



Critical Analysis of the Criminal Justice System in India

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Abstract: The tradition of teaching and research in critical criminal law have yet to take place in India. Criminal law as a discipline in India has largely been a normative subject without bringing a dimension of criticality in it. On the other hand the emerging scholarship in the western world is gradually shaping to evolve critical perspective in criminal law. These perspectives mainly adopted two approaches. One, critical legal studies perspective which looks at criminal law as a theoretical critique by applying philosophical and radical linings. The second approach is that all the critique of system and institutions associated with criminal law. This perspective is a functional critique of the institutionally working of the system. In its historical context criminal law has been seen as a repressive regime of the state which sanctions in enforces its definition right and wrong. Thus a critical approach is to give same explanation about the justification and limits of criminal law. It questions the legitimacy and rational of criminal law as an instrument of state power. This perspective is quite oppose to the mainstream theme in criminal law where criminal law is considered to be an essential feature of social order. In the critical legal study perspective the choices of explanation fall between the realistic and left idealistic positions. In this sense the critical writers focus precisely on the ideological significance of criminal law. The bigger critique of criminal law stands from fact that it has been used reinforce slavery, to secure the labour force, to maintain religious political hierarchies to convert customary rights in the poaching, and so on the grant tradition in criminology also question the culpability, it is process and its necessity in dealing with the challenges of crime. The whole debate in contemplating idea of criminal law also situated between the two notions of 'law and context and normative law'. The law and context approach brings in several external factors into play which may have some bearing of the functioning of criminal law and its institutions. Thus the context in criminal law has now become a major point of defining element.

[Dhundhwal, K. **Critical Analysis of the Criminal Justice System in India**. *Researcher* 2023;15(3):24-28].ISSN1553-9865 (print); ISSN 2163-8950 (online).<http://www.sciencepub.net/researcher>. 03.doi:[10.7537/marsrsj150323.03](https://doi.org/10.7537/marsrsj150323.03).

Keywords: Critical Analysis, Criminal, Justice System, India

Introduction

The Criminal Justice System in India is a several decades-old system, based on the system established by the British in India during the Raj. The system more or less remains the same, without any major changes. IPS, R.K. Raghavan in his *World Factbook Of Criminal Justice Systems* says: "In sum, the criminal Justice System in India is a legacy of the British system."

The establishment of the Vohra Committee was the initial step (or a better word to use is 'attempt') to bring reform into the Criminal Justice System of India in the year 1993. The committee made observations on the Criminalization of politics and of the nexus among criminals, politicians, and bureaucrats in India. It submitted that the political leaders had become the gang leaders and they also commented upon the criminal network saying that it is virtually running a parallel government. The Committee further revealed that the criminals enjoy the patronage of politicians across parties and they also get full protection from the government functionaries.

Rule of Law, democracy, development, and human rights are dependent on the degree of success that the governments are able to achieve on the criminal justice front. The objectives of the criminal justice are prevention and control of crime, maintenance of public order and peace, protection of the rights of victims as well as persons in conflict with law, punishment and rehabilitation of those adjudged guilty of committing of crimes, and generally protection of life and property against crime and criminality. It is considered the primary obligation of the state under the constitution of India. The principal formal agencies of criminal justice are police, judiciary, and corrections. Under the Constitution of India, Police and Prison Administration are the State subjects. But, the Supreme Court at Federal level and High Courts at state level administer the judiciary in the entire country. Though police and prisons are state subjects, the organizational structure, administration, and functioning of all the agencies of criminal justice are as per the federal laws such as Indian penal code, Criminal Procedure Code, Indian Evidence Act, Police Act, and Prison Act. This paper explains the structure

and functioning of various agencies of Criminal Justice System.

The system that deals with agencies of government that are responsible for enforcing the law in the country, maintaining peace and harmony and treating criminal conduct is known as the criminal justice system. The aim of the criminal justice system is to ensure that every person who suffers an injury or loss at the hand of others is allowed to present his case and seek justice.

According to Hobbes, man is selfish by nature and can go to any extent for pleasure. As said by Bentham, a person avoids pain and demands to seek pleasure. He is usually moved by his instincts and, in earlier times, there were no regulations and limits to control his conduct. With the increasing population and communities, his interests collided with others' and led to a situation of conflict. Thus, in order to regulate the conduct of a man, a system was needed that could monitor his actions. The development of the criminal justice system is the same as the development of man.

