



INTERNATIONAL HUMAN RIGHTS ADVISORY COUNCIL

(A Human Rights Advisory Wing Of All India Council Of Human Rights, Liberties And Social Justice)
(MEMBER OF UNITED NATION GLOBAL COMPACT)

Criminal Justice Movement (CJM)

In India only about 16 out of 100 people booked for criminal offences are finally convicted. Low rate of conviction points to the inefficiency of the Criminal Justice System of India – which includes the police, prosecutors, and the judiciary.

This results in a big problem of people losing faith in the Criminal Justice System of India – which is very dangerous. Criminal Justice refers to the agencies of government charged with enforcing law, adjudicating crime, and correcting criminal conduct. The criminal justice system is essentially an instrument of social control: society considers some behaviours so dangerous and destructive that it either strictly controls their occurrence or outlaws them outright. It is the job of the agencies of justice to prevent these behaviours by apprehending and punishing transgressors or deterring their future occurrence. Although society maintains other forms of social control, such as the family, school, and church, they are designed to deal with moral, not legal, misbehaviour. Only the criminal justice system has the power to control crime and punish criminals.

Two central philosophies anchor the commonly accepted notion of criminal justice. The first is a zealous requirement for increased conviction rates. The second is the perception that those people in prison deserve punishment rather than rehabilitation. Both of these philosophies have especially grave consequences for the poor and marginalized. In this context, the Criminal Justice Initiative provides pro bono and low cost legal aid service to undertrials and convicted prisoners who are unable to pay for their legal representation. Our work is to defend civil liberties and to create a more humane criminal justice system. The emphasis is on greater access to justice for the poor, workers, disabled, aged, sick, tribal, women, dalit, juveniles and other minorities.

So, the main objectives of the criminal justice system can be categorized as follows:

- # To prevent the occurrence of crime.
- # To punish the transgressors and the criminals.
- # To rehabilitate the transgressors and the criminals.
- # To compensate the victims as far as possible.
- # To maintain law and order in the society.
- # To deter the offenders from committing any criminal act in the future.

WHAT WE DO?

- The Criminal Justice System (CJS) includes the institutions/agencies and processes established by a government to control crime in the country. This includes components like police and courts.
- The aim of the Criminal Justice System (CJS) is to protect the rights and personal liberty of individuals and the society against its invasion by others.

One of our main focus areas is work inside the prison, as we believe in corrections via jails and prisons, which can only be understood by reviewing prison conditions and capital punishment laws. We work with progressive prison administrators and police personnel to set up legal aid clinics in prisons with the objective of representing indigent undertrials. We have initiated to be instrumental in setting up a legal aid mechanism for prisoners . AICHLS strongly believes in the abolition of the death penalty.

ISSUES OF CONCERN

- Prison Conditions
- Practice of Death Penalty
- Legislative, Executive and Judicial Expansion of Police Powers

MAJOR IMPACTS AND CONCERN

We have represented the poor and marginalized and have highlighted that a large number of prisoners are kept in prisons without being produced in the courts on the dates fixed for their trial or in connection with remand. (See: Rajendra Bidkar and Ors Vs. The State of Maharashtra)

Our team is at the forefront in regard to its reform work in prisons, playing a pivotal role in implementation of the Mulla Committee recommendations and the DK Basu guidelines layed down by the Supreme Court. Strongly



INTERNATIONAL HUMAN RIGHTS ADVISORY COUNCIL

(A Human Rights Advisory Wing Of All India Council Of Human Rights, Liberties And Social Justice)
(MEMBER OF UNITED NATION GLOBAL COMPACT)

condemning custodial torture and violence. However, statistics still demonstrate that 80% of India's prison inmates are undertrials and much remains to be done to improve the criminal justice system of the country, sources (NCRB)

“The use of extra-judicial means pervades every facet of the criminal justice system in every Indian state, remaining an enduring legacy and everyday reality for millions of citizens. Instead of introducing reforms in the prevailing justice system and ensuring basic protection of the rights of the poor and minority groups, the government, aided by popular media, is calling for more stringent and oppressive laws.”

OUR SUGGESTIONS

Criminal Justice System in India requires a strong second look.

The criminal investigation system needs higher standards of professionalism and it should be provided adequate logistic and technological support. Serious offences should be classified for purpose of specialized investigation by specially selected, trained and experienced investigators. They should not be burdened with other duties like security, maintenance of law and order etc., and should be entrusted exclusively with investigation of serious offences.

