DEVELOPMENT OF CRIMINAL JUSTICE SYSTEM IN INDIA - *A Historical Perspective*

Ms. Sambeeta Dabral
Assistant Professor
Nari Gursahani Law College, Ulhasnagar, India

Abstract: *Crime has been an integral part of the society since advent of the existence of mankind. During early human civilization, there were no laws to control human behaviour. A lawless society gradually brought in law and order issues due to increase in commission of crimes. With the passing of time, a need was felt to curb and control criminal activities of people by making rules of conduct for administration of justice. Since ancient times, various ways and techniques were adopted in the form of Dharma or rules laid down by the sovereign authority, in order to administer justice to the victims against whom the crimes were committed. This paper contextualises the idea of criminal justice system and its development in India. The two different types of criminal justice system prevalent in the world is highlighted in this paper with an emphasis on criminal justice system in India. An attempt is made to study the existence of criminal justice system in Ancient, Mughal, British and Post-independence period. The various component parts of criminal justice system which comprises of investigating agencies, judiciary and correctional institution along with their functions is analysed and suggestions are made to improve and strengthen the current criminal justice system in India.*

Key words: Criminal justice, jail, judiciary, investigating agencies, offences, adversarial, inquisitorial, malimath…

"Good people don't need laws to tell them to act responsibly and bad people will find a way around the laws" – Plato

Introduction to Criminal Justice System:

Criminal justice system is an association of various independent agencies such as police, courts and jails which are inter-related to each other and deals with prevention, investigation, prosecution and punishing the crime and criminal activities in a human society. The main objective of such a judicial administration is to maintain peace, protect the good and punish wrongdoers.

In India, people enjoy bundle of rights to live with dignity. Whenever crimes are committed, one or more fundamental right of people gets violated. Therefore, in order to uphold the authority of the Indian Constitution and other laws, the primary duty of the criminal justice system is to keep the criminal activities in society under control by taking action and administering punishment to the guilty. The criminal justice administration functions through four agencies, namely-

1. Investigating agencies;
2. Prosecution;
3. Courts and
4. Prison authorities.

Role of each of the abovementioned component is explained in order to understand Indian criminal justice system:

1. ***Investigating Agency-*** Whenever a crime is committed, the information of the same is given to the local police authorities within whose jurisdiction the crime is committed. The prime duty of the police official as enlisted in the Code of Criminal Procedure, 1973 is to register the complaint, investigate the case and file the charge-sheet or final report before the Competent Magistrate. There are various state and central laws governing the establishment and working of the police authorities in India such as Code of Criminal Procedure, 1973, Indian Police Act, 1861, Maharashtra Police Act, 1951, Delhi Special Police Establishment Act, 1946, etc.
2. ***Prosecution*** **-** After the final report is filed, it is the duty of the prosecutor appointed by the Government [1] to initiate and prove the guilt of accused person beyond reasonable doubt.
3. ***Court*** **-** The cases filed by the investigating agencies are to be heard, tried and adjudicated by the respective courts. The hierarchy of various courts has been listed in the Criminal Procedure Code. The Apex court of the State has an appellate jurisdiction over its subordinate courts. The purpose of establishment of lower criminal courts is to try and prove the guilt of accused person, punish him and restore justice in the society.
4. ***Prison*** **–** It is a place where accused persons are kept during their trial. However, after the conviction, offenders are also placed in the prison to undergo sentence. Apart from detaining the criminals, it also provides correctional service to the criminals.

All these bodies help the system fulfil its objective. [2]

Need for a criminal justice system is felt whenever crime is committed by a person against another or other persons. In India, offences are divided into two categories –
1. ***Cognizable*** - Cognizable offence means those offences for which a police officer may arrest a person without a warrant merely on receiving an information or a complaint. Such category of offence is shown in Schedule I of the Code of Criminal Procedure, 1973.
2. ***Non-cognizable offences*** - Non-cognizable offences are those for which the police cannot arrest the accused without a warrant for arrest. These offences are less serious in nature and hence the magistrates are empowered to take cognizance of such crimes.

When a crime is committed, it is categorized into cognizable or non-cognizable offence. Based on the nature of crime committed, the process of criminal justice administration is initiated. In cognizable offence, the first stage is of detection of crime which is initiated by lodging of an FIR by the complainant or victim. The concerned police officer then investigates the case and files a charge-sheet. The Magistrate thereafter initiates the trial or commits it to the respective court wherein the trial begins, evidences led, facts proved or disproved. Finally, the judgement is passed by the competent court.

In non-cognizable offence, the police officer does not have the power to investigate the crime. However, he registers the complaint and directs the complainant to the Magistrate Court to seek remedy. The trial is conducted and the judgement is passed by the Court based on the evidence furnished before it.