The first stage was when there was no control over his actions and he acted as per his needs and demands. If needed, he could hurt anyone and fulfil his wishes. Then came the second stage, where the territory expanded and the concept of 'state' emerged. At this stage, a ruler ruled the kingdom and other people acted on his behalf. This stage, however, could not handle the conflict of interests, and so the king gave strict punishments based on the theory of eye for an eye and body for a body. This stage was full of revenge and hatred. When the king still could not regulate the actions of man and there was chaos in society, a need for a proper system was felt. With the advancement of time and development in society, the monarchy was replaced by the aristocracy, which was further replaced by democracy, and the government was thought to have a system to control the rate of crime in each state; hence, the criminal justice system emerged.

Types of criminal justice systems

There are two major types of criminal justice systems in the world. These are:

- Adversarial system
- Inquisitorial system

1. Adversarial system

This system is followed in common law countries that were once colonies of a particular country. In this system, there is a prosecution advocate and a defence advocate who argue before the court, and the case is decided on the basis of principles of evidence law and procedural laws. The judge decides the case on the basis of arguments between the two counsels and evidence shown in court. This system presumes the accused to be innocent until proven guilty beyond a reasonable doubt.

India follows this system because it was once a colony of the British empire and hence called a common law country. The prosecutor represents the state, as it is presumed that a crime has been committed against the state at large, and so, it is the obligation of the state to provide justice. In this system, both parties are given rights to a fair trial and hearing, and so justice is delayed.

2. Inquisitorial system

This system is followed in civil law countries. In this system, the judge can himself investigate the matter and decide the case on the basis of investigation and inquiry. The counsel from each side is present, but unlike in the adversarial system, there is no cross-examination of witnesses. The decision and its accuracy depend on the prudence and skills of the judge.

This trial procedure is much faster in this system, and it is not costly. It is less formal, and the determination of justice does not depend on the advocate but on the ability of each particular judge.

Evolution of Criminal Justice System of India – From Ancient to Present

- The jurisprudence of Ancient India, which was shaped by the concept of 'Dharma', prescribing various rules of right conduct.
- The codes or rules of conduct can be traced to various manuals that explained the Vedic scriptures, such as 'Puranas' and 'Smritis'
- The King had no independent authority but derived his powers from 'Dharma' which he was expected to uphold.
- The distinction between a civil wrong and a criminal offence was clear.
- While civil wrongs related mainly to disputes arising over wealth, the concept of pātaka or sin was the standard against which crime was to be defined.
- The Mauryas had a system of rigorous penal system which prescribed mutilation as well as the death penalty for even trivial offences.
- Dharmasastra of Manu, recognized assault and other bodily injuries and property offences such as theft and robbery.
- During the Gupta's era, the judiciary consisted of the guild, the folk assembly or the council and the king himself.
- Judicial decisions conformed to legal texts, social usage and the edict of the king, who was prohibited from violating the decisions.

Criminal Justice System in its Present Form

- The Criminal Justice System in India follows the legal procedures established by the British during the pre-independence era.
- An Indian Penal Code (IPC) defining crime and prescribing appropriate punishments was adopted in 1860, prepared by the first Law Commission of India.
- It was developed in line with the English criminal law.
- Code of Criminal Procedure was enacted in 1861 and established the rules to be followed in all stages. This was amended in 1973.
- The NN Vohra Committee, set up in 1993, observed increasing criminalization of politics, talked of the unholy nexus.
- It was an effort to push the reforms in the criminal justice system.
- In 2000, the Government of India formed a panel headed by the former Chief Justice of Kerala and Karnataka, Justice V.S. Malimath, to suggest an overhaul of the century-old criminal justice system.
- In 2003, the Justice Malimath Committee submitted a report with 158 recommendations.
- The Committee opined that the existing system “weighed in favour of the accused and did not adequately focus on justice to the victims of crime.”

Overview of the criminal justice system in India

The aim of the criminal justice system is to punish the criminal and prevent further crimes in future so that people could live peacefully. Criminal law in India consists of the Indian Penal Code, 1860 which defines the various offences along with their punishment and the Criminal Procedure Code, 1973 which gives the procedure of the trial. The evidence is further governed by the Evidence Act, 1872.

