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THE INDIAN CRIMINAL PROCEDURE CODE: NEED FOR REVAMP AND ROLE OF TECHNOLOGY IN ASSISTING REVAMP

AUTHORED BY - ARK SHARMA

Abstract-

One of the most essential laws controlling Indian criminal law is the Code of Criminal Procedure (CrPC). But it is understandable that some CrPC provisions would now be viewed as outmoded given the evolving nature of crime and the complexity of contemporary society. This research study will look at how technology may be used to update the CrPC and address the demand for change. The CrPC was drafted with the intention of ensuring a just legal process that ensured justice, fairness and no harm on the innocent. It carefully laid down the method how the authorities should act and also the process of their actions, in relation with criminal law in India. However, the process in itself is a little slow and the machinery of justice moves even slower. The law in itself was drafted with the colonial India in mind of the makers. The modern India has moved ahead and thus its law must move forward too.

Sections of the CrPC that are in dire need of changes-

Section 41: Power to Arrest without Warrant

Section 41 of the Criminal Procedure Code (CrPC) provides for the power of the police to arrest a person without a warrant.

41. When police may arrest without warrant.—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person— 1 [(a) who commits, in the presence of a police officer, a cognizable offence; (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine¹

This section has been a subject of criticism for its misuse by the police, leading to arbitrary arrests and violations of fundamental rights. The provision of Section 41 is broad and gives wide

¹ Criminal Procedure Code, 1973, India

discretionary powers to the police to arrest an individual. According to this section, a police officer may arrest a person without a warrant if he has a reasonable suspicion that such person has committed an offense that is punishable with imprisonment for more than seven years. The provision also allows for the arrest of a person without a warrant if the police officer has a reasonable suspicion that such person is about to commit an offense that is punishable with imprisonment for more than seven years. One of the primary criticisms of Section 41 is that it gives vast discretion to the police officers to arrest a person without any credible evidence. The section has been widely misused, leading to the arrest of innocent individuals. The lack of guidelines and criteria for the arrest without a warrant has also led to arbitrary arrests by the police. Moreover, the provision of Section 41 is inconsistent with the constitutional principles of the presumption of innocence until proven guilty. The provision of arrest without a warrant has been seen as a violation of an individual's fundamental right to personal liberty and dignity. The Supreme Court of India has observed that the power of arrest without a warrant is an extraordinary power, which should be exercised only in exceptional cases. In 2014, the Supreme Court of India, in the case of *Arnesh Kumar vs. State of Bihar*, laid down guidelines for the police officers to follow before making an arrest without a warrant. The court held that before making an arrest without a warrant, the police officer must have credible information and reasonable suspicion that the accused has committed the offense. The court also directed the police officer to record the reasons for the arrest in writing and to inform the accused of the grounds for his arrest. However, despite the guidelines laid down by the Supreme Court, the misuse of Section 41 continues to be a cause of concern. The arbitrary arrests made under this section have been a significant cause of concern for human rights activists and legal experts. In conclusion, the provision of Section 41 of the CrPC gives vast discretionary powers to the police officers to arrest a person without any credible evidence. The lack of guidelines and criteria for arrest without a warrant has led to its misuse and violation of fundamental rights. The guidelines laid down by the Supreme Court in the case of *Arnesh Kumar vs. State of Bihar*² have provided some relief, but more needs to be done to ensure that the provision of arrest without a warrant is not misused by the police.

Recommended Change-

Section 41 of the CRPC provides for the power of the police to arrest a person without a warrant if he has reasonable grounds to believe that the person has committed a cognizable offense or is about to commit one. However, this power is often misused to harass and intimidate individuals,

² *Arnesh Kumar vs. State of Bihar*

particularly those belonging to marginalized communities. Therefore, the following changes could be considered:

1. Ensure that the power to arrest without a warrant is exercised only in exceptional circumstances and is subject to the principles of natural justice and the rule of law.
2. There is also a need to provide training to police officers on the proper exercise of power under Section 41. The police officers should be educated on the constitutional and legal provisions governing the power of arrest and the need to ensure that the power is not misused.
3. The introduction of technology can also help to streamline the process of arrest and reduce the scope for abuse of power. The use of body-worn cameras by police officers can provide a visual record of the circumstances leading to the arrest and can deter the police from making arbitrary arrests.

Section 167: Detention of Accused

Section 167 of the Criminal Procedure Code (CrPC) deals with the detention of accused persons during the investigation of a criminal case. This provision allows for the police to detain an accused person for a maximum period of 24 hours, after which he must be produced before a magistrate. If the investigation cannot be completed within 24 hours, the police may request for further detention, up to a maximum of 15 days in the case of an offense punishable with imprisonment of less than 10 years, and up to 90 days in the case of offenses punishable with imprisonment of 10 years or more.

167. Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is wellfounded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate. (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding

fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction³

However, the provision of detention under Section 167 has been criticized for its misuse by the police, leading to illegal detention, custodial torture, and violation of fundamental rights. There have been instances where the police have exceeded the maximum period of detention allowed under Section 167, leading to the violation of an accused person's right to a speedy trial and detention without trial. The lack of guidelines and criteria for the detention of an accused person has led to arbitrary and prolonged detention, often without sufficient evidence against the accused. Another significant criticism of Section 167 is that it violates an accused person's right to a speedy trial. The provision allows for the police to detain an accused person for up to 15 days or 90 days, which is a long period for a person to be detained without trial. The prolonged detention often leads to the violation of the accused person's right to a fair and speedy trial, as enshrined in the Indian Constitution. Moreover, the provision of detention under Section 167 has been criticized for its inconsistency with the international human rights standards. The United Nations Human Rights Committee has observed that the prolonged detention of accused persons without trial is a violation of their right to liberty and fair trial.

Recommended Change-

Section 167 of the CRPC provides for the detention of an accused person during the investigation or inquiry of a criminal case. However, this section has been misused to detain accused persons for prolonged periods without trial, leading to violations of their fundamental rights. Therefore, the following changes could be considered:

1. Provide for strict timelines for the completion of investigation or inquiry to ensure that the accused is not detained for prolonged periods without trial.
2. Ensure that the detention of an accused person is subject to the principles of natural justice and the rule of law.
3. Provide for a mechanism to challenge the detention of an accused person and to seek release on bail.

³ Criminal Procedure Code, 1973, India

Section 309: Power to Postpone or Adjourn Proceedings

Section 309 of the Criminal Procedure Code (CrPC) gives the power to the court to postpone or adjourn the proceedings in a criminal case. This provision allows the court to postpone the trial if the judge is satisfied that the adjournment is necessary for the proper and just disposal of the case. The court can also adjourn the proceedings if the accused is not present or is absent without sufficient cause.

309. Power to postpone or adjourn proceedings. —

1 [(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody⁴

However, the provision of postponement and adjournment has been criticized for its misuse by the judges, leading to the delay and denial of justice. There have been instances where the judges have used this provision to delay the proceedings or extend the trial unnecessarily, leading to prolonged detention and hardship for the accused. One of the primary criticisms of Section 309 is that it leads to the delay in the disposal of criminal cases, which results in the violation of an accused person's right to a speedy trial. The provision allows the court to adjourn the proceedings if the accused is absent or not present, leading to repeated adjournments and delay in the trial. Moreover, the provision of postponement and adjournment has been criticized for its inconsistency with the international human rights standards. The United Nations Human Rights Committee has observed that the delay in the trial leads to prolonged detention, which violates an accused person's right to liberty and fair trial. Another significant criticism of Section 309 is that it puts the burden of proof on the accused to show that the postponement or adjournment is not necessary. This provision creates an unfair burden on the accused and makes it difficult for them to challenge the delay in the trial. In 2017, the Supreme Court of India, in the case of Anil Rai vs. State of Bihar⁵, held that the power to adjourn the proceedings under Section 309 should

⁴ Ibid

⁵ Indian kanoon - search engine for Indian law Indian Kanoon, <https://indiankanoon.org/doc/1517737/> (last visited Apr 18, 2023)

be used judiciously and with caution. The court directed the trial courts to exercise the power to adjourn the proceedings only in exceptional circumstances and after considering the interests of both the accused and the prosecution. However, despite the guidelines laid down by the Supreme Court, the misuse of Section 309 continues to be a significant cause of concern. The unnecessary delay in the trial has been a significant cause of concern for human rights activists and legal experts.

Recommended Change-

Section 309 of the CRPC provides for the power of the court to postpone or adjourn the proceedings in a criminal case. However, this power is often used to delay the disposal of cases, leading to unnecessary delays and denial of justice. Therefore, the following changes could be considered:

1. Provide for strict timelines for the disposal of cases to ensure that the power to postpone or adjourn proceedings is not misused.
2. Ensure that the power to postpone or adjourn proceedings is exercised only in exceptional circumstances, and the reasons for the same are recorded in writing.
3. Provide for a mechanism to challenge the order of postponement or adjournment.

Section 357: Order to Pay Compensation

Section 357 of the Criminal Procedure Code (CrPC) empowers the court to order the convicted person to pay compensation to the victim or their legal heirs for any loss or injury suffered by them as a result of the crime committed. The provision aims to provide some relief to the victim and ensure that they are compensated for their losses.

