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दिल्ली विधिज्ञ परिषद्  
**BAR COUNCIL OF DELHI**

(Statutory Body Constituted under the Advocates Act, 1961)

2/6, Siri Fort Institutional Area, Khel Gaon Marg, New Delhi-110 049

Ref. No. : 722/SF/2020

Dated : 29.06.2020

Shri Amit Shah,  
Hon'ble Union Home Minister  
Government of India,  
New Delhi

Sub: *Committee for Reforms in Criminal Law.*

Respected Sir,

1. The unending rape crimes, Nirbhaya and many more, every day, reported from different parts of the country, curiously raising questions about credibility of Common Law System of administration of criminal justice system, inherited from the British Colonial Rulers. The incidents of burning and killing of victims, in case of failed attempt or to destroy evidence has become a common tendency to obviate conviction and to delay trials. It has a relation to the psyche of the criminals, as even according to criminal jurisprudence, more stringent is the punishment, such consequences are inevitable.
2. Vulnerable sections of the society like women, children and weaker sections suffer, since the system has failed to live up to people's expectations. Innocent girl child, are easily trapped and made victims, which is horrific and outrageous, but worst when existing laws fail to prevent such crimes or convict such offender. Public debates do not help to deter offenders nor reduce crime. No doubt, substantial legislative amendments were carried out after Nirbhaya's incident, but proved inconsequential to reduce crime.
3. The recovery of half burnt body at Hyderabad, after rape and killing was shameful, another glaring example of systemic failure. On killing of 4 accused persons in an encounter, eyebrows raised by Human Rights Activists but public appreciated. The rule of law does not permit street trials. In a civilized society, we cannot permit any system having no legal sanction. The Hon'ble Chief Justice of India, Justice S.A. Bobde, stated that, "*Justice loses its character if it becomes revenge*".



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4. Public anger and discontentment is obvious, due to the failure of existing system to respond promptly and diligently, leading to agitation and protests on the roads. Basically, inefficiency and lackadaisical attitude of police is largely responsible. Undoubtedly, neither people nor criminal justice system has trust in Police. Tardy and sluggish investigations, laying dishonest and defective foundation of a case is main cause, rendering courts helpless to convict, in absence of evidence. Governments after governments completely ignored to bring Police reforms, despite repeated court directions, more so when existing model is incapable to render speedy and fair justice, to say the least. On many occasions, Courts issue directions to investigating agencies or order establishment of fast track courts, even monitor investigations, which hardly has any impact to improve overall the system, except some consolation to public. How long it can go on?
5. The stories of investigations and trials of criminal cases has always been a subject matter of intense criticism, be it crime relating to women or any other crime. The fact of the matter is that despite repeated efforts, a viable criminal justice system could not be put in place. Your kind attention is drawn to the Justice Malimath commission report which has extensively examined various aspects of criminal law and made recommendations long back but no final decision was taken on the recommendations. It's high time when Government must take a call to revamp or change the system drastically.
6. It is highly appreciated that the government has undertaken to review the existing criminal justice system and to take steps for amend of law substantially, to protect and safeguard people. This should be a priority on the agenda. History of mankind is full of glaring examples, which show that we tend not to learn from mistakes from past. So we did, and not learned lessons from horrific Nirbhaya's incident. Many women activists and organizations claim imposition of death sentence, an issue much debated. What essentially required is drastic amendments in procedural laws to provide effective preventive mechanism and for conduct of fair and honest investigation. Any lapse at any stage must face serious consequences, even imposition of imprisonment.

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7. As back as in 1999, Justice Krishna Iyer said, "...Alas the criminals are on the triumph, the police suffer from "dependencia syndrome" and integrity is on decadence and judges themselves are activists in acquittal of anti-social felons. True that police plays a dominate role while investigation, to collect evidence for prosecution oral, documentary or circumstantial."
8. In fast changing global environment and deteriorating socio-economic conditions, negative and provocative mind-set and easy availability of porn material on internet platforms, social norms and values are major casualties. It calls for a serious debate for a better social environment, in contemporary conditions before total erosion.
9. We may be more influenced by western culture but can't abdicate over own traditions and values. The websites and other internet service providers making pornographic material easily available must be checked and stopped, no matter who they are. They should be made liable and be punished with stringent punishments of minimum 3 years, including heavy fine. The administration seems to be insensitive to the present conditions. The information technology act needs to be appropriately amended. There should also be cybercrime cell in each Police Station because cybercrimes are superseding physical crimes.
10. While framing laws, extensive brain storming exercise is undertaken to focus on expectations of public and society at large. Even pre-legislative consultation takes place, to ascertain public views for comprehensive legislations, as the system has to function within the laid down legal parameters. The increasing tendencies to investigate and conduct street trails even impose punishment, instantaneously or through media, pauses serious challenges to the rule of law.
11. I am proud to say that the legal community in India has many well experienced experts in criminal law and by virtue of their dealing with criminal cases extensively, they can help the government for bringing a better system and suggest suitable amendments. During the court

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proceedings and discussions among the legal community, we notice many loopholes and lapses in the laws, which is a cause for delay in dispensation of justice and if, all such points are examined thoroughly with the help of legal community during drafting or amending the law comprehensively, it will be very helpful.

12. The Bar Council of India and other state bar councils, along with experts on the subject can provide better inputs with their vast experience, but so far they have not been included in the High power committee.

We hope that the Government of India will include representative of the Bar Councils to help in introduction of a better system.

With regards,

(K.C. Mittal)

CC:  
Shri Manan Kumar Mishra  
Senior Advocate  
Chairman, Bar Council of India