The adversarial form of the criminal justice system presumes the accused as innocent until proven guilty beyond a reasonable doubt. It gives the accused a fair chance to present his case to meet the ends of natural justice. The principles of Hinduism and other religions in India value human life and adhere to the principle of providing an equal opportunity to every person to present his side of the story. Thus, the Indian criminal justice system follows an adversarial system and depends on the maxim “*let 100 culprits be acquitted and freed, but one innocent person should never be convicted*”.

History reveals that every king in India had his own way of regulating crime in his kingdom. Mauryas

believed in rigorous punishment and the aim was to create fear in the minds of people, which would stop them from committing further crimes, while Manu recognized various offences like theft and robbery as property-related offences and assault and murder as injuries to the body. This is where the classification started. There was a group of learned counsels in the Gupta dynasty which helped the king settle disputes among people and decide punishment for the wrongdoers. This system fulfilled the purpose of the judiciary, and thus, it can be said that the concept of the judiciary emerged long ago in the country. However, there was no codification of the punishment of offences. Nor did they have any procedure for the trial.

With the advancement of time and technology, offences were codified and the trial procedure was laid down. This made the administration of justice easy and reliable. The present criminal justice system in India was established by the British East India Company during the pre-independence era. However, after independence, it has seen many changes and modifications. Various committees were set up from time to time to recommend changes in the system and suggest measures to control the rate of crime in the country.

Trial procedure

There are 4 different types of trial procedure, but in the Indian criminal justice system it is laid down in the Criminal Procedure Code, 1973 (CrPC). After the offence is committed and an FIR is lodged in the police station, the steps involved in the trial are as follows:

1. Charges are framed against the accused.
2. The prosecution gives the evidence and witnesses.
3. The accused is given a chance to present his case and the statement of the accused is recorded.
4. The defence lawyer from the side of the accused gives the evidence.
5. Both the lawyers, i.e., the prosecution and the defence have a final argument.
6. The last stage, after closing and final arguments, is the judgement in which the accused is either acquitted or convicted.

The criminal law in India has seven fundamentals which serve as the principles of modern criminal law. These are:

- A guilty mind and a guilty act together constitute a crime. It is based on the maxim “*actus non facit reum nisi mens sit rea*”.
- A mistake of fact is a defence in crime but not a mistake of law. (*ignorantia facit excusat, ignorantia juris non excusat*)

- The law does not permit ex post facto laws, which means that no one can be punished for an offence that is no longer recognized as the offence.
- Everyone shall be presumed innocent until proven guilty beyond a reasonable doubt.
- An accomplice is treated the same as the accused and given equal punishment under the criminal law.
- The rights of the accused before, during, and after trial are protected. He has various rights like the right to a fair trial, the right to bail, the right to free legal aid and protection against self-incrimination and double jeopardy, which can never be infringed upon by the authorities under the criminal justice system in India.

Role of the Federal Government and Its Police Force

There is no independent department of police at the federal level. But the Federal government performs numerous police functions. The Federal Parliament has paramount jurisdiction over the Central and the Concurrent subjects. There can be no doubt that police and law and order are state subjects. In spite of it, many quasi-police subjects are from the federal government. For example, the administration of the subjects or items like the Central Bureau of intelligence and investigation, Preventive Detention, Arms, Ammunitions, Explosives, Extradition, Passports, and a host of similar or corresponding subjects is the sole responsibility of the Central Government. The Federal Government has also the power to amend the basic Police Acts, like the Indian Police Act, 1861; the Indian Penal Code, 1860; the Code of Criminal Procedure, 1861; the Code of Civil Procedure, 1859; and the Indian Evidence Act. These are all binding on the State Governments. Thus, the constitutionally created flexible situation and the organization and administration of police (Sethi 1983) in the states are brought under the purview of the Central Government under special circumstances (Gautam 1993)

Conclusion

The criminal justice system is a system that controls the functioning of institutions like the police, prisons, courts, etc., that work towards granting justice to the victim. It is the duty of the state to maintain peace and harmony in society, and this can only be achieved with the proper implementation of laws and the effective criminal justice system of a country. The criminal laws in India were majorly enacted by the British East India Company, but after a lot of amendments were made to the laws.

