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**UNDERSTANDING OF EFFECTIVENESS OF THE
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 (BNSS)
IN PREVENTING ABUSE OF CRIMINAL PROCEDURE**

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ABSTRACT

The concept of malicious prosecution and abuse of process occupies a crucial place within the criminal justice system, particularly in democratic societies governed by the rule of law. This study examines the misuse of criminal law and procedural mechanisms by state authorities, private individuals, corporations, and vested interests for ulterior motives. While criminal procedure is designed to ensure fair investigation, prosecution, and trial, the increasing abuse of these processes has raised serious concerns regarding the protection of individual liberty, human rights, and the administration of justice. The research critically analyzes how false complaints, arbitrary arrests, prolonged investigations, misuse of police powers, and vexatious litigation undermine public confidence in the justice delivery system.

The paper further explores the distinction between malicious prosecution and abuse of process, emphasizing the legal principles governing malice, lack of reasonable and probable cause, and the improper use of judicial machinery. It evaluates the role of constitutional safeguards, judicial intervention, and the inherent powers of High Courts under the Bharatiya Nagarik Suraksha Sanhita, 2023, to prevent misuse of criminal proceedings and secure the ends of justice. The discussion also highlights landmark judicial pronouncements that attempt to strike a balance between effective law enforcement and protection against arbitrary prosecution.

In addition, the study critically examines the adversarial criminal justice system in India, its colonial foundations, and its increasing inability to address modern forms of criminality and procedural abuse. The paper argues for reform in substantive and procedural criminal laws to meet contemporary societal needs while preserving the ideals of fairness, accountability, and justice. It concludes that unless criminal justice institutions—including the police, prosecution, judiciary, and legal profession—function with integrity, independence, and sensitivity toward constitutional values, the criminal process itself may become an instrument of oppression rather than justice.

KEY WORDS

Criminal Law, Criminal Procedure, Substantive Law, Procedural Law, Justice, Law Enforcement, Legal System, Abuse of Power, Wrongful Prosecution, Legal Definitions, Maxims, 21st Century, Police Detection, Prevention, Public Prosecutor, Forensic Skills, Legal Framework, Social Adaptability, Rule of Law.

EXPLORING THE NUANCES OF MALICIOUS PROSECUTION: ALTERNATIVE PERSPECTIVES WITHIN THE CRIMINAL JUSTICE SYSTEM

“In Criminal Law, the basic principle is that it is for the prosecution, not the court, to decide whether a prosecution should be commenced and, if commenced, whether it should continue, or not.

The law of criminal procedure is intended to provide a mechanism for the enforcement of criminal law. Without proper procedural law, the substantive criminal law which defines offences and provides punishments for them would be almost worthless. Because, in the absence of enforcement machinery, the threat of punishment held out to the law-breakers by the substantive criminal law would remain empty in practice. Empty threats do not deter, and without deterrent effect, the law of crimes will have hardly any meaning or justification.¹

The object of criminal process is to provide machinery for a fair trial in accordance with the principles of natural justice. Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 has accordingly provided a detail and comprehensive procedure for the investigation, inquiry and trial of an accused charged of a crime and punishment to be accorded after conviction in accordance with law. In addition, it has also provided for certain preventive measures for the safety and protection of the society from undesirable and suspected elements. The preventive measures incorporate the principle that prevention is better than cure, i.e., if the undesirable elements are apprehended in time, the crime can be checked and potential danger to the society be averted.

But it is found that many a time the law is abused by the police in the name of security and maintenance of public peace and order on filmy grounds. At times the poor and innocent persons are picked up by the police, not because they have committed crime, but because they are poorly dressed, illiterate unemployed and are victim of extra poverty. They are brought before the magistrate, and before they could know of it, they are remanded to the police custody

¹ R V Kelkar, *Lectures on Criminal Procedure*, Eastern Book company, 2006, p. 1.

where they remain indefinitely as the investigations are never completed.² Similarly the procedure is also misused by the individual, associates and corporate by filing false complaints and cases.”

Fortunately for accused and unfortunately for the society the penal code does not prohibit people from committing offences. But encourages criminal minded persons to commit any and every offence taking care to see their act does not fall within the given definition. In other words, it educates criminals to escape prosecution charge, when caught in spite of their intelligent execution of crime.

