

Injustice in our Justice System

Injustice in Our Justice System: The Structure of Unjustified Laws Since Independence

Introduction

When India gained independence in 1947, it marked the end of nearly two centuries of colonial rule, oppression, and exploitation. The freedom movement had been built on ideals of liberty, equality, and justice. Our Constitution, adopted in 1950, promised a new era grounded in democracy and fundamental rights. However, even as we gained freedom, the **justice system we inherited remained deeply flawed**, continuing to reflect the **colonial mindset of control and domination**. Over the decades, instead of uprooting these unjust laws and institutions, many were allowed to remain—and worse, some were strengthened. This has led to a structure that often protects the powerful and punishes the vulnerable. Let's examine how this structure has been shaped and sustained since independence.

1. Colonial Hangovers in Indian Law

Many of the laws we continue to use today were drafted by the British—not to serve justice, but to maintain colonial control.

- **Sedition Law (Section 124A of IPC):** This law was introduced in 1870 to punish those who spoke against the British Empire. Even post-independence, it has been used to silence dissenters, journalists, and activists. Its vague wording allows authorities to label criticism of the government as "anti-national."
- **Police Act of 1861:** After the 1857 revolt, the British created a policing system not to protect citizens but to control them. This colonial-era law still governs police conduct today, resulting in a force that is often **authoritarian, politicized, and unaccountable**.
- **Criminal justice procedures:** The system still prioritizes punishment over rehabilitation. Bail is often a luxury only the rich can afford. This is reflective of a justice model that doesn't focus on human rights but on control and compliance.

2. Post-Independence Unjustified Laws

Even after 1947, India introduced new laws or retained old ones that continue to violate basic rights and disproportionately affect the marginalized.

- **AFSPA (Armed Forces Special Powers Act):** Enacted in 1958, this law gives the armed forces sweeping powers in "disturbed areas" like Jammu & Kashmir and the Northeast. It allows

arrest without a warrant and even shooting on suspicion. Despite thousands of allegations of human rights violations, the law provides **near-total impunity** to security forces.

- **UAPA (Unlawful Activities Prevention Act):** Touted as an anti-terror law, UAPA allows the government to arrest individuals **without trial for months**, based on vague suspicions. The conviction rate under UAPA is less than 3%, yet thousands, including students, activists, and journalists, have been jailed under it.
- **Section 377 IPC (until 2018):** This law criminalized homosexuality until it was finally struck down by the Supreme Court in 2018. For decades, it was used to **harass and persecute** the LGBTQ+ community.

3. Structural Issues in the Justice System

Even beyond individual laws, the **system as a whole is structurally unjust**, particularly for the poor and marginalized.

- **Undertrial Crisis:** More than 70% of people in Indian jails are undertrials—meaning they haven't been convicted of any crime. Many spend **years in jail without trial**, simply because they can't afford bail or legal representation.
- **Access to Justice:** Legal aid services are understaffed and underfunded. Lawyers and courts are often inaccessible to rural and economically backward populations. For the wealthy, justice can be bought. For the poor, it remains a distant dream.
- **Judicial Delays:** India has over **5 crore (50 million) pending cases**. Some people die waiting for justice. This delay benefits those with power, while the rest suffer in silence.

4. Bias in Enforcement and Judiciary

The justice system reflects the **deep-rooted inequalities of Indian society**.

- **Caste, religion, and class bias:** Studies and data consistently show that Dalits, Muslims, Adivasis, and the poor are **overrepresented in prisons** and are more likely to be arrested, denied bail, or convicted.
- **Selective application of laws:** Laws like sedition and UAPA are often **used selectively**—to target political opponents, dissenters, and minorities—while those in power often face no consequences, even for serious crimes.

5. Resistance and Reform Movements

Despite these challenges, **people have fought back**, and some change has been achieved through public pressure and legal action.

