



CONSTITUTIONAL VISION OF CRIMINAL JUSTICE

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INTRODUCTION

I. Constitutionalisation of Criminal Procedure

II. Investigation

III. Law & Arrest

IV. Legal Aid

IMAGES OF CRIME AND CRIMINAL



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"Say what you will about a life of crime, it's one of the few remaining career choices with a recession-proof retirement plan that's immune to the whims of the stock market!"



"If you haven't done anything wrong, why did you hire a lawyer?"



I. CONSTITUTIONALISATION OF CRIMINAL PROCEDURE

- ◆ Supremacy of the Constitution
- ◆ Sanctity of the fundamental rights. The golden triangle- Art. 14, 19 and 21.
- ◆ Fair trial and respect to right to life
- ◆ Positive obligation on Criminal Justice functionaries.
- ◆ Shifted judicial focus to the plight of the poor.

APPROACHES AND PERSPECTIVES



GREAT news!!
Our appeal
successfully reduced
your six life terms
to one.



- Constitutionalization of CrPC:
 - ☐ Crime control Vs. Due process of Law: Liberty Vs. Public Order
 - ☐ Fundamental Rights of under trial/convicted prisoners
 - ☐ Gender/Class/Caste dimensions.
- Victim Centric Concept:
 - ☐ Restorative Justice



BASIC CONSIDERATIONS of Cr.PC, 1973

- ◆ Just, fair and reasonable trial including investigation, post trial including appeal.
- ◆ Avoid delay in investigation and trial;
- ◆ Fair deal to the poor and the marginalized communities.
- ◆ Bail is a rule and jail is an exception.
- ◆ Sentence hearing.
- ◆ Zero tolerance to torture or cruel and inhuman and degrading treatment.



FUNCTIONARIES OF CRIMINAL PROCEDURE:

- ◆ Police;
- ◆ Prosecutor;
- ◆ Defense Counsel;
- ◆ Prison Official;
- ◆ Probation Officers;
- ◆ Legal Aid Authority.



II. INVESTIGATION

Lalita Kumari (SC, 2013) Discretion in registering of FIR:

- ◆ Lalita Kumari was a minor girl who was kidnapped and her father filed a habeas corpus petition in the Supreme Court.
- ◆ He submitted a written report to the police but no action was taken. An FIR was filed only after the matter reached the superintendent of police.
- ◆ While hearing the case, the court noticed disparity in registration of FIRs on a case to case basis across the country and it issued notice to the central and state governments. Supreme Court in Lalita Kumari case framed eight guidelines to be followed by the police.



Lalita Kumari case

- ◆ Registration of FIR is mandatory if information discloses commission of a cognisable offence. No need for preliminary inquiry by police. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognisable offence.
- ◆ It also mentioned in what type of cases preliminary inquiry is to be conducted, such as, Matrimonial disputes, family disputes, commercial offences, medical negligence cases, corruption cases etc. The preliminary inquiry should be initiated within 7 days and to be sated in the **General Diary**. It was modified in March 2014 to 15 days in normal cases and six weeks in exceptional cases.

III. LAW OF ARREST

Sheela Barse, 1983 SC

Legal assistance to prisoners in jails: IGP Prisons in Maharashtra to issue circular to all SPs:

- (1) to send list of all under-trial prisoners to Legal Aid Committee of the district with particulars of date of entry in jail and offence charged and gender.
- (2) to send District Legal Aid Committee a list of the persons arrested on suspicion under section 41 Cr.PC. who have been in jail beyond 15 days.
- (3) to provide facilities to the lawyers nominated by District Legal Aid Committee to enter the jail and to interview the prisoners.





Sheela Barse, 1983 SC

- (4) to furnish to the lawyers nominated by the concerned District Legal Aid Committee whatever information is required in regard to the prisoners in jail.
- (5) to put up notices at prominent places in the jail that lawyers nominated by the concerned District Legal Aid Committee would be visiting the jail on particular days and that any prisoner who desires to have their assistance can meet them and avail their services; and
- (6) to allow any prisoner who desires to meet the lawyers nominated by the concerned District Legal Aid Committee.



Joginder Kumar, 1994, SC

For effective enforcement of Articles 21 and 22(1) of the Indian Constitution, we issue the following requirements:

1. Information of arrest to friend, relative or other person as far as is practicable that he has been arrested and where he is being detained.
2. The police officer shall inform the arrested person when he is brought to the police station of this right.
3. An entry shall be required to be made in the diary as to who was informed of the arrest.



