necessary details and treat that report as primary evidence in the Court. Thereafter, the seized property may either be destroyed or sold in public auction. This provision will lead to properties worth hundreds of crores being saved and the Police Stations will present a neat look.

Amendment Needed:

After Section 451, add Section 451(A) as follows:

“451-A (1) Where any property is seized by any Police Officer or other Officer empowered to do so, the Officer shall prepare an inventory of such property containing such details relating to its description, quality, quantity, marks, numbers or such other identifying particulars of the property as the officer may consider relevant to the identify of the property and make an application to any Court for the purpose of certifying the correctness of the inventory so prepared; or taking, in the presence of such court, photographs of the said property and certifying such photographs as true; or if possible, allowing to draw representative samples of

the property in the presence of the court and certifying the correctness of any list of samples so drawn.

Where an application is made under sub-section (1), the Court shall, as soon as may be, allow the application notwithstanding anything contained in the Indian Evidence Act, 1872 (I of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every Court trying the offence, shall treat the inventory, the photographs and any such samples drawn under sub-section (2) and certified by the Court, as primary evidence in respect of such offence.

After the compliance of sub-sections (2) and (3), the Police Officer or the other officer may either destroy the property in case it has no value, or sell the property in public auction and remit the sale proceeds into the criminal court in which the crime or case is pending, or remit the sale proceeds into Government Treasury under appropriate heads of account in case no crime is pending.