- **Public Interest Litigations (PILs):** These have been used to address social justice issues and environmental concerns, helping democratize access to the courts.
- **Judicial Activism:** In some landmark cases, the judiciary has stood up for rights—like decriminalizing homosexuality (*Navtej Singh Johar v. Union of India*), and striking down Section 497 IPC (criminalizing adultery).
- **Civil society and legal activists:** Organizations and individuals continue to work on prison reform, police accountability, and challenging draconian laws.

Seventy-five years after independence, we must ask: **Can justice truly exist in a system built on injustice?** The Constitution gave us a vision of equality, liberty, and justice for all. But the continued use of colonial-era laws, the creation of new unjust laws, and the structural barriers within the justice system betray that promise. It is time for a **deep, systemic reform**—not just to repeal outdated laws but to **reshape the entire justice system** into one that serves the people, protects the marginalized, and upholds the dignity of every individual.

India's legal landscape continues to grapple with the legacy of colonial-era laws, which many legal experts argue perpetuate systemic injustices. Notable figures within the judiciary have called for a comprehensive reevaluation and decolonization of the legal system to better align with India's democratic ideals and social realities.

1. Justice P.S. Narasimha: A Call for Decolonization

Supreme Court Justice P.S. Narasimha has been a vocal advocate for reexamining colonial-era laws and their interpretations. He emphasizes that over 70 years of independence have seen India suffer due to the continued application of these outdated laws. Justice Narasimha views the decolonization of laws as a constitutional mission, highlighting the need for a legal system that reflects India's unique societal and cultural context.

2. Chief Justice N.V. Ramana: Advocating for Indianization

Chief Justice N.V. Ramana has underscored the necessity of 'Indianizing' the legal system. He points out that the current judicial processes, rooted in colonial practices, often pose barriers to the common people. According to CJI Ramana, the legal system's colonial origins may not be best suited to the needs of the Indian population, advocating for reforms that make the justice system more accessible and relevant.

3. Justice S. Abdul Nazeer: Revisiting Ancient Jurisprudence

Justice S. Abdul Nazeer has proposed integrating ancient Indian jurisprudence into legal education. He suggests that studying the legal norms developed by figures like Manu, Kautilya, and Brihaspati could offer valuable insights. Justice Nazeer believes that such an approach would help in aligning the legal system with India's cultural and social heritage, moving away from the colonial mindset.

4. Justice Markandey Katju: Critique of Judicial System

Former Supreme Court Judge Markandey Katju has been critical of the Indian judiciary, describing it as "rotten to the core." He argues that the legal system often fails to deliver justice, particularly to the marginalized sections of society. Justice Katju's critiques highlight the need for substantial reforms to address systemic issues within the judiciary.

5. Ongoing Legal Reforms and Debates

Recent legislative efforts aim to address some of these concerns. For instance, the Indian government has proposed revisions to colonial-era laws, including the Indian Penal Code, to expedite judicial processes and enhance protections for women. However, these changes have sparked debates among legal experts. Critics argue that while the reforms are steps in the right direction, they may not be sufficient to overhaul the deeply entrenched colonial structures within the legal system.

The discourse among legal experts indicates a growing consensus on the need to reevaluate and reform India's legal system. While acknowledging the historical context of colonial laws, there is a collective call for a justice system that is more reflective of India's democratic values and diverse societal needs. The journey towards a decolonized legal system is complex, but it is essential for ensuring justice and equality for all citizens.

Social media has emerged as a powerful platform for public discourse and activism, particularly concerning the reform of colonial-era laws in India. These laws, such as sedition and Section 66A of the Information Technology Act, have been criticized for suppressing dissent and curbing freedom of expression. The digital realm has become a space where citizens, activists, and even international figures engage in debates and campaigns aimed at uprooting these outdated legal provisions.

1. Public Outcry and Hashtag Movements

The misuse of sedition laws has sparked widespread condemnation on social media platforms. For instance, in 2021, the Supreme Court of India labeled the sedition law as "colonial" and questioned its relevance post-independence. This judicial observation resonated with many online users,

leading to trending hashtags like #ScrapSeditionLaw and #JusticeForDissent. These movements highlight the public's demand for legal reforms that align with democratic values and human rights.

