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Criminal Justice Reforms in India

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INTRODUCTION

India is the World's largest democracy. But unfortunately, over the period of the time its shine is diminishing because of defective criminal justice system. Therefore, we are in a critical juncture of time, there is need to again be rethought and reformulate the justice system to address the challenges of the present day. Because of strong spur in demand of justice. There are some lacunae which necessitate the development of various techniques & strategies that can be effectively incorporate into the policy framework.

Therefore, in order to better understanding of criminal justice system it is worth examining the object of the criminal justice system.

OBJECT OF THE CRIMINAL JUSTICE SYSTEM

The object of the criminal justice system is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The criminal trial does not mean only doing the justice with the accused but also with the victim and society. So that law and order is maintained. A judge does not preside over a criminal trial merely to see that no innocent man is punished, but also to see that the guilty man does not escape. Both are the public duty which the judge has to perform¹.

Hence, the courts should always try to maintain the public faith of the people in administration of the justice by ensuring the concept of the human rights in administration of the justice.

NEED TO REFORM IN CRIMINAL JUSTICE SYSTEM

¹ Justice Palok Basu, Law relating to protection of Human Rights under the Indian Constitution and allied laws, Allahabad: Modern Law publication, 2011.

In today's era, Change is constant but even in that changing phase of the society "criminal justice system" of India is yet to improve. These all are the reason of the lack of accountability, ineffective enforcement of the law, and delay in disposal of the cases, lack of trained police, an overburdened court system and Poor prison conditions.

These are all significant problems in the criminal justice system. In India, the administration of criminal justice system follows the Anglo Saxon- adversarial pattern it has three vital units, namely, a) Police b) Judiciary c) Prison

COMPONENTS OF THE CRIMINAL JUSTICE SYSTEM: PRESENT SCENARIO

I. *Police*

Police, being a front- line segment of the criminal justice system, have a very vital role in administration of justice. Therefore, understanding the criminal justice system is a prelude to understanding the police. Under Article 246 The Constitution of India places the police, public order, courts, prisons, reformatories, and other allied institutions in the State List². Now the next looming question towards is, that how to make accountable to police? Which is vital part of the Indian Criminal Justice system? Is following section of this article we will evaluate this problem.

Accountability of police

Indian police Act of 1861, is outdated law which, made in regime of the colonial system with the aim of suppressing the people. Unfortunately, instead of the continuous demand of The National Police Commission, Indian government is unwilling to do any change in this colonial law. Further, in the Police Act, 1861 there is no as such provision of the accountability of the police unlike in the UK, in which the Independent Police Complaints Commission (IPCC) supervises and investigates public complaints against the police and can take over the supervision or investigation of any complaints case³. Whereas in Indian Police Act Is lacking in this aspect. It can be clearly evident from the matters involving the atrocities of the police often come before the court some are as people, and not break the law themselves. If the protector becomes the

² Chenthilkumar Paramasivam, Police organization of India, Common Wealth Human Rights Initiative.

³ Maja Daruwala, G.P Joshi, and Mandeep Tiwana, Police Act, 1861: Why we need to replace it? COMMONWEALTH HUMAN RIGHTS INITIATIVE, July 2005. Available at. www.humanrightsinitiative.org/.../police/.

predator civilized society will cease to exist. As the Bible says, “If the salt has lost its flavor, wherewith shall it be follow:

Central Bureau of Investigation v. Kishore Singh and Others⁴

In instant case Hon’ble Justice Markandey Katju stated that, what should be done to policemen who “Bobbitt” a person in police station and think that they can get away it? That is the question decided in the case. Court held that in our opinion, policeman who commit criminal act deserve harsher punishment than other person who commit such act, because it is duty of the policemen to protect the salted?” Or as the ancient Roman used to say “who will guard the praetorian guards?” Hence, the police are supposed to protect the people and uphold the law, but if they themselves become criminals, then it’s a difficult task to ensure the protection of the human rights.

