

CENTRE FOR LAW, JUSTICE AND GOVERNANCE

Introduction

Mahatma Gandhi State Institute of Public Administration, Punjab is a well-equipped research and training institution funded by Govt. of Punjab. The institute has recently set up a centre for "**Law, Justice and Governance**". It will be a premier research centre of the state examining issues concerning law, justice and governance. The centre shall undertake projects that seek to make a difference for the community by advancing and facilitating improvement in the fields of justice and governance. The mission of the centre is to undertake quality research and suggest ways and means for improvements that benefit the society in positive ways.

Our legal system is faced with numerous crises starting with the fundamental challenge of enforcing the rule of law. Enforcement of the rule of law and efforts to protect the rule of law ought to be shaped by a number of factors that will improve the capacity of the legal system to respond to injustices. There is lack of awareness among the general public about the laws enacted by the State for their welfare. In the absence of any such awareness they are being exploited by those who are responsible for governing as per rule of law. Passing more laws and the establishment of more institutions credited with responding to injustices may not be the right approach. There needs to be a fundamental re-examination of the approaches that we have adopted to enforce the rule of law.

Organization

- i) Head Office of the Center will be at Chandigarh in MGSIPA building.

- ii) The Director General of MGSIPA will be the Chairman of the Centre. He will be assisted by Director-cum- Senior Consultant in running the operational activities of the Center.

Aims and objectives:

Some areas in which the centre will endeavor to make research and studies can be mentioned as under: -

1. Studies of important laws by evaluating its use, abuse and other shortcomings – about a dozen of laws can be taken up for evaluation study every year.
2. Detailed analysis of specific types of litigation- labour courts, family courts, different types of criminal cases, building-vacation and rent cases, inheritance disputes, cases of commercial nature, employees cases in personnel matters against the government etc.
3. Evaluation of legislative initiative in Punjab.
4. Evaluation of legislative initiative of state governments in matters of concurrent list.
5. Evaluation of quality of legislative drafting.
6. Analysis of litigation between government & public and government & employees in order to find out where the fault lies- whether in the statute or in its implementation and observance.
7. A management perspective to suggest such designs of statutory interventions as conduce to efficiency in management a pragmatic review systems.
8. Analysis of litigation from various angles such as: -
 - Causes of litigation and problems of adjudication
 - Causes of delay possibilities of alternate disputes resolution

-Monitoring and management for expeditious disposal of court cases.

9. Accountability of police, prosecution and judiciary due to violation of human rights in false or negligent booking of accused persons / implication under unwarranted sections of IPC/ other laws.
10. Study of the causes leading to various types of criminal cases with a view to reduce possibility of the offences by removing / mitigating the causes.
11. Restitution of victims of crime or vexatious civil litigation.
12. Exploring alternate redressal system for minor crimes or for certain types of crimes.

Priority Topics/Projects

In order to achieve the objectives and to make research and studies for reforms and training, the Centre is to prioritize the following topics/projects:-

- Alternative disputes resolution mechanism in civil litigation.
- Litigation regarding service matters relating to all the departments of Government including Boards and Corporations.
- Labour law cases pending in Labour Courts- ADR process.
- Problems faced by Departments of the Govt. including Boards/Corporations on account of legal hurdles/defects in the laws affecting their organization.
- Land Revenue Act procedure regarding- contested mutations.
- To create general awareness about the Law Justice and Governance among the illiterate villagers in the State of Punjab.

- Criminal Justice System- Investigation, Trial Procedure and plea bargain etc.
 - Study and evaluation of governance of important laws.
- First Conference of the Center

The first conference of the centre was held on 26th of March 2008 in the Institute, which was attended by a large number of legal and other luminaries from all the faculties where they expressed their thoughtful view on the constitution of the Center, its aims and objects. Subsequently, conferences will be held at Patiala, Jalandhar and Ferozpur Divisional Headquarters at some of the districts to get feed back from all concerned regarding research, analysis, reforms and training for Law Justice and Governance Centre. Some persons from different walks of life, who are devoted to this cause and activities of the Centre, will also be associated for the purpose.