357. Order to pay compensation. —(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied⁶

However, the provision of compensation has been criticized for its flaws and limitations. One of the primary criticisms of Section 357 is that it does not provide for a comprehensive mechanism for the compensation of victims. The amount of compensation awarded is often inadequate and

⁶ Criminal Procedure Code, 1973, India

does not cover the entire loss suffered by the victim. Moreover, the provision of compensation is limited to only certain crimes, such as hurt, grievous hurt, and death caused by negligence. The provision does not cover other crimes, such as rape, sexual assault, and acid attacks, which can cause severe physical and emotional trauma to the victim. Another significant criticism of Section 357 is that the compensation is often not paid by the convicted person. The provision does not provide for any mechanism to enforce the payment of compensation. As a result, the victim is left without any remedy, and the purpose of compensation is defeated. Furthermore, the provision of compensation is often misused by the courts to reduce the sentence of the convicted person. In some cases, the convicted person has been released from jail after paying compensation to the victim. This practice has been criticized as it undermines the importance of the punishment and the need for deterrence in criminal cases.

Recommended Change-

Section 357 of the CRPC provides for the power of the court to order the payment of compensation to the victim of a crime. However, the amount of compensation awarded is often inadequate and does not take into account the actual loss suffered by the victim. Therefore, the following changes could be considered:

1. Provide for a structured mechanism for determining the amount of compensation based on the actual loss suffered by the victim.
2. Provide for a mandatory requirement for the court to consider the payment of interim compensation to the victim during the pendency of the case.
3. Ensure that the payment of compensation is made a priority and is not delayed due to administrative inefficiencies.

Section 482: Saving of Inherent Powers of High Court

Section 482 of the Criminal Procedure Code (CrPC) provides the High Court with inherent powers to make orders that are necessary to give effect to any order passed under the CrPC, to prevent abuse of the process of the court, and to secure the ends of justice. This provision serves as a safeguard to protect the interests of justice, even in situations where there is no specific provision under the CrPC to deal with a particular situation.

482. *Saving of inherent powers of High Court.—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.*⁷

However, the inherent power of the High Court under Section 482 has been criticized for its potential misuse by the courts. There have been instances where the High Court has used its inherent power to quash criminal proceedings against accused persons without any justifiable reasons. This practice has been criticized as it undermines the sanctity of the criminal justice system and the importance of holding accused persons accountable for their actions. Moreover, the inherent power of the High Court under Section 482 has been used to interfere with the investigation and prosecution of criminal cases. In some cases, the High Court has stayed the investigation or trial of a case, leading to delays in the administration of justice. This practice has been criticized as it undermines the importance of timely justice delivery and the need to deter criminal activities. Another criticism of Section 482 is that it provides a wide and undefined scope for the High Court to exercise its inherent powers. The lack of clarity and definition of the scope of inherent powers has led to the arbitrary exercise of power by the courts. This has resulted in uncertainty and inconsistency in the administration of justice.

Recommended Change-

Section 482 of the CRPC provides for the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the CRPC, or to prevent abuse of the process of any court or to otherwise secure the ends of justice. However, this section has been used to bypass the normal legal process, leading to arbitrary decisions and abuse of power. Therefore, the following changes could be considered:

1. Limit the scope of the inherent powers of the High Court to only those situations where no specific provision exists under the CRPC or any other law.
2. Ensure that the use of inherent powers is subject to the principles of natural justice and the rule of law.
3. Provide for a mechanism to challenge the exercise of inherent powers by the High Court.

⁷ Criminal Procedure Code, 1973, India

General Changes needed in the CrPC

Apart from these sections, general changes that could be made to the CrPC can be-

- **Stricter Guidelines:** One way to refresh the sections of the CrPC is to include stricter guidelines for their application. The guidelines could include factors that would help in determining the situations when the sections can be applied. These guidelines could also ensure that the provisions are not misused by police officers or judges. For instance, Section 41 could be refreshed to include guidelines on the types of situations when arrest without a warrant is necessary, such as cases where the suspect is likely to flee the scene of the crime.
- **Time Limits:** Another way to refresh the sections of the CrPC is to include time limits for the different stages of criminal proceedings. For instance, Section 167 could be refreshed to include a time limit for the detention of an accused person, with regular reviews by a judicial officer to ensure that the detention is not arbitrary. This would ensure that the accused person is not held in detention for an extended period without trial.
- **Use of Technology:** The use of technology could also be used to refresh the sections of the CrPC. For instance, technology could be used to speed up the process of trial and ensure that the proceedings are fair. For instance, video conferencing could be used to take the testimony of a witness who is unable to appear in court. This would ensure that the proceedings are not unnecessarily delayed and that the witness's testimony is not lost due to their inability to appear in court.
- **Public Participation:** Another way to refresh the sections of the CrPC is to ensure public participation. This could be done by consulting with different stakeholders such as lawyers, judges, civil society organizations, and citizens. This would ensure that the provisions of the CrPC reflect the concerns and priorities of different groups. The input could be gathered through public forums, social media platforms, or other means of engagement.
- **Continuous Review:** The sections of the CrPC should be reviewed periodically to ensure that they are still relevant and effective. The review could be done by a committee of experts who could analyse the provisions and suggest changes where necessary. The review could also consider the experiences of other countries and international best practices. This would ensure that the CrPC remains up-to-date and responsive to the changing needs of society.