There is a need, due to change of time, to redefine the offences. The Penal Code defines offences and prescribes punishments Courts have been interpreting that if an alleged act answers all the description given in the definition, then only accused can be held guilty otherwise not. Thus, if an alleged act of an accused, say of murder, theft, robbery, rape, etc. is proved to be an offence exactly, as defined in the relevant section then only the accused can be held guilty. For over century the accused are more educated and have become clever. A convict in prison is capable of explaining what constitutes an offence. Thus, if an accused manages to commit an act in such a way so as not to come within the defined corners of the offence, he does not need a lawyer to defend him. That is how one can see in Magistrate’s Courts that the accused himself is cross examining the Investigating officer on procedure law and prosecution witnesses on the fact and being successful also.

Once upon a time the offence of theft attracted death sentence. This is why a proverb says that the wife of a thief would be successful for ten times and sure to be caught at the eleventh time. But the theft is not an offence punishable with death penalty since 1860. That rule was changed in Penal Code many acts amounting to offence under local usage, Mughal rule and Hindu Law were not considered as offences in 1860 Code as the offences were defined afresh in the Code in 1860 as was suitable to the then system and the society.³

So also, now after more than a century it is necessary to redefine offences as is suitable to 21st and to future centuries. The present definitions are out modelled and crude and subject of laughter.

Time and tide wait for none. So also, the law must change in line with the time, and it should be redefined from time to time.

The golden day’s maxims are not golden saying to be followed today. There is a need to change or modify the maxims and frame such maxims as will suit the present and future and give up

² *Jagannathan v. State*, (1983) Cr.L.J. 1748

³ V. Naryan Swami, “*Redefining offences in Penal Code*”, Cr.L.J. 2002 (104) 93.

the past maxims. The maxims like the guilt of accused should be proved beyond all reasonable doubts' the guilt should be brought home to the accused or 'benefit of doubt should go in favour of accused' shall be given up in view of new trends. Actus non facit ream nisi mens sit rea and that let 100 guilty go unpunished but not an innocent, make a mockery to law and justice. In a group of murderers or dacoits or gang rapists etc. if one of them is innocent and it is not possible to make out whom that one is then all the culprits are entitled to be acquitted. This is not proper for today's society on the other hand if one innocent is to be sacrificed for the good of society it is great sacrifice for him. But in order to save one innocent if other culprits are acquitted the society will be full of offenders and that is what is happening today. It is, therefore, necessary for the law makers, lawyers, and judges in particular and people in general to give a fresh thinking on the subject and change the old laws and bring in the new laws as required for today and tomorrow.⁴

The urgency of improvement in detection and prevention of methods of police needs to be emphasized. The importance of the police was highlighted by Lord Denning himself and I⁵ would like to quote a few words.

"I have no hesitation however in holding like that every Constable of the Land, he should be and is independent on the executive. He is not subject to the orders of the Secretary of the State, I hold it to be the duty of the Commissioner of Police as it is of every Chief Constable to enforce the Law of the Land. He must take steps, so post his man, that crime may be detected and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted and if needed, bring the prosecution or see that it is brought. But in all things he is not the servant of anyone save the law itself. No minister of crown can tell him that he should not prosecute this man or that, nor can any police authority tell him so. The responsibility of law enforcement lies on him. He is answerable to the law and to the law alone. This is the institution which has to be nourished".

It was so highlighted by Hon'ble Supreme Court in *Vineet Narain's case*⁶, that importance of the institution of the Public Prosecutor may also be emphasized. A Public Prosecutor represents the state in a criminal trial he acts *pro bono publico* to foster the ends of justice. He is an officer of the Court ready to secure the ends of Justice. In performing this duty, he has to act according to the law, with avowed commitment to administration of Justice.

"The law of criminal procedure is meant to be complementary to criminal law and has been

⁴ *Ibid.*

⁵ H. R. Bhardwaj, "Criminal justice Under Stress: transnational perspective", *JILI*, (30) 2003 190.