Mehboob Batcha and Others v. State represented by superintendent of police Judges Markandey Katju and Gyan Sudha Mishra⁵

In instant case Supreme Court held that, as murder by policemen in police custody is rarest of rare case. They deserve for death penalty and we give a warning to all country that this will not be tolerated. Further, court upheld that custodial violence in police custody is in violation of this court’s directive issued in ***D. K. Basu v. State of WB, A.S. Mohammed Rafi v. state of the Tamil Nadu***⁶

In instant case court granted 1.5 lakhs compensation to the victim for police custodial death. However, apart from the above cases, one of the most engrossing and passionately debate is the illegal and arbitrary arrest by police person. Therefore, it is, important to document, study and analyse some case laws in this regard.

Judiciary view on Arbitrary arrest and illegal detention

The power of the police to arrest is also often very grossly abused. This can be analyzed by following cases.

There are numbers of the cases where Apex Court directed various guidelines regarding the arrest for example in ***D.K Basu v. State of West Bengal***⁷ in instant case court streamlined the procedure relating to the arrest. Court reiterated in this case

⁴ (2011) 6 SCC 371.

⁵ (2011) 7 SCC 46.

⁶ (2011) 1 SCC 688.

⁷ (1998) 6 SCC 380.

that, protection from arbitrary arrest is flow from Article 21 and 22 (1) of the constitution and are to be enforced strictly. The Supreme Court in **Joginder Kumar v. State of the U.P.**⁸ has put clear restrictions on the powers of police to make arbitrary arrests.

The above cases are really, a path breaking judgments. Therefore, it is high time to look into the power of the President provided in Art. 372 (2)⁹ of the India Constitution. Which empower the President to amend the law in compliance with the Constitution?

II Judiciary

The judiciary has a very vital role in implementation of rule of law. The primary and most important duty of the courts is to protect and enforce the human rights, as well as provide the relief to the victim. Such duty and obligation is indispensable for a democratic country. The present criminal justice system in Indians courts is to give more attention to the accused and try to protect all his/her rights i.e. Presumption of the innocence, legal right against arrest, and double Jeopardy etc. no doubt accused are entitled of all these rights but now in changing situation, it is also expected from the courts focus upon the Victim as well as witness.

Role of the court during the criminal proceeding: Ensuring the humane condition of the investigation here the pertinent question is that, what should be the role of court in reformation of the criminal justice system? Because we already discussed that, it is the Judiciary which has a vital role in implementation of rule of law. Further, it is noticeable that, there are some provisions in legislation itself, the proper realization of which can bring the remarkable change in the field of the criminal justice system.

The analysis of such provisions dealt in the following section of the article.

Limitation on the power of the arrest

The Criminal Procedure Code, 1908 confers fairly extensive

⁸ (1994) 4 SCC 260.

⁹ Article 372(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

powers of the arrest mainly to the police in various Sections i.e Sec. 41, 42, and 151 of the code. There are number of the instances, which shown how the police officers are misusing this power? Therefore, the concept of the arrest procedure must be flow from Art. 21 and 22 of the Constitution of India. Hence, it is the duty of the magistrate to satisfy himself all the requirements of the arrest has been fulfilled. A new Section 436-A of the Cr.P.C. which deals with the “Maximum period for which an under trial prisoner can be detained”. The purpose of this Section is to ensure the human rights of the arrested person. Now it is up to on judiciary for full realization of this right. Moreover, court should also keep in mind the Section 310 of the Cr.P.C. this runs as follow:

“Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed.....inspection”

Therefore, it is clearly evident from the above Section that magistrate has an ample amount of power for proper realization of human rights at any stage of any inquiry¹⁰.

Limitation on the adjournment of the cases

Now a day the concept of the granting of the adjournment in cases became the rule instead of the exception. This is also one of the major factors of delay in disposal of the cases. However, there is express prohibition on adjournment more than three times (Order XVII, Rule1 of the Civil procedure code, 1908), but still in practice there is no serious concern about it. Therefore, all the courts should keep in mind all this provision to ensure the early disposal of the cases. The judge should be sensitize: There is need that Judges to take a more proactive role in the administration of justice.

