

In quest of a fairer justice system

There is always going to be conflict between two or more people, no matter how ideal (socially just) the society is. All kinds of efforts need to be made to reduce conflicts, but conflicts cannot be eliminated. In the following an effort has been made to reform our current judicial system that would be able to fairly determine whether a crime has indeed been committed and who the perpetrator is. Thereafter the question of appropriate retribution and the manner of doing so has to be dealt with. The following write up does not go into that (the retribution part), nor does it explore the norms and mores of a society wherein there will be less crimes, if not zero crime.

In case a conflict between two entities, a third party must intervene, otherwise law of jungle will prevail, the stronger will win, with no recourse to justice. The aggrieved (plaintiff) should be able to go to an agency, generally police or a lawyer or an investigating agency, and file an FIR (First Information Report). The FIR should be communicated to the alleged offending entity directly (if the offending entity is known) or to the police department.

Thereafter an investigation is launched to determine veracity of the FIR. The investigation is generally carried out by an IO (Investigation Officer) who is also from the department of police. This is where the case starts getting skewed -- assumption that the police is (at least in most cases), a neutral body. They are not. Hence the two entities involved in the case (the plaintiff and the accused), should be able to get investigators of their choice involved. A third IO should also be found as soon as possible, who may be acceptable by both parties (assuming that an alleged offender has been identified) to be a neutral IO. Soon a panel of judges too has to be empaneled consisting of a barrister to be hired by each of litigants, in whom the respective litigants have trust. Soon thereafter a third judge, or a group of judges (consisting of an odd number of them), too has to be found who may be acceptable to both parties to be neutral.

As soon as the three IOs submit their respective reports, if the judicial panel is ready, the trial may begin.

Crux of the matter seems to lie in the finding neutral entities to act as a neutral IO and a neutral judge(s). Can we do it via a process used to find supposedly neutral jurors, or something similar? If we had a panel of lawyers whose allegiance to various segments of the society is known via trust shown in them by those segments, the process of finding suitable IOs and judges by the litigants could be somewhat simplified. This is where an electoral system like list-PR (list-Proportional Representation) system of election could come handy. List-PR can also be very profitably used to elect individuals into police force. More about list-PR later.

It was suggested to me to look into the possibility of restorative justice being an alternative to current justice system. Personally, I think restorative justice may be brought into play after a crime has been adjudicated to be true, but before the sentence has been announced. The

defendant and/or the plaintiff may like to take recourse to restorative judicial process wherein the society too may get involved. But that may imply admission on the part of the defendant to having been, at least partly, responsible for the damage done to the plaintiff. If the defendant denies any wrong doing, how can we proceed to restorative part?

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