⁶ (1998) 1 SCC 226.

designed to ensure the process of its administration. In view of this objective, the law of criminal procedure has created the necessary machinery for the detection of crimes, arrest of suspected criminals, collection of evidence, determination of guilt or innocence of the suspected criminals, collection of evidence, determination of guilt or innocence of the suspected person, and the imposition of proper punishment on the guilty person. The law of criminal procedure also aims at providing safeguard against possible harms and violation of human rights of innocent persons in its process of sifting criminals from non- criminals. It further attempts to strike a just balance between the need to give discretionary powers to the functionaries under the Code of make the investigative and adjudicatory processes strong and effective and the need for controlling the probable misuse or abuse of these powers. It is therefore right to say, as the Supreme Court has said, that it is the procedure that spells much of the difference between the rule of law and the rule of whim and caprice.⁷”

We are all aware that there are only two kinds of criminal justice system in the world. One is the adversial system which we follow; the other is inquisitorial which is mostly prevalent in the continental countries. We inherited the commonwealth system i.e. the adversial system. There are institutions that play an important role, firstly it is the police, and the second is the Public Prosecutor than the Defense Council, Magistrates, Judges, Complainant, Witnesses, Officers of President, Remand Homes: they play their respective roles which are complementary and supplementary. The major role is that of the Police, they are charged with the duty to investigate the crime. It is therefore paramount that India has an efficient and reliable investigating agency at all levels. There is also a need to improve the forensic skills of detection of crime. I would like at this moment to quote what Lord Curzon in 1902 said, and it is relevant even today: “A Government that gives good Laws, good education, wherewithal to live but places the preservation of internal orders and detection, prevention, punishment of crime in soiled or incompetent hand cannot escaped approached”.⁸

1.1 What is Abuse of Process?

“Abuse of process has been defined as something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a regular proceeding.⁹

Willfully misapplying Court process to obtain object not intended by law. The willful misuse

⁷ *Iqbal Ismail Sodawala v. State of Maharashtra*, (1975) 3 SCC 140

⁸ *Supra* note 5.

⁹ *Hui-Chi Ming v R* [1992] 1 A.C. 34, PC.

or misapplication of process to accomplish a purpose not warranted or commanded by the writ. An action for malicious abuse of process lies in the following cases, A malicious petition or proceeding to adjudicate a person an insolvent, to declare a person lunatic or to wind up a company, to make action against legal practitioner under the Legal Practitioners Act, maliciously procuring arrest or attachment in execution of a decree or before judgment, order or injunction or appointment of receiver, arrest of a ship, search of the plaintiff's premises, arrest of a person by police.

There is a distinction between a malicious use and a malicious abuse of legal process. An abuse is where the party employs it for some unlawful object - not the purpose which it is intended by the law to effect; in other words, a perversion of it.

The distinction between an action for malicious prosecution and an action for abuse of process is that a malicious prosecution consists in maliciously causing process to be issued, whereas an abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect - the improper use of a regularly issued process.¹⁰ For instance, the initiation of vexatious civil proceedings known to be groundless is not abuse of process but is governed by substantially the same rules as the malicious prosecution of criminal proceedings.

Malice means an improper or indirect motive other than a desire to vindicate public justice or a private right. It need not necessarily be a feeling of enmity, spite or ill-will. It may be due to a desire to obtain a collateral advantage. The principles to be borne in mind in the case of actions for malicious prosecutions are these:-Malice is not merely the doing a wrongful act intentionally, but it must be established that the defendant was actuated by *mains animus*, that is to say, by spite of ill- will or any indirect or improper motive. But if the defendant had reasonable or probable cause of launching the criminal prosecution no amount of malice will make him liable for damages. Reasonable and probable cause must be such as would operate on the mind of a discreet and reasonable man; 'malice' and 'want of reasonable and probable cause.' have reference to the state of the defendant's mind at the date of the initiation of criminal proceedings and the onus rests on the plaintiff to prove them.

1.2 Other Definitions of "Malicious Prosecution":-

- A judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause to sustain it.

¹⁰ *Westbengal State Electricity Board v Dilip Kumar Ray* AIR 2007 SC 976,

- A prosecution begun in malice, without probable cause to believe that it can succeed, and which finally ends in failure.
- A prosecution instituted wilfully and purposely, to gain some advantage to the prosecutor or thorough mere wantonness or carelessness, if it be at the same time wrong and unlawful within the knowledge of the actor, and without probable cause.
- A prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or is bound to know are wrong and against the dictates of public policy.
- The term "malicious prosecution" imports a causeless as well as an ill-intended prosecution."¹¹