The number of Forensic Science Institutions with modern technologies such as DNA fingerprinting technology should be enhanced. The system of plea-bargaining (as recommended by the Law Commission of India in its Report) should be introduced as part of the process of decriminalization.

The greatest asset of the police in investigation of crimes and maintenance of law and order is the confidence of the people. Today, such public confidence is at the lowest ebb. The police are increasingly losing the benefit of this asset of public confidence. Hard intelligence in investigations comes from public cooperation. If police are seen as violators of law themselves or if they abuse their powers for intimidation and extortion, public develop an attitude of revulsion and the onerous duties and responsibilities that the police shoulder become more onerous and difficult.

In order that citizen's confidence in the police administration is enhanced, the police administration in the districts should periodically review the statistics of all the arrests made by the police in the district and see as to in how many of the cases in which arrests were made culminated in the filing of charge-sheets in the court and how many of the arrests were ultimately turned out to be unnecessary. This review will check the tendency of unnecessary arrests. Some statistics indicate that in some districts in the country, nearly 80% of the arrests were made in respect of bailable offences.

The legal services authorities in the States should set up committees with the participation of civil society for bringing the accused and the victims together to work out compounding of offences.

Criminal laws: laws related to Indian penal code, evidence act etc is discussed here

Of late, the relevance of our criminal justice system- both substantive and procedural- a replica of the British colonial jurisprudence, is being seriously questioned. Perhaps the criminal judicial system is based on the laws that are arbitrary and operate to the disadvantages of the poor. They have always come across as law for the poor rather than law of the poor. It operates on the weaker sections of the community, notwithstanding constitutional guarantee to the contrary.

There are hardly any people to advocate for the new laws to help the poor, there are practically none to pressurize the government and the legislature to amend the laws to protect the weak and the poor. Even after five decades of independence, no serious efforts have been made to redraft penal norms, radicalize punitive processes, humanize prison houses and make anti-social and anti-national criminals etc. incapable of escaping the legal coils.

The criminal justice system is cumbersome, expensive and cumulatively disastrous. The poor can never reach the temple of justice because of heavy costs involved in gaining access and the mystique of legal ethos. The hierarchy of courts, with appeals after appeals, puts legal justice beyond the reach of the poor. Making the legal process costlier is an indirect denial of justice to the people and this hits hard on the lowest of the low in society. In fact, the legal system has lost its credibility for the weaker section of the community.



INTERNATIONAL HUMAN RIGHTS ADVISORY COUNCIL

(A Human Rights Advisory Wing Of All India Council Of Human Rights, Liberties And Social Justice)
(MEMBER OF UNITED NATION GLOBAL COMPACT)

Of course, the judiciary in recent years has taken a lead and has come forward with a helping hand to give some relief to the victims of criminal justice in a limited way.

Some of the recent developments that have taken place during the last few years in our judicial delivery system to seek redress and accord justice to the poor are worth mentioning. The importance of these developments to the delivery system of justice can't be ignored. They have revolutionized our judicial jurisprudence and will go a long way in giving relief to the large masses and the common man.

In view of the importance of the subject matter, it is proposed to explain in brief some of the important areas of the criminal justice system that have attracted the attention of the courts in recent years. These are:

1. Public interest litigation.
2. Bail justice jurisprudence.
3. Prison justice.
4. Compensation to the victims.
5. Legal aid and legal services.

PUBLIC INTEREST LITIGATION

Public interest has its origin in the United States. It was during the 1960s that public interest litigation emerges as a part of the legal aid movement primarily aimed at protecting the rights of the weaker sections of the community, such as the women, children, physically and mentally handicapped and the like.

In India during the last few years, a new wave of public interest litigation has struck the courts. It is being argued in some quarters that public interest litigation has opened a floodgate of litigation and by such action, the Indian judiciary seems to be projecting itself as the upholder of the freedom of people.

This over act of the judiciary is regarded as nothing but interference in the action of the executive, which is making a good and effective government impossible. It is pointed out that the judiciary might collide head on with the other organs of the State-the executive and the legislature- in which event, being the weakest, it would collapse.