DK Basu Guidelines

- Identification Marks of Arresting officer-name tag, badge – particulars to be recorded in register.
- **Memo of arrest** to be signed by family member or respectable member of locality as a witness, and countersigned by arrestee.
- **Information of Arrest:** Relative or friend of arrested person is entitled to know whereabouts of arrestee – this is to be informed through District Legal Aid Committee in case relative/friend resides outside district.
- Right to inform relative/friend as soon as possible.



DK Basu Guidelines

- Entry to be made in case diary regarding arrest of a person, particulars of relative/friend and particulars of arresting officer.
- Examination by medical officer-inspection memo signed by arrestee and police—medical examination every 48 hrs by panel.
- Copies of all documents to be sent to Magistrate for record.
- legal counsel during interrogation.
- Information about arrest within 12 hours to be given to Police control room .



2009 Amendments to Cr PC

- Arrest without warrant to be made only when offence is committed in presence of police officer
- If punishment less than 7 years, reasons to be recorded:
 1. Arrest is necessary to prevent further crime by offender.
 2. Arrest is necessary for proper investigation.
 3. Arrest is necessary to prevent evidence-tampering by offender.
 4. Arrest is necessary to prevent threats to witnesses.
 5. Arrest is necessary to produce offender in court.



IV. LEGAL AID SERVICES

Legal aid: Constitutional requirement

- Flows from **Articles 14, 21, 22(1) and 39-A.**
- The right to legal representation and counsel is guaranteed by **Article 22** of the Constitution. **Article 22(1) states:** “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.”
- Further, **Section 304(1)** of the Criminal Procedure Code indigent accused is to be provided with a pleader in the Court of Session; and



- Under **Section 304(3)** the State Government is empowered to extend this facility to trials before other courts as well. Most States have not availed of this enabling clause and have not extended legal aid to criminal courts other than the Court of Sessions.
- Article **39-A** incorporating the Directive Principle of "equal justice and free legal aid" introduced by the Forty-Second Amendment Act to the Constitution.
- *Hussainara Khatoon (IV) v. State of Bihar*
- *Khatri v. State of Bihar*
- *Suk Das v. State of Arunachal Pradesh*



Legal aid in police station

- **Section 41D** of Cr.P.C, arrested person has right to meet advocate of his/her choice during interrogation (Nandini, 1980).
- **Section 167**
- UN Principles and guidelines on Legal aid of 2012;
 - advice and assistance at the police station to victims of crime & accused.
 - visiting police lock-ups
 - custody time limits in the police station
 - attending at police interview
 - screening juveniles for possible diversion programmes
 - contacting / tracing parents / guardians / sureties
 - Assisting with bail from the police station.



Legal aid in court

The Governments should introduce measures to:

- Prepare panel of lawyers in consultation with the LSA and University legal services clinics.
- Pro-active judiciary to ensure legal aid to
- Promote wider use of alternative dispute resolution and diversion of criminal cases.
- Encourage paralegals and victim support groups to provide advice and assistance and to conduct regular observations of trial proceedings.
- Conduct regular case reviews to clear case backlogs, petty cases and refer/divert appropriate cases for mediation.



Legal aid in prison

- *Hussainara Khatoon (1980), Sunil Batra, Khatri,*
- *Re-Inhuman Conditions in 1382 Prisons*
- The Governments should introduce measures to ensure that;
- Magistrates/judges screen remand prisoners regular and expedite hearing.
- Prison officers, judicial officers, lawyers and paralegals conduct periodic census to see they are there as a first rather than last resort.
- 436 A CrPC.



Legal aid at Inquest

- **Section 176 of the Cr.P.C** amended to provide judicial inquiry in the case of death or disappearance, or rape of a woman while in police custody, there shall be a mandatory judicial inquiry.
- Prior notice to relatives and friends of Victims about inquiry.
- Legal aid should be granted for relatives of victims appearing before the inquiry.

Challenges of Justice Gap

- Massive 'justice gap' between huge demand of legal services to the poor and inadequate resources of trained lawyers.
- Clinical legal education is answer to improve the overall quality of legal aid.



Paralegal services

- **Paralegal services be available in prisons:**
- Legal education of prisoners so as to allow them to understand the law, process and apply in their own case;
- Assistance with bail and the identification of potential sureties;
- Assistance with appeals;
- Special assistance to women, women with children, young persons, refugees and foreign nationals, the aged, terminally and mentally ill etc.;
- Access to prisons for responsible NGOs and other.



Thank you