The position of law, it is regrettable to note, is such as generally helps those who abuse the processes of criminal laws. Such persons are adept at filing false criminal complaints in one court and more often than not in many courts, so that their adversaries have to run from court to court to answer to the complaints. When a complaint discloses any one or more offences, the Judicial Magistrates issue that is known as process i.e. either summons or warrant against the accused under Section 227 of the Code. Of course, if the complaint does not disclose any offence, the same may be dismissed; in certain cases, an inquiry and in certain other cases, investigation may be ordered. When any complaint is dismissed i.e. it proves to be still born, which is very rare, the aggrieved party is entitled to approach the higher forum to complain against the dismissal of the complaint. Besides, when a complaint is drafted by a lawyer of some standing, it is bound to disclose some offence. Therefore, dismissal of any complaint under Section 226 of the Code is normally ruled out. Adoption of such a course of action would also make the Magistrate highly unpopular amongst the members of the legal fraternity. While one should expect the Magistracy to be robustly independent, the prevalent conditions are far from ensuring such independence, a hard fact, which cannot be washed away.

The position of law for quashing any criminal proceedings launched in the court of the Magistrate is that the accused may approach the High Court under Section 528 of the Code. This Section, which saves the inherent powers of the high Courts, reads as under : ***‘Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the end of justice.’*** The section is in fact worded in the manner it is, as such an inherent power was enjoyed by the High Court’s

¹¹ *Supra* note.10.

even prior to coming into force of the said provision. Thus, what was a pre-existing power has been merely retained by the said provision. In fact, one may venture to say that a duty has been cast upon the High Court for passing such orders as may be necessary to prevent abuse of the process or otherwise to secure the ends of Justice. While it is true that proceedings in respect of certain complaints pending in the Courts of Magistrates are quashed by High Courts, the inherent power has inherent limitations. All the Courts and authorities in the country, including the High Courts are under an obligation to follow the law laid down by the Supreme Court of India. This is the mandate of Article 141 of the Constitution of India and apart from the Constitutional mandate, judicial propriety requires that the law laid down by the Supreme Court ought to be followed by the High Court's etc. the position of law as crystallized in a catena of decisions, including the leading case of *King-Emperor v. Khwaja Nazir Ahmed*,¹² *R.C. Kapur v. State of Punjab*,¹³ *State of Haryana v. Bhajan Lal*,¹⁴ and a host of other decisions is that the averments in the complaint only have to be taken into consideration to adjudge as to whether they disclose any offence(s), and when an offence is disclosed, the proceedings of the complaint cannot be quashed under section 482 (now Section 528 of the Code). So far as police investigation is concerned, the position is still worse.¹⁵

Decisions come to the mind as infusing a whiff of fresh air : *State of West Bengal v. Swapan Kumar*,¹⁶ the law has been discussed threadbare and it has been inter alia held that even investigation by the police may be quashed and put an end to, when no offence is disclosed. The case related to the offence of cheating. It has been held in the said case that FIR which does not allege or disclose that the essential requirement of the penal provisions is prima facie satisfied, cannot form the foundation, or constitute the starting point of lawful investigation.

“While quashing of criminal proceedings should not be restored to lightly but is to be used sparingly, the High Court should not hesitate to quash the proceedings when they are launched for an oblique motive. It has been laid down in the case of *Madhavrao Scindia*¹⁷ that the legal position is well settled that when a prosecution at the initial stage is asked to be quashed the test to be asked by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and it in the interest of

¹² AIR 1945 PC 18.

¹³ AIR 1960 SC 866.

¹⁴ 1992 Supp.(1) SCC 335.

¹⁵ *Supra* note. 10.

¹⁶ AIR 1982 SC 949.

¹⁷ *Madhavrao Scindia v. Sabhajirao Chandrojirao*, AIR 1988 SC 709.

justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for an oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and therefore no useful purpose is likely to be served by allowing a criminal prosecution to continue. The court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage.”¹⁸

'Unfair and wrong' is for the court to determine on the individual facts of each case. The concept of a fair trial involves fairness to the prosecution and to the public as well as to the defendant.¹⁹

“The jurisdiction to stay, as has been repeatedly explained, is one to be exercised with the greatest caution. The question of whether or not to prosecute is for the prosecutor. Most of the points relied on in support of an argument of abuse are more profitably relied on as mitigation.”²⁰

“However, the courts have an overriding duty to promote justice and prevent injustice. From this duty there arises an inherent power to 'stay' an indictment (or stop a prosecution in the magistrates' courts) if the court is of the opinion that to allow the prosecution to continue would amount to an abuse of the process of the court.”