2. Activism Against Section 66A

Section 66A of the Information Technology Act, which penalized online posts deemed offensive or annoying, was widely criticized for its vague language and potential for misuse. In 2015, the Supreme Court struck down this provision, declaring it unconstitutional. Prior to this, activists like Aseem Trivedi and Alok Dixit initiated hunger strikes to protest against the law's oppressive nature. Their efforts, amplified through social media, played a pivotal role in raising awareness and mobilizing support for the cause.

3. International Solidarity

Global figures have also used social media to express solidarity with Indian activists. During the 2020–2021 farmers' protests, international celebrities like Rihanna and Greta Thunberg tweeted in support of the farmers, bringing global attention to the issue. Their involvement underscored the universal concern over the suppression of peaceful protests and the need for legal reforms that protect fundamental rights.

4. Calls for Comprehensive Legal Reform

While the repeal of specific laws like sedition and Section 66A is a step forward, activists and legal experts argue for a more comprehensive overhaul of colonial-era laws. Discussions on platforms like Twitter and Facebook often focus on the need to replace outdated legal frameworks with ones that reflect contemporary values of justice and equality. The ongoing debates emphasize the importance of a legal system that upholds democratic principles and protects citizens' rights.

5. Challenges and Government Response

Despite public demand for legal reforms, the government's response has been cautious. In 2023, the Law Commission proposed amendments to the sedition law, suggesting increased penalties, which was met with criticism from opposition parties and civil society groups. They argued that such changes would make the law more "draconian" and inconsistent with free speech.

Social media continues to serve as a vital tool for advocating legal reforms in India. Through online campaigns, public debates, and international solidarity, citizens are challenging colonial-era laws and pushing for a justice system that reflects the nation's democratic ethos. While progress has been made, the journey toward comprehensive legal reform is ongoing, with social media playing a crucial role in shaping public opinion and influencing policy decisions.

Beyond the commonly debated ones like **sedition (Section 124A)**, **AFSPA**, and **UAPA**, there are several other **laws and legal practices** in the Indian judiciary system that have been **heavily criticized for perpetuating injustice**, especially against the poor, minorities, and marginalized communities. Here's a breakdown of such laws and systemic practices:

Unjust Laws and Structural Injustices in the Indian Judicial System

India's judicial system continues to operate under several laws and practices that are widely criticized for enabling injustice, discrimination, and systemic bias. While the Constitution promises equality, liberty, and justice for all, many existing legal provisions contradict these ideals. Below is a detailed overview of some lesser-discussed but deeply problematic laws and practices.

1. Preventive Detention Laws (e.g., National Security Act, 1980)

Nature of the Law: The National Security Act (NSA) allows the government to detain individuals without formal charges or trial for up to 12 months if they are deemed a threat to national security or public order.

Concerns:

- The law undermines Article 21 of the Constitution, which guarantees the right to life and personal liberty.
- It gives excessive power to the executive and bypasses judicial oversight.
- It is often misused to silence dissent, including students, journalists, and activists.
- Detainees are denied the opportunity to defend themselves adequately, violating basic principles of natural justice.

2. Discretionary and Arbitrary Bail Provisions

Nature of the Problem: There is no consistent or codified framework for granting bail in India. Judges have broad discretion, and the criteria often vary from case to case.

Concerns:

- People from marginalized communities are more likely to be denied bail due to lack of legal representation or financial resources.
- Wealthier individuals with better legal teams are often granted bail quickly.
- Prolonged pre-trial detention leads to overcrowded prisons, with undertrials forming over 75% of the jail population.

- The process becomes the punishment, even without a conviction.

3. Death Penalty

Nature of the Law: India retains the death penalty for certain crimes under the “rarest of rare” doctrine.