Bail Justice System

Bail is a generic term used to mean judicial release from custodia legis. The right to bail- the right to be released from jail in a criminal case, after furnishing sufficient security and bond- has been recognized in every civilized society as a fundamental aspect of human rights. This is based on the principle that the object of a criminal proceeding is to secure the presence of the accused charged of a crime at the time of the inquiry, trial and investigation before the court, and to ensure the availability of the accused to serve the sentence, if convicted. It would be unjust and unfair to deprive a person of his freedom and liberty and keep him in confinement, if his presence in the court, whenever required for trial, is assured.

Prison Justice

Justice delayed is justice denied. This is more so in criminal cases where the liberty of an individual is at stake and in jeopardy. The irony of fate is that in all such cases, it is the poor and the weak who are the victims of the criminal justice system, and not the rich who are able to get away.

The plight of undertrial prisoners for the first time came to the notice of the Supreme Court of India in the landmark case of **Hussainara Khatoon v. State of Bihar** in 1979, wherein it was disclosed that thousands of undertrial prisoners were languishing in various jails in the State of Bihar for periods longer than the maximum term for which they could have been sentenced, if convicted. While granting a character of freedom for undertrials who had virtually spent their period of sentences, the court said their detention was clearly illegal and was in violation of their fundamental rights guaranteed under Art.21 of the Constitution of India. The court further said that speedy trial is a constitutional mandate and the State can't avoid its constitutional mandate and its constitutional obligation by pleading financial or administrative inability.

In Sanjay Suri, a trainee newspaper reporter initiated a public interest litigation by moving a writ petition in the Supreme Court of India to gather information about seven juvenile prisoners locked up in Tihar Jail, Delhi, whose



INTERNATIONAL HUMAN RIGHTS ADVISORY COUNCIL

(A Human Rights Advisory Wing Of All India Council Of Human Rights, Liberties And Social Justice)

(MEMBER OF UNITED NATION GLOBAL COMPACT)

conditions were reported miserable. The Court, after getting a thorough investigation conducted of the matter, came to know that the prisoners were living in pathetic conditions in prison and there was overcrowding in jail. The court accordingly issued a number of directions to the jail administration under the provisions of the Indian Prison Act, 1884 to undertake corrective measures, so that the prisoner could be provided with facilities available under the law and were not put to harassment and inhuman torture.

There is however, hardly any change in the condition of the jails and the attitude of the jail administration, and in spite of constitutional mandate for speedy trial, there are over two lakh prisoners, convicts and undertrials who are endlessly awaiting an early hearing of their cases.

It may be noted that the liberal remissions and grant of frequent paroles to the prisoners to spend time with their families would help to inculcate self confidence in prisoners and reduce the intensity of some of the prison vices.

As Kuldeep Singh and B.L. Hansaria, JJ said:

Unless there is introspection the part of all concerned with the criminal justice system, issues relating to jail reforms, improvement in the prisoner's condition, and better administration of justice will continue to remain on paper. It is possible to reduce the backlog of criminal cases if the judiciary and lawyers together resolve to refrain from unnecessary and repeated adjournment.

Compensation to Victims of Crime

Criminal law, which reflects the social ambitions and norms of the society, is designed to punish as well as to reform the criminals, but it hardly takes any notice of by product of crime- i.e. its victim.

The poor victims of crime are entirely overlooked in misplaced sympathy for the criminal. The guilty man is lodged, fed, clothed, warmed, lighted, and entertained in a model cell at the expense of the state, from the taxes that the victim pays to the treasury. And, the victim, instead of being looked after, is contributing towards the care of prisoners during his stay in the prison. In fact, it is a weakness of our criminal jurisprudence that the victims of crime don't attract due attention.

The code of criminal procedure, 1973, sec.357 and Probation of Offenders Act, 1958, sec.5; empowers the court to provide compensation to the victims of crime. However it is noted with regret that the courts seldom resort to exercising their powers liberally. Perhaps taking note of the indifferent attitude of the subordinate courts, the apex court in Hari Krishan, directed the attention of all courts to exercise the provisions under sec.357 of the Cr.P.C. liberally and award adequate compensation to the victim, particularly when an accused is released on admonition, probation or when the parties enter into a compromise.

No doubt in recent years, the Supreme Court and High Courts by invoking Art.21 of the Constitution have tried to give some compensatory relief to the poor victims of illegal detention at the hands of the executive. Such cases are, however, numbered and are not going to solve the malady.

COMPILED BY : DR ANTHONY RAJU