“The inherent jurisdiction of the court to stop a prosecution to prevent an abuse of process is to be exercised only in exceptional circumstances.²¹ The essential focus of the doctrine is on preventing unfairness at trial through which the defendant is prejudiced in the presentation of his or her case. Courts that are asked to exercise their inherent power to stay should first consider whether other procedural measures such as the exclusion of specific evidence or directions to the jury might prevent 'trial unfairness' and allow the prosecution to continue.”

“The impetus towards abuse applications has increased since the incorporation of the European Convention of Human Rights and Fundamental Freedoms (ECHR) into domestic law, but the appellate courts have maintained a consistently restrictive attitude towards the application of the doctrine. The clear preference remains that cases should continue to trial and that the judge should use other powers (such as the discretion to exclude unfairly” obtained evidence) to regulate the conduct of the trial to avoid unfairness to the defendant.²²

Whilst the courts do not have any power to apply direct discipline to the police or the prosecuting authorities, they can (in Lord Griffiths' words in the *Bennett case*) "refuse to allow them to take advantage of abuse of power by regarding their behaviour as an abuse of process

¹⁸ *Hussainara Khatoon v. Home Secretary, State of Bihar*, AIR 1979 SC 1369.

¹⁹ *DPP v. MEAKIN* [2006] E.W.H.C. 1067.

²⁰ *Environment Agency v. Stanford* [1998] C.O.D. 373, DC.

²¹ *Attorney general's Reference*, (No 1 of 1990) [1992], Q.B. 630.

²² *DPP v Hussain* (1994) 158 JP 602.

and thus preventing a prosecution."

"Courts should not use their inherent power to stay proceedings merely to discipline the prosecution. Case law makes it abundantly clear that the power to stay on the grounds of abuse is not designed to be a tool with which the courts can apply direct discipline to the police or the prosecuting authorities."²³

The criminal prosecution is controlled by procedure prescribed under the Bharatiya Nagarik Suraksha Sanhita, 2023 herein after referred to as Code. The criminal prosecution may be either based on police report or a private Complaint or by taking cognizance by the Court Suo Motto as provided under Section 210 of the Code.

At every step vested interest tries to abuse the procedure for their personal interest. This may be by filing a false complaint, causing delay in investigation, arresting an accused even though no case is made out. Registering false cases so as to settle personal scores such as to obtain unlawful relief's such as recovery of money on the threat of prosecution etc. Then the procedure is also abused by the accused who after obtaining bail tries to prolong the matter as much as it is possible to ensure that the witnesses are not examined or becomes unavailable or are managed. Sometimes a long list of defense witnesses is given again to delay the disposal of case. Unnecessary cross-examination of the witness is another instance of abuse of procedure.

The procedure for arrest, bail, jail, and trial of criminal case, among other things are dealt with in the Bharatiya Nagarik Suraksha Sanhita, hereinafter referred the "Code". There is Cognizable and Non-Cognizable offence as well as case. In the former, police arrest the accused without warrant from a competent Court. In the latter warrant is a pre-condition for arrest. The classification of offence in the first schedule of the 'Code' details cognizable and non-cognizable offences. The same schedule speaks about bailable and non bailable offence.

Of all the three important organs of state, the Legislature, the Executive and the Judiciary, the judiciary is considered to be the weakest. To quote Justice H.R. Khanna once said that,

"It has neither the power of purse nor the power of the sword, neither money nor patronage; not even the physical force to enforce its decisions. Despite that, the Courts have by and large enjoyed high degree of prestige amongst and commanded respect of the people. This is so because of the moral authority of the court and the confidence the people have in the role of the courts to do justice between the rich and the poor, the mighty and the weak, the state and the citizen, without fear or favor."²⁴

²³ *R v Crown Court At Norwich Ex Parte Belsham* (1992) 94 Cr. App. R. 382, QBD

²⁴ H.R. Khanna, *The Judicial System*, New Delhi, IIPA, 1980, P.11.