Action Plan

i) Alternative disputes resolution mechanism in civil litigation

By an amendment in Section 89 of the CPC, it has become mandatory for the civil courts to refer the disputes for resolution on the first date of hearing to one of the A.D.R. mechanism i.e. Arbitration, Mediation, Conciliation and Lok Adalats where the Courts consider that the element of settlement of the disputes between the parties. A large number of cases are filed against and by the State in which State is a party. The departments are to be made aware of this A.D.R. so that they may properly face the litigation when the matter is referred by the Civil Court for A.D.R. resolution. In order to reduce the number of civil cases pending in the high Court, the Center for "Mediation and Conciliation" has been set up by the High Court where the cases can be taken up for resolution of the disputes through trained mediators

appointed by the Hon'ble high Court for this purpose. A meeting of the departments can be held on different dates in August and September to create awareness among the officers of the departments about the same. The object of the meeting is to study and evaluate the ADR mechanism and to get in-puts, to discuss operation of Section 89 of CPC, Operation of Lok Adalat Act, Operation of Arbitration and Reconciliation Act and other Acts falling in this category.

Problems faced by Boards/Corporations in litigation cases

In order to assess the problems faced by Boards/Corporations in litigation cases pending in the courts a meeting of 33 Boards/Corporation was organized in different dates in May 2008 and officers dealing with legal matters were invited to participate but out of this only few corporations turned up to participate but data is still awaited from them they are being reminded to supply the data for study and analysis of the problems being faced by them. The following were items on agenda of these meetings:-

1. Scope of mediation and conciliation in place of arbitration or litigation for expeditious disposal of the cases.
2. Problems faced by the organization on account of legal hurdles or defects in the laws effecting the organizations.
3. Analysis of cases of litigation of different types – number of types of litigation cases of the organization involving the corporation and remedy to sort out the same.

ii) **Criminal Justice System**

A former Chief Justice of India warned a decade ago that the criminal justice system in India was about to collapse. There is huge pendency of criminal cases and inordinate delay in the disposal of the same on the one hand and very low rate of conviction in cases involving serious crime. As chances of conviction are remote, the crime has become a profitable business. The life has become unsafe and people liv

in constant fear. The law and order situation has deteriorated and the citizens have lost confidence in criminal justice system.

The manner in which the police investigations are conducted is of much importance to the functioning of the criminal justice system. If the collection of evidence is vitiated by error or mal practices it will cause serious miscarriage of justice. The laws, procedure and police practices must be such as to ensure that the guilty are apprehended and punished with utmost dispatch and in the process the innocent are not harassed. The aim of the investigation as well as of the entire criminal justice system is to search for the truth. To achieve this objective, the investigating officer must be properly trained, supervised and necessary scientific and logistical support should be made available to them.

In order to find solution to the problems in the criminal justice system the Center will endeavour to make research and study and suggest remedial ways and means and training to solve the problem as under:-

- i) There is a need to frame procedure for registration of FIRs in respect of complaints disclosing cognizable offences committed by the accused persons. The hon'ble Supreme Court has given a mandate that the police is bound to register the FIR in cases in which complaint discloses cognizable offence and the registration of the cases can not be left at the mercy of the police officers. The investigation is to be proceeded and not preceded of the registration of FIR.
- ii) There should be a separate wing of investigating agency.
- iii) There should be a State Bureau of Investigation and Prosecution on the pattern of Central Bureau of Investigation.

- iv) The system of recruitment of investigators and prosecutors should also be completely changed. Only those persons who have a degree of law should be taken for these posts after completion of necessary training.
- v) All the serious offences which are punishable with sentence of death, imprisonment for life and sentence for more than 10 years can be assigned to the State Bureau of Investigation for investigating as well as for prosecution of the cases in the Courts for the present, if it is not possible to handover the investigation of the entire crime to the State Bureau of Investigation Agency.
- vi) Investigators/Public Prosecutors appointed in the State Bureau of Investigation should be given training of at least one year in different methods of investigation, latest laws, offences, ballistic expertise, Weaponary and Motor Vehicles etc.
- vii) A state laboratory can be established on the pattern of CFSL, New Delhi that can be a part of this Institute for training Investigators/Prosecutors.
- viii) There should be time limit for presenting the challans after investigation in the Court keeping in view the gravity of the offence and time required for collection of evidence and completion of the investigation.
- ix) The investigating officers should be made responsible to produce the evidence in the Court so as to ensure the success of the cases.
- x) The investigating officer of the case must be present in the Court on the dates when the evidence is to be recorded. If the case fails for want of proper evidence or if the Court finds

that the person has been falsely implicated and sent for trial by the investigating officer, he should be awarded adequate punishment so that it may be a lesson for other officers in the line.

