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CRIMINAL JUSTICE IN INDIA

By

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INTRODUCTION

The basic requirement of law is that it should correspond with the actual feelings and demands of the society. The criminal law should fulfill this requirement. If the people would gratify the passion of revenge outside of the law, as happened openly, if the law did not help them, the law has no choice but to satisfy the craving itself and thus avoid the greater evil of private retribution. The main object of criminal law have been to deter the people by threat from doing certain acts. Because it was recognised principle of criminal justice that there was a mystic bonds between wrongs and punishments.

With a view to provide a criminal justice to the community, Indian Penal Code and Criminal Procedure Code was framed by the Britishers but the Indian Penal Code and other procedural laws which were drafted one forty years ago, are not providing criminal justice in real sense. In fact it does not correspond with the actual feelings and demands of the community because it provides only punishment to the wrong-doers. There is nothing in whole the Indian Penal Code or other criminal laws which deal with the relief to the real victim of the crime. Even top most Jurists, though, talk about the reforming of the criminals but they never talk about the feelings and demands of the victim of the crime or the society. Not only this the procedural system of the criminal cases is not satisfactory and proper. The punishment provided for the crime are not also satisfactory in the present

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prevailing social circumstances. The punishment provided in criminal laws mainly aim to prevent or retribute the criminals. The justice should be done in consonance with the feelings of the society since vox populi vox Dei. The following issues may be considered to provide true criminal justice to the community:

1. PROCEDURE RELATING TO INVESTIGATION -

The present system of administration of criminal Justice is not effective at all. The main purpose of investigation is to bring the real culprit to the book. If the investigation is honest, instantaneous and effective, then most of the avenues to corruption would be closed. Unfortunately there is only one agency working in India i.e. police, which lodges the report, arrest the offenders, investigate the matters, prosecute the offenders and also maintain the law and order in the society. This investigating agency is highly overloading which generally results in the harrassment of the innocent people. The innocent people are arrested under suspicion, put behind the bars, and harassed.

2. FREE LEGAL AID TO THE POOREST AT ALL THE LEVELS:

Free legal services to the poor and the needy is an essential element of any reasonable, fair and just procedure. Where a person accused of case has not sufficient means to engage pleaders to defend himself, legal aid must be given to such person at the expense of the state. In *Hussainara Khatoon v. State of Bihar*, 1979 Cri. L.J. 1045 in para 6, the Supreme Court observed: "Now a procedure which does not make available legal service to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot possibly be regarded as reasonable, fair and just."

Article 39A of the Constitution of India provides constitutional directive relating to free-legal aid. The provisions relating to pre-legal aid at the expense of the State has also been provided in Section 304 of the Criminal Procedure Code. But sub-section (1) to section 304 of Criminal Procedure Code provides legal aid to the poorest accused persons at the expense of the state only in a trial before the court of sessions. If a case is pending before the Magistrate, and the accused has not sufficient means to engage a pleader to defend himself then there is nothing in the code to provide free legal aid to such accused persons and justice is denied to such persons due to their poverty. Though clause 3 of Section 304 of Criminal

Procedure Code authorises the State Governments to notify that the provisions of sub-section (1) of Section 304 of Criminal Procedure Code shall apply in relation to any class of trial before other courts in the state as they apply in relation to trials before the court of sessions, but nothing has been done so far in this regard. Practically, the right of the poor accused to avail of the free legal aid has been recognised in a very limited number of cases. Not only this, even this legal aid is available only after the completion of the two important stages of a criminal case i.e. investigation and inquiry. Indigence should never be a ground for denying fair trial or equal justice.

3. SPEEDY JUSTICE:

It is a nomen generalissimum principle of law that "delay defeats justice" and "Justice delayed, Justice denied". In our country the trials begin normally 3 or 4 years after the commission of the crime and generally it takes a year or two or even several years and even then trials are not concluded. Imagine what will be the position of Human memory after 3 or 4 years of the incident as far as that incident is concerned. Section 468 of the Code of Criminal Procedure provides period of limitations and creates a bar to taking cognizance after lapse of period of limitation. But no period of limitation has been provided for the conclusion of the trial. Recently in a case *Shyam Sunder Sharma and others v. State of Uttar Pradesh and others* reported in 1982 Allahabad Criminal Rulings page 391, no progress in the case took place for seven years after submission of the charge-sheet. Hearings of the case were adjourned without rhyme or reasons. Such state of affairs in criminal courts was condemned by Justice S.J. Hyder in strong words. He observed that "the object of the law or procedure is to attain justice for the person who seeks it. Procedure departs from the course set forth for it if instead of facilitating justice, it tends to obstruct it or is allowed to be used as an instrument of personal vendetta and operation". In *Huseinara Khatun v. Home Secretary, State of Bihar, Patna, 1979 Cr. L.J. 1036*, the Hon'ble Supreme Court observed "a procedure proscribed by law for depriving a person of his liberty cannot be reasonable, fair or just, unless that procedure ensures a speedy trial for determination of guilt of such person. No procedure which does not ensure a reasonable quick trial can be regarded as reasonable, fair or just and it would fall foul of Article 21. There can, therefore, be no doubt

that speedy trial and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of fundamental right to life and liberty enshrined in Art.21".