“The observation given above was made by Justice Khanna one and-a-half decades ago in his lecture on ‘The Judicial System’ as part of the IIPA’s silver jubilee celebration. Things have changed quite a lot since then. Today, even our judiciary does not appear to have the same respect of the people that it had once commanded. For the first time in the history of our democracy, a judge of the Supreme Court was impeached by the parliament for alleged corruption and malpractices while in office. Although, the impeachment motion could not be passed due to the non-committal and escapist approach of the members of the Treasury Bench, the tarnished image of the Judiciary in the eyes of the common men in India was, by no means, restored. Of late, the courts orders in a number of sensational criminal cases have been subjected to public criticism and raising of eyebrows.”²⁵

“The justice system in India which is based on adversarial model of common law is known for being cumbersome, expensive and cumulatively disastrous. The poor can never reach the temple of justice because of the heavy cost of its process and the mystique of legal ethos. The hierarchy of courts, with appeals after appeals puts legal justice beyond the reach of the poor. Professional service is monopoly of a few rich professionals (lawyers), who are too dear to be fed for the poor. Making the legal process costlier is an indirect denial of justice to the people and this hits hard on the lowest of the low in the society. With the result the poor were losing faith in the capacity of legal system to bring about changes in their life conditions and to deliver justice to them. The law is regarded by the poor as something mysterious and forbidding always taking something away from them and not as a positive and constructive social device for changing the socio-economic order and improving their lot.”²⁶

The law of criminal procedure is a very vital area of study for lawyers. It is particularly so in democracies governed by rule of law. It is this law which determines the extent of personal liberty at the operational level. Indeed, the Constitution may declare general norms; but the actual parameters are determined by criminal procedure of law. The legal fraternity has, therefore, to be very vigilant in keeping a watch over the developments in this area so as to make it relevant and responsive to the needs of the people. The best way to keep a watch over the developments is to evaluate the case law produced by various high courts and the Supreme Court in the context of the fact situations presented in the numerous cases coming before them. Criminal Law system seeks to balance the individual freedoms and interests with the social or collective interests and thereby strives to ensure peace and tranquility.

²⁵ Jaytilak Guha Roy and Yatish Mishra, Indian Journal of Public Administration, 1995(41) 545.

²⁶ *Supra* note. 19.

The apex court of the land, on occasions more than one,²⁷ has stressed the need to ensure ‘fair trial’ and ‘fair administration of justice’ and cautioned, in unequivocal terms, that the criminal justice system will be at stake, if a criminal trial is not fair. Denial of fair trial, it wanted, will shake the confidence of the public in the criminal justice system, judicial fairness, and the rule of law.

In fact, the idea and ideal of ‘fair trial’ and ‘fair administration of criminal justice’ run through the whole of the Code. It not only lays down a comprehensive procedural paradigm of ‘fair trial’ and ‘fair administration of justice’ but also provides a set of ‘safeguards’ and ‘protections’ to the persons accused of committing crimes as well as victims thereof at every stage of the trial. Criminal law agencies are expected not only to keep on reminding themselves of these ideals but also to act for their achievement. Moreover, to make these ideals and ideas a reality, criminal courts, in general, and the higher judiciary, in particular, are vested with an armoury of vast supervisory and remedial powers.

The survey, based on judicial pronouncement of the various high courts and the Supreme Court of India reported during 2005, endeavors to take stock of the developments in the field of criminal procedure in relation to different segments of the criminal justice delivery system at different stages of a criminal trial

During the recent past a series of criminal proceedings relating to the *Best Bakery*²⁸ case have unfortunately revealed that our criminal law system can be manipulated by unscrupulous investigatory and prosecuting agencies to their advantage. An effective and vigilant judicial monitoring mechanism is further supplemented by the Constitution of India, is assigned to criminal courts, in general and the higher judiciary in particular.

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In fact, the idea and ideal of ‘fair trial and ‘fair administration of criminal justice’ run through the whole of the The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) (hereinafter the Code). It not only lays down a comprehensive procedure paradigm of ‘fair trial’ and ‘fair

²⁷ *Sri Jayendra Sarswathy Swamigal v. State of Tamil Nadu & Ors.*, 2005 Cr.L.J. 648 (SC).

²⁸ 2004 Cr.LJ 2050.

administration of justice' but also provides a set of safeguards and protections to the persons accused of criminal law agencies are expected not only to keep on reminding themselves of these ideals but also to act for their achievement. Moreover, to make these ideals a reality, criminal courts, in general and the higher judiciary, in particular are vested with an armoury of vast supervisory and remedial powers.

The position of law, it is regrettable to note, is such as generally helps those who abuse the processes of criminal laws. Such persons are adept at filing false criminal complaints in one court and more often than not in many courts, so that their adversaries have to run from court to court to answer to the complaints.