Nature of Criminal Justice System:
There are two types of criminal justice system, namely –
*1.**Adversarial System***
This system is also called as accusatorial system as it focuses more on the accused person than the victim. In this system, the presiding officer hears both the disputing parties to the case, where each one is contesting against the other party. The prosecutor and defence attorney present and defend their respective case before a judge, a neutral and independent person who finally decides the case. He is not supposed to conduct the investigation and examination of the case but to act as a neutral umpire. Countries such as England, USA and India follow this system. [3]
*2.**Inquisitorial System***
In this system, emphasis is on accused being guilty. It is the duty of the accused to prove with the help of evidences, his innocence. The police and prosecution are trusted substantially by the law under this system. The judicial officer is directly involved in conducting the inquiry and investigation relating to the case, in order to bring out the truth involved. The outcome of such an official inquiry is considered final and true. The trial is then conducted on the basis of the report made by the judge/magistrate. The judge with the help of other agencies collects the evidences, prosecutes, and also examine the witnesses. Thus, he himself acts as the prosecutor. The accused is given an opportunity to clear his position and prove his innocence before the court of law. [4] The State plays an active role in the inquisitorial system. In countries like France and Germany (and continental countries) another system is followed which is known as Inquisitorial System.

Criminal justice system in India is based on adversarial system. This system is accused centric. It does not focus on remedying the victim. It is the police authority's duty along with the prosecution to prove the guilt of the person. The system is based on the principle that if a crime is committed, it is the duty of the police, prosecution to prove the guilt of the accused person beyond reasonable doubt. The accused does not have to prove his innocence. It is the duty of the prosecution alone to prove is guilt.

In India, police and prosecution are not trusted blindly so they need to prove their case sufficiently. Based on the evidence put forth by the prosecution, judges hear the case, appreciate the evidence and pass judgement accordingly. Therefore, in this system the judge has to decide whether the accused has committed the crime or not. The decision of conviction or acquittal is completely based on the judge where he acts as a neutral umpire. This system is based on the principle that 'let thousands of criminals go unpunished but not even one innocent person be punished'.

The Central Government constituted Malimath Committee in 2003 to discuss reforms to be brought about in the Indian Criminal Justice System. The Committee anxiously considered whether the current adversarial

system in India was satisfactory or whether it needed to be changed. After examining the inquisitorial system in other countries, the Committee felt that some features of inquisitorial system may be adopted in order to strengthen the current adversarial system to make it better and more effective. The recommendations suggested were as follows -

a) The court should take up responsibility to search for the truth;
b) The court must assign new roles to judges and work proactively;
c) The court must give directions to the police officers investigating the matter and the prosecutors regarding investigation and the procedure of leading evidences so as to bring out the truth involved in the case;
d) The court must focus more on giving justice to the victims than penalising the accused. The view of the criminal justice system must be changed to be victim centric and not accused centric. [5]

Evolution of Criminal Justice System in India:

Criminal justice system in India is not of a recent origin. It dates back to the Ancient Period through which it has evolved systematically. The system of criminal justice has evolved because of various social, economic and political conditions which were prevalent at different times. Due to constant change in the society, the objective of criminal justice and its administration has also changed from time to time.

Ancient Period-

Looking back into the early society where there was no State or any other authority or Government to control the conduct of people, the wrongdoers and the victims settled their dispute by retaliation and revengeful ways. With the advancement of time, individual revenge took the form of group revenge as men could survive, gain strength only in large groups and as it was necessary to do so for his existence and survival. As the human society was settling in groups, necessity was felt to formulate rules of behaviour for people of the society. These rules were the code of conduct to be followed by each member of the society so that man could live in peace and harmony. Rules were made to take action against inappropriate behaviour of any member of the society. This code of human conduct which managed and controlled the actions of people in the society came to be known as 'Law or Dharma'. Gradually people living in isolation and small groups started joining and forming large groups in order to live peacefully.

During this period of early civilization, great importance was placed on Dharma. People who were following rules were said to be acting as per Dharma and for such people there was no need to have any authority to control and govern them. For some time, the society was free from crimes and evil activities and hence there was no necessity for any external or sovereign authority to administer justice to the people. However, such ideal society did not last long. People who had no faith in God and Dharma dominated the society because of which the situation and affairs of society started deteriorating. During this period, handful of people who had no respect for Dharma began exploiting and tormenting the weaker sections of the society for personal gains. Gradually 'might became right' and tyranny of strong started ruling the weak. Due to this chaotic law and order situation, people started searching for remedies to restore Dharma back into the society. This resulted in the establishment of King's rule in the society, who was considered as the sovereign head and the fountain of Justice. Duty of the king was to provide protection to people and their property and to punish the wrongdoers. The king established a system to enforce law and punish wrongdoers. This system came to be known as criminal justice system.