Role of Technology in Revamping the CrPC

While the CrPC has been amended over the years, there is still room for improvement in terms of streamlining the process and making it more efficient. One way to achieve this is through the use of technology. In this article, we will discuss the role of technology in streamlining the CrPC of India.

Electronic Case Management System (ECMS)

By simplifying the CrPC and making it easier to manage and supervise cases, implementing an electronic case management system is able to assist in its simplification. The Electronic Case Management System is a computer system that enables court staff to keep track of cases, manage documents and evidence as well as schedule hearings. The electronic court management system allows judicial officials to easily access case information, ensuring that all the necessary documents are in place. It may also help to reduce delays and ensure that cases are dealt with as soon as possible.

Video Conferencing

The use of video conferencing can help streamline the CrPC by making it easier for witnesses and other parties to participate in the trial process. With video conferencing, witnesses can provide testimony from remote locations, which can help save time and reduce the need for travel. This can be particularly useful in cases where witnesses are located in different parts of the country or in cases where witnesses are reluctant to travel.

Electronic Filing

Electronic filing is another technology that can help streamline the CrPC by allowing lawyers and other parties to file documents electronically. This can help reduce the need for physical filing and can make it easier for court officials to track and manage documents. Electronic filing can also help reduce the risk of lost or misplaced documents.

Courtroom Technology

The use of courtroom technology can also help streamline the CrPC by making it easier for judges and lawyers to present evidence and arguments. Courtroom technology can include tools such as document cameras, video displays, and audio equipment. These tools can help make the trial process more efficient and can help ensure that all parties have access to the same information.

Artificial Intelligence (AI)

Artificial intelligence (AI) can also play a role in streamlining the CrPC. AI can be used to analyze large volumes of data and identify patterns and trends that can help inform legal decisions. AI can also be used to automate certain tasks, such as document review, which can help reduce the workload of court officials.

Electronic Monitoring

Electronic monitoring is another technology that can help streamline the CrPC by allowing courts to monitor individuals who are on bail or parole. Electronic monitoring can include tools such as ankle bracelets or GPS tracking devices. These tools can help ensure that individuals comply with the conditions of their release and can reduce the risk of reoffending.

Online Legal Research

Online legal research tools can also help streamline the CrPC by making it easier for lawyers and other legal professionals to access legal information. Online legal research tools can provide access to legal databases, case law, and other legal resources. This can help reduce the time and effort required to conduct legal research and can help ensure that legal arguments are well-informed and well-supported.

In conclusion, technology can play a crucial role in streamlining the CrPC of India. By implementing electronic case management systems, video conferencing, electronic filing, courtroom technology, AI, electronic monitoring, and online legal research, the legal system can become more efficient and effective. These technologies can help reduce delays, improve access to information, and ensure that cases are resolved in a timely and fair manner.

Conclusion

In conclusion, the Code of Criminal Procedure (CrPC) is a crucial law that governs criminal proceedings in India. However, with the evolving nature of crime and the complexity of contemporary society, some of the provisions of the CrPC have become outdated and in need of reform. The use of technology can play a significant role in updating and modernizing the CrPC to ensure that it remains relevant and effective in maintaining law and order in the country. Through the incorporation of technology, the CrPC can become more efficient, transparent, and accountable, ensuring the protection of the people's rights and freedoms. The use of electronic

filing, electronic case management systems, and video conferencing can streamline the legal process and reduce the time and resources required for the administration of justice. Additionally, technology such as body-worn cameras and AI-powered tools can help to ensure that the police exercise their powers fairly and justly, without violating the fundamental rights of citizens. Overall, it is essential to recognize the need for change in the CrPC and to embrace the benefits of technology to improve the legal system. By doing so, the CrPC can continue to serve its purpose of ensuring a just legal process that upholds the rule of law, protects the rights of the accused, and delivers justice to the victims of crime.