1.3 Criminal justice system

Criminal justice system in society, which is based on fixed principles, According to Salmond, even though is a remedy for evils, yet it is responsible for growth of evils, in spite of this it serves three very important purposes, namely:

1. Insures uniformity
2. Guarantors impartiality and
3. Represents the collective wisdom of the society.

The court of appeal in India, by their active participation in interpreting the law have not only made useful contribution to the stability of law but have also acted as a to lower courts.

“The Indian criminal law, being gift of British, is based on the colonial concept of jurisprudence. It is establishment oriented and pro elitist. It appears to be a little hostile to the poor and weaker sections of the society, such as women, children, physically, economically, and mentally handicapped groups, prisoners, religious and political dissenters, inhabitants of geographically remote regions, victims of crime and the like. It operates oppressively on them despite constitutional guarantees to the contrary.”

“The objective differences in social values and social behavior of various groups very often mean that the poorest and the least privileged in society bear a disproportionate share of socio-economic consequence of crime. There is also a status-gap between the judge and the judged. Perhaps, the socio-economic value and milieu of the court system is unfriendly to the poverty sector. Today in India a big smuggler, tax-evader, black-marketed through clever advocacy may get away with it with no imprisonment, while a poor man lives in the cage in tears because he has no tongue to explain his innocence. Pavement dwellers and palace hovers often fair differently in court, in prison and even after release. In other words, those who invade and wealth of the nation (i.e., white collar and socio-economic criminals) have still an upper hand as brave

law becomes soft justice and loopholes are their invariable luck”.²⁹

The crimes scenario in the country is distressingly disturbing and has shattered the genuine hopes of both the plebeian and intellectual society about the possible rejuvenation of the value-based society. The wisdom in the say ‘crime never pays is belied by the factual realities. The malignancy of criminalization has affected every sphere of social, economic, and political activity and there has been a consistent accelerated growth of crime believed to be encouraged by political patronage. The obvious and evident crime noticed and noticeable are flourishing unchecked and undetected resulting in the criminals going unpunished. The purported logic of salutary cannon ‘let hundred guilty go unpunished rather than one innocent is punished’ is perverted by undue and unwarranted over cautious implementation which a has resulted in allowing the obvious crimes and criminals going scot-free. The concomitance of the deep-rooted criminalization has manifested a situation giving criminals and their abettors a hold over the reins of administration directly or indirectly.

For the past three decades there has been a wild criticism levelled against ineffective and inadequate legislations to tackle the prevalent crime situation. The complexion, gravity and intensity of the crimes committed in the present-day order although may loosely fit into generic definitions of the various offences; the contours of the given definitions are hardly comprehensive enough to cover the enlarged facets, range, and intensity of the crimes. Synthesis of two or more distinct offences combining into one offence or a crime has become a changing phenomenon in the crime scenario. Exhaustive review of the definition of the crimes is required if need be. The definitions have to be remade to keep in time with the changed complexion and facets of the offences.³⁰

Conclusion

The criminal justice system is meant to protect society while simultaneously safeguarding the rights and liberties of individuals. However, the growing misuse of criminal law through false complaints, malicious prosecution, abuse of police powers, and procedural delays has weakened public confidence in the administration of justice. Such misuse not only causes harassment to innocent persons but also undermines the very purpose of law and fair trial.

The study highlights that abuse of process and malicious prosecution have become significant challenges within the modern criminal justice system. While courts possess inherent powers to

²⁹ K.D. Gaur, “*Poor victim of uses and Abuses of Criminal law and Process in India*”, *JILI* (35) 1993 183.

³⁰ K. Sreedhar Rao, “*Criminal Justice required reforms*”, *JILI* 43(2) 155.

prevent misuse of legal procedures and secure the ends of justice, these powers must be exercised effectively and cautiously. At the same time, investigative agencies, prosecutors, and judicial authorities must function with fairness, transparency, and accountability to ensure that criminal law is not used as a weapon of oppression or personal vengeance.

In conclusion, there is an urgent need to reform and modernize criminal laws and procedures in accordance with changing societal realities. Strengthening investigative mechanisms, ensuring speedy trials, protecting human rights, and maintaining judicial independence are essential for restoring faith in the justice system. A balanced and fair criminal justice system alone can ensure that justice is delivered not only to society but also to every individual subjected to the process of law.