They can use their discretion in the process where they found necessary in interest of justice. There are some judges who disqualify themselves from advancing the criminal justice system because they have old fashioned attitude. The old-fashioned judge looked to the letter of the statute and their believe is that, justice can only be done according to strict interpretation of the law. That is why judges should look out through the window in order to see the effects of their judgment on the ordinary men and women. Therefore, justice does not reside in the judge’s intellect only. It also resides in his heart. It is the

¹⁰ Hon’ble Justice Enoch dumbutshena (Zimbabwe), Role of the Judge in advancing Human rights, 1300, Heinonline, commonwealth law bulletin.

blending of the heart and the intellect that result in justice.¹⁰ Therefore now a day's criminal justice reform is a matter of the serious concern, and for effective enforcement of it activeness of judges is very much required. Due care and causation in case of the bail application and remand order

At the outset there is no hard and fast rules regarding the granting and refusing the bail. Each case should be decided in the light of their own facts. But it should be decided for judicious exercise of the discretion of the courts. In Cr.P.C Section 436 provides the law relating to bailable offences. Similarly, Sec. 437 dealing with non-bailable offences. Now it is the duty of the courts to take care of due caution and care when granting and denying the bail. Power to grant the Remand under Section 167 of the Cr.P.C. Magistrate is empowered to grant the remand either in

police or Judicial custody, for a period not exceeding fifteen days at a time (in case of police custody, only for initial fifteen days). Judicial authorization of detention amounts to curtailment of personal liberty and, therefore, due caution should be exercised while authorizing detention of an accused in police or judicial custody on production of the accused. Therefore, it is duty of the magistrate to examine the case diary as well as all the material fact before granting the order.

In the case of **Joginder Kumar v State of the UP**¹¹, there are some guidelines laid down by the courts: An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to take an interest in his welfare, told as far as is practicable that he has been arrested and where is being detained.

The police officer shall inform the arrested person when he is brought to the police station. The entry should be requiring to be made in the diary as to who was informed of the arrest. This protection from power must be held to flow from Art 21 and 22 of the Indian Constitution.

Nahar Sing Yadav and Another v. Union of India and others.¹²

In instant case court held that "a true and fair trial is sine qua non of Article 21 of the constitution. Therefore, it can be clearly documented from this case, that court should take care and

¹¹ AIR 1994 SC 1349.

¹² (2011) 1 SCC 307. Para 21.

caution at every step of the administration of the justice.

III. Prison

Violation of the right's of the prisoners:

The condition of the prisoners remained deplorable in the India. The law enforcement personnel were responsible for widespread violation of the human rights in including the arbitrary deprivation of the life in alleged encounters, deaths in custody and indiscriminate use of the firearms. According to the national crime records Bureau of the Government of the India, eight persons died in the custody and 42 civilian died in police firing during 2005. Besides, at least 87 persons were killed in alleged encounters between January and March 2005 alone, while the figure stood at 238 in 2004 and 214 in 2003.¹³ Therefore, it is the duty of all Courts to make regular visit as well as the surprise visit of the prison to ensure the human condition of the prisoners.

SUGGESTIONS

There are some suggestions which are very essential to ensure the criminal Justice Reform i.e. There is need of periodical inspection of Courts. At present there are numbers of cases pending in the courts and unfortunately, there is no authentic data in this regard and moreover, Supreme Court and High Courts do not publish any annual administration report in reference to the pendency of the cases. Now the another lacunae is sanction of the government (Sec.197) before prosecuting the public servant in Section 166 of the I.P.C. it creates a great hindrance in exercise of the power under section 166 of the Indian penal code. Therefore, its need to be withdrawn.

Even National police Commission 1979-1981 in its 8th Report recommend the withdrawal of Sec. 132, 197 of the Cr.P.C. It is the travesty that most of the law existing today are outdated, it is seen that the punishment prescribed under the laws are as nominal and paltry as not to have any impact on the crime situation. The Police Act, 1861 is example of it. The cases must be assigned according to the specialization of person. It also recommended by the Malimath Committee (24th November 2000) that assigning cases without considering specialization result in delay in deciding the cases.

There is need to reduce the political influence because, the Police Act, 1861 vests the superintendence of the police directly in the hands of the political executive i.e the state government. At the present time, the Head of Police (Director General/ Inspector

General) enjoys her/his tenure at the pleasure of the Chief Minister. he/she may be removed from the post at any time without assigning any reasons. Such a state of affairs has resulted in wide-spread politicization of the police.