- xi) There should be a separate wing for trial of criminal cases by the judicial Magistrates. These officers should not be given civil work, which should be done in the Civil Wing. We can follow this on the Delhi pattern.

Plea Bargain

The accused undergoing trial also needs to be made aware of the recently introduced plea bargain in Code of Criminal Procedure.

iii) **Service Matter Litigation In Respect Of Employees.**

(a) There should be a departmental committee in each department to look into the claims of the employees who intend to go to the Courts to get justice. The committees can take into consideration and resolve the disputes of the employees on the basis of latest judicial verdicts given by the Hon'ble High Court/Supreme Court on and service matters.

(b) There is a need for making rules up to date by adding the amendments therein. The present Civil Services Rules has become obsolete in many respects in view of the judicial verdicts from time to time and amendments made by Finance Department through executive instructions.

(c) There should be a separate web-site of the State on which all the up to date rules should be available along with amendments and the instructions and clarifications issued, if any, by the Govt.

(d) There should be a separate legal cell in Finance Department to consolidate all the rules and regulations framed by the Govt. and post all amendments and the same should be put on the web site.

(e) There is a need for establishment of State Administrative Tribunal on the pattern of Central Administrative Tribunal to adjudicate the cases of employees. At present thousands of cases are lying pending in the Civil Courts. The disposal of cases can be expedited by the State Administrative Tribunal. The energy and money of both the sides of litigation can be saved by this process.

(f) In order to make a research and study on the above point it is necessary to constitute a working group consisting of representatives of Finance Department, Administrative Departments concerned, representative of Director Prosecution, Personnel Department and the employees of Govt. Departments, and the Law Officers of Boards/Corporations. A keynote will be prepared and sent to all the concerned requesting them to send their views well before holding the meeting.

iv) **Labour Law Cases**

The Departments/Boards/Corporations shall be asked to send a list of problems faced in the disposal of pending cases in Labour Courts. Labour Court cases can be decided by Alternative Disputes Resolution Mechanism i.e. Mediation Conciliation and Lok Adalat etc.

A letter has been sent to Labour Commissioner, Punjab to collect necessary data from the departments before fixing the actual date of workshop. A workshop in this regard will be held shortly because a large number of cases pending in the Labour Courts is a big problem being faced by the departments/Board and Corporations owned by the State Govt.

v) **Land Revenue Act/Procedure for Contested Mutation**

The present system of deciding Contested mutation by the Collectors and then going in for appeal up to the level of Financial Commissioner Revenue is not a useful exercise because as soon as the man fails to get decision in his favour he can file suit in civil court for declaration of his title which means another 10-12 years because mutation does not create any title. It is desirable that there should be an amendment in the Land Revenue Act for contested mutation. The meeting of Revenue officers, Advocates dealing with revenue cases and the persons from the public can be held to study and evaluate this matter for finding remedial measures for reforms and for necessary training.

vii) **To create general awareness about the Law Justice and Governance among the illiterate villagers in the State of Punjab.**

80% of Indian population lives in villages. They are not aware of the laws framed by the Govt. from time to time for their welfare. They have no knowledge as to how they can seek justice through the rule of law and thereby exploited by the persons who are authorized to implement the rule of law. The officers controlling the village cooperative societies instead of being helpful to the villagers are misusing their position and the poor people are suffering a lot at their hands.

In order to create awareness among the villagers it is desirable that the center will organize teams who will visit the villages from time to time after due notice to the persons concerned. In this respect the final year students of LL.B or LL.M law students of the area concerned and other resource persons can also be associated to be the part of the teams who will be assisted by their law teachers. The teams

will go to the villages and hold village meetings. They will hear their problems for study and research and to find and suggest ways and means as to how they can get justice and better governance. They will keep a record of the meetings held by them so that they can be useful in future in action. The team shall also be responsible to inform the villagers about the latest laws framed by the Govt., its implications and how they will be useful for the villagers. Such a step will create general awareness among the village folks about the law, justice and governance and this is the real endeavour required to be made by the Center.

viii) **Study and evaluation of important Laws.**

Keeping in view the objects of the Centre, the Centre will also endeavour to study important laws for evaluating its use and abuses and other shortcomings for the purpose of reforms and training. For the present, the Centre is holding a workshop to evaluate the shortcomings and amendments required in the Arbitration and Conciliation Act, 1996. The workshop of a smaller group to study the various points is to be called shortly. Later on studies of some other important laws for the purpose of research and evaluation, reforms and training will also be undertaken.