A procedure which keeps a large number of people behind the bars without trial so long cannot possibly be regarded as reasonable, just or fair. It is necessary that the law as enacted by the Legislature and as administered by the courts must radically change its approach to pre-trial detention and ensure reasonable, just and fair procedure.

4. COMPENSATION TO THE VICTIM OF THE CRIME:

The present legal system defends the society from the criminal behaviours, by punishing them for the crime committed by them. But the present legal system does not compensate the real victim of the crime in any way. Imagine where the head of family, who is the only earning member, is murdered, the murderer may be punished with imprisonment for life or death sentence, but what sort of compensation is given to the poor family of the deceased. In certain countries, for example United States Bureau of Prisons, "works camps" for large number of prisoners have been introduced for certain offences where the offenders after conviction work, earn and pay for the loss caused to the victim or the society due to their offensive acts. In our country too, the Indian Penal Code (Amendment) Bill, 1972 is under consideration. Joint Committee of Rajya Sabha and Lok Sabha members considering this bill has recommended certain types of punishment. Instead of awarding short terms imprisonment for offences punishable with less than 3 years imprisonment the bill has introduced a new punishment of community service. According to the bill introduced such sort of punishment can be awarded to the offenders of more than 18 years of age. Sec. 250 of the Code of Criminal Procedure provides compensation for accusation without reasonable cause. But there is no provision for providing compensation to the real victim of the crime when accusation is found true. This bill has also suggested introduction of a new form of punishment viz. "Disqualification from holding office. Offenders holding office as a director or manager of a company or as a public servant, when convicted for any offence committed in connection with the affair of the company or with his office as public servant can be sentenced to disqualification from holding such office any where for a period upto 5 years in addition to any other punishment imposed by law. Therefore, the suggestion proposed is that the penalty of fine must be the

essential punishment for all the crimes in addition to the punishment of imprisonment. And the fine recovered from the convicted person should be given to the real victim of the crime immediately.

5. PUNISHMENT FOR THE JUVENIALS DELINQUENTS:

Presently the Juvenial delinquents are placed in jail with hardened criminals. At present the jails are not proper place to reform them. The Juvenile offender when comes out from the jail becomes a hardened criminals.

SUGGESTIONS

In the light of the foregoing discussion the following issues and suggestions may be considered to provide true and speedy legal criminal justice to the community.

1. There should be two independent agencies firstly to maintain law and orders and secondly to investigate the matter. The investigating agency should consist of specialized investigators and it should be headed by a Magistrate. As soon as an information of the commission of any type of offence is lodged, the investigating agency alongwith Magistrate should immediately go to the spot and investigate the crime. The arrest should be made only when it is investigated that such and such persons has committed the offence. In this way only real culprits will be arrested and the harassment of innocent people may be avoided. This would also prevent wrong conviction which it can not be denied, do some times arrives. The witnesses examined by the Magistrate at the spot at the initial stage can also be checked from going back to their statements which they have made before the Magistrate. The Magistrate would enjoy the legal evidence for those statements. In this way the cause of justice would be materially served.

2. As stated above, the right of the poor accused to avail of the free legal aid has been recognised in a very limited number of cases and even after the completion of the two important cases of the criminal case i.e. investigation and inquiry, the proposed suggestion is that the free legal aid to such accused who has not sufficient means, must be provided at the expense of the state in all class of trials before other courts also

as provided before the court of sessions. The right of the accused to be dependent by the pleader of his own choice should commence from the time of his arrest or as soon as the criminal proceedings are instituted against him.

3. The period of limitation for conclusion of the trial should also be provided so that justice should not be denied.

4. The penalty of fine must be the essential punishment for all the crimes in addition to the punishment of imprisonment. And the fine recovered from the convicted person should be given to the real victim of the crime immediately. Secondly the wages of labour in jail should be equivalent to the general market wages and the 50% of the total income of the labour put by convicted person in jail should be given to the real victim of the crime or his family periodically till that family of the victim of crime establishes itself. The punishment should be provided to such convicted persons who are failure to get to work or who are indifferent to work. If the convicted person is to put under technical labour then training for certain periods should be given to him so that the labour put by him may be cashed in the open market at the general rate. At this point it may be interjected that by substituting the death penalty with life imprisonment, the society may enable a wrong doer to help rehabilitation of the victim family by doing labour and creating a source of compensation to the family of the deceased. This will have deterrent effect as well as reformatory. Because when a liability to maintain the family of the victim of the crime shall be imposed on the shoulder of the convict he will think about the society. He will realise that if he commits a crime, he will have to share the burden of maintaining the society also. In the present system the convicted person does not feel any sort of social responsibility. And after being released from the jail, his place in the society is just like a big boss. So the present prevailing approaches of punishment does not make him socially responsible. At this stage he flouts the norms of behaviour of the society, and the moral obligations more vehemently because he gathers more impressions that people around him listen to his voice of command more liberally. Therefore, the punishment should be such a nature which may compel him to feel social responsibility, and also the real victim of the crime be properly redressed.

5. There should be different jails in form or reformatory schools where the juvenial offenders below 18 years of age should be kept. They should be provided proper technical trainings, during the period of their jail, so that when they come out from the jail they may be good citizens instead of hardened criminals.

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