With the advancement of time and technology, new crimes like organised crimes, white collar crimes, cyber crimes, etc. are increasing, and the government feels the need to reform the justice system to deal with such offences. As a result of this, various committees set up by the government gave various suggestions and recommendations. But still, the condition has not improved. Courts are still suffering from pressure due to the pendency of cases, which is a result of the shortage of judges. It is perceived by the public that the police force is under the influence of politicians, and corruption has made them ineffective in fulfilling their duties. Instances of custodial rapes and deaths are increasing day by day. This creates fear in the minds of the public. Prisons witness a situation of overcrowding and prisoners suffer from inhuman and degrading treatment. The recommendations of various committees are on paper but not implemented properly. There is a need to solve all the issues and fill the gaps in the criminal justice system in India in order to provide fair justice.

References:

- [1]. Ann Wolbert Burgess, Cheryl Regehr, et al., *Victimology Theories and Applications 05* (Jones and Bartlett Publishers, Sudbury, Massachusetts, 2010).
- [2]. Kirchoff GE. *What is victimology*, Monograph Series No. 1, Tokiwa International Victimology Institute, Seibundo Publishing Co, Tokyo, 2005.
- [3]. D. Banerjea, *Criminal Justice India Series*, Volume 17, Chandigarh, Part 1 108 (Allied Publishers Pvt. Ltd., New Delhi, 2005).
- [4]. *Supra* Note 3.
- [5]. Sharon Detrick, JE Doek and Nigel Cantwell, *the United Nations Convention on the Rights of The Child: A Guide to the "Travaux Préparatoires"* (1992).
- [6]. *Supra* Note 8.
- [7]. Dubey S. (2019). *Criminal Judiciary Reforms in India*. [online] Legalserviceindia.com. Available at: <http://www.legalserviceindia.com/legal/article-244-criminal-judiciary-reforms-in-india.html> [Accessed 15 Jul. 2019].
- [8]. Unodc.org. (2019). *Integrity in the Criminal Justice System*. [online] Available at: <https://www.unodc.org/unodc/en/corruption/criminaljustice-system.html> [Accessed 15 Jul. 2019].
- [9]. Indiantanoon.org. (2019). *Sabarimala Ayyappa Seva Samajam vs State of Kerala on 29 October, 2018*. [online] Available at:

- <https://indiankanoon.org/doc/46072596/>
[Accessed 15 Jul. 2019].
- [10]. Frederikson SJ (1976). A comparison of selected personality and history variables in highly violent mildly violent and non-violent female offenders. (Unpublished doctoral dissertation, 1975, University of Minnesota). Paper presented at the 11th Annual MMPI Symposium, Minneapolis, March.
- [11]. Cole KE, Fisher G, and Cole SS. Women who kill : A sociopsychological study. Archives of General Psychiatry, 1968;19:1-8.
- [12]. Section 25, The Indian Evidence Act, 1972.
- [13]. Ashok D. Ippe, The Protection of Women from Domestic Violence Act, 2005: With the Protection of Women from Domestic Violence Rules, 2006: Alongwith Useful Allied Laws (2009).
- [14]. Sharon Detrick, JE Doek and Nigel Cantwell, the United Nations Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires" (1992).
- [15]. Abolition of Child Labour and Making Education A Reality for Every Child as a Right, (2008).
- [16]. Sharon Detrick, JE Doek and Nigel Cantwell, the United Nations Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires" (1992).
- [17]. Sharon Detrick, JE Doek and Nigel Cantwell, the United Nations Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires" (1992).
- [18]. Shailendra Kumar. Awasthi, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (1999).
- [19]. Rhode Island Bar Asso. vs Automobile Serv. Asso., 100 ALR 226, 55 RI 122, 179 A 139).
- [20]. Rhode Island Bar Asso. vs Automobile Serv. Asso., 100 ALR 226, 55 RI 122, 179 A 139).
- [21]. Somasundaram O, and Ponnudurai R. A study of delinquent boys using jesness inventory. Indian Journal of Psychiatry. 1980;22:348-352

2/25/2023