Concerns:

- Studies show a disproportionate number of death row inmates are from economically weaker sections, Dalit, Adivasi, or Muslim communities.
- There are often errors in investigation, legal defense, and judicial discretion, leading to irreversible consequences.
- Many global human rights organizations have called for its abolition, citing its ineffectiveness as a deterrent and moral opposition to state-sanctioned execution.

4. Section 498A IPC – Cruelty Against Women

Nature of the Law: Section 498A criminalizes cruelty by a husband or his relatives against a woman.

Concerns:

- While it plays a vital role in protecting women from domestic abuse, the law has faced criticism for its potential misuse in family disputes.
- There have been calls for amending the law to include safeguards that prevent its abuse while ensuring protection for genuine victims.
- Critics argue that its misuse, though rare, has been used to delegitimize women's complaints of violence.

5. Personal Laws Based on Religion

Nature of the Law: India follows different personal laws for different religious communities in matters of marriage, divorce, inheritance, etc.

Concerns:

- Many personal laws are discriminatory, particularly against women. For example, inheritance rights under Muslim or Hindu personal laws have often treated women unfairly.
- There is no uniform application of laws on marriage, divorce, or custody, creating inequality.

- There have been longstanding demands for a Uniform Civil Code (UCC) to ensure gender justice and legal equality irrespective of religion.

6. Juvenile Justice (Care and Protection of Children) Act

Nature of the Law: The law was amended in 2015 to allow juveniles aged 16–18 to be tried as adults for heinous crimes.

Concerns:

- This shift goes against international child rights standards, such as those outlined in the UN Convention on the Rights of the Child.
- Critics argue it prioritizes punishment over rehabilitation and may criminalize youth who could otherwise be reintegrated into society.
- It risks disproportionately affecting juveniles from underprivileged backgrounds who may be involved in crime due to poverty or lack of opportunity.

7. Forest Rights Act (Implementation Failures)

Nature of the Law: The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, was enacted to recognize the land rights of indigenous communities.

Concerns:

- The law's implementation has been poor, with over 1.9 million forest dwellers rejected land rights across states.
- Many Adivasi communities have been evicted without due process.
- Bureaucratic apathy and resistance from forest departments and commercial interests have undermined the spirit of the law.

8. Anti-Conversion Laws

Nature of the Law: Several Indian states have enacted laws that regulate or prohibit religious conversions under the pretext of preventing “forced” or “fraudulent” conversions.

Concerns:

- These laws are vaguely worded and often criminalize voluntary conversions, especially in interfaith marriages.

- They have been used to harass minority communities and couples, particularly Muslims and Christians.
- Critics argue that such laws violate Article 25 of the Constitution, which guarantees freedom of religion and belief.

9. Section 295A of IPC – Offending Religious Sentiments

Nature of the Law: This section criminalizes deliberate acts intended to outrage religious feelings.

Concerns:

- The provision is broadly defined and frequently used to target artists, filmmakers, writers, and dissenters.
- It is often applied selectively, driven by political or religious group pressure.
- Critics say it chills free expression and fosters a culture of self-censorship.

10. Criminal Defamation – Sections 499 and 500 IPC

Nature of the Law: Defamation, including spoken or written statements that harm a person's reputation, is a criminal offense in India.

Concerns:

- Many democracies treat defamation as a civil matter, where monetary compensation is pursued instead of jail time.
- Criminal defamation is frequently used by the powerful to intimidate journalists, activists, and whistleblowers.
- The threat of imprisonment creates a chilling effect on free speech and public scrutiny of those in power.

Conclusion

While India's judiciary has played an important role in defending rights in many cases, the continued existence and misuse of certain laws show the need for **urgent structural reform**. These laws, whether remnants of colonial rule or poorly implemented modern statutes, often work against the very ideals of justice, equality, and liberty enshrined in the Constitution. Addressing these issues requires not just legislative changes but also judicial sensitivity, political will, and public pressure.