The evolution and development of criminal justice system was observed even during the Vedic period in India.[6] The administration of Justice by the King with the help of advisors or ministers can be traced to Vedic period. As per the Rig Veda, the King was called as the protector of people whose duty was to maintain law and order. Even as per Dharmasutras, the King was duty bound to ensure safety and security of his people. This system of justice administration was also maintained during Mauryan, Gupta, Chalukya Dynasties. [7]

In ancient India, the criminal justice system was very well organised where village councils consisted of few members who were to hear and dispose of the disputes of villages and to pass the judgement. With the passage of time, unlike village heads, police authorities were also appointed to maintain law and order as described in Kautilya's Arthashastra. It shows that agency such as police existed even during ancient period to assist the king. The only difference being that they were not called 'police' but carried on the functions similar to police authorities. Along with the police system, jail system also started in Pre-Mauryan period. Jail was the

place where people found guilty of committing an offence had to undergo sentence. Therefore, during this period, evolution of police and jail system were also initiated. [8]

Mughal Period-

The criminal justice system evolved during Vedic period and continued throughout the period of various Hindu Kings in India. However, this criminal justice system was shaken up by the downfall of Hindu rule due to attack by the foreign invaders mainly the Mughals who ruled India till 1700 AD. The Muslim rule was based on their Islamic laws. The Muslim rulers followed the principle of equality for their own people. They did not recognise caste system or division of people into various caste. But this rule of equality was applied only to Muslims during medieval period. In order to decide cases, the Muslim rulers followed the Quran and Sunnah or Hadis.

During this period, the King's most important duty was to administer justice to its subjects along with maintenance of law and order in the society. Various courts were constituted during this period to hear different cases. The courts were called as Faujdari and Nizamat Adalat where Kazi's and Mufti's heard and decided the criminal matters. Kotwal and panchayat system was also constituted during the Muslim rule. The panchayat system which existed during the Hindu period continued unaltered during the Muslim period. In both these periods, panchayat system continued to decide the civil and criminal cases of the local area that were governed by the personal laws of their times. It continued to administer justice and its decisions were binding on the parties and it was un-appealable.

The Mughals had formulated and established Kotwal system in cities and Chowkidar system in villages. Kotwals were empowered to report crimes and investigate the criminal cases in order to maintain law and order within their jurisdictions. People whose guilt was proved were sentenced to imprisonment and were detained in the jail based on the nature of crime committed by the offenders. [9]

British Period-

It begins with the Charter of 1600 when Queen Elizabeth permitted East India Company to carry on trade and commerce in East Indies whereby the Company first settled in Surat and slowly and gradually established the settlement at Madras, Bombay, Bengal, Bihar and Orissa. With the expansion of business, East India Company started acquiring Indian territories as well. The Company continued to expand its rule till 1857. Thereafter, the British Crown took direct charge of India and sent East India Company back to England.

Till 1857, under the control of East India Company, different courts were constituted to decide the cases of its own people, foreigners and Indians. From 1858 to 1947, the British Crown ruled the country. In order to control the vast population of India, British revamped the already existing criminal justice system in India.

Mughals were ruling India at the time when British East India company entered India. Apart from Mughal emperor, there were Hindu Rajas and Nawabs at various Subbah or Province. Law and order was maintained by the Muslim rulers based on Muslim personal laws and justice was given by the Raja based on Hindu rules of law. However, after the establishment of various courts by the British in India, Muslim criminal laws and procedures were allowed to be continued by the British. But because of flaws in the Muslim criminal laws, it was suggested to be changed as no civilized government could administer such rules and procedures in its justice system.

Governor General Warren Hastings suggested judicial plans to form a sound judicial system in the country. Later, Governor General Cornwallis proposed major changes in the existing criminal justice system. Two sets of courts were established in India to administer justice, one was the Crown Court and the other was the Company's courts. The Crown Court usually applied English laws while deciding the cases but Company courts judges applied common sense, equity and good conscience while deciding the cases. In criminal cases, Mahommedan laws were applied. Because of this dual system, there was no uniformity and certainty in criminal justice administration during this time.

In 1835, the Crown constituted First Law Commission in India to establish uniform judicial procedure for the operation of laws i.e., substantive as well as procedural laws. It was during this period that Lord Cornwallis tried to improve the police system. Police stations were constituted and Daroga was the police officer appointed in each police station. Kotwal was the officer-in-charge of the police station in the town.

On the recommendation of a commission constituted in 1860, Indian Police Act, 1861 was made with an object of reorganising and making the police system efficient in detecting and preventing crimes.

The jails in British period did not undergo much change and the British continued to maintain jails of the Muslim period. The British had no intention of spending money on improving the conditions of jails and so no significant improvement was made.

After the codification, the judicial system was unified by amalgamation of the Company's Sadar courts and Crown's courts so that the Crown could exercise control over the judiciary. Various courts such as supreme courts, high courts, Federal courts etc. were established.

The British, after taking over the control of India, found the three thousand years old criminal justice administration defective and hence they tried to bring drastic changes in the prevalent justice system. Reforms were made wherever possible. They brought changes in the archaic laws by updating and making new laws. The administration of police, courts and jails were also restructured in order to develop the criminal justice system in India.

Criminal Justice System Post-Independence-

Since ancient period, rulers of India developed and treated the criminal justice system as an instrument to control the people of the society. The focus was always on dominating the people instead of protecting their rights. The British gave us judicial system but they too develop the criminal justice system to manage the Colonial rule in India.

Police is a central agency of the criminal justice system. It is a law enforcement agency whose function is to maintain law and order in the society. As stated earlier, Indian Police Act, 1861 was enacted to impose a uniform police system which regulates the organisation and working of police force in India. Thereafter, the Police Forces (Restriction of Rights) Act, 1966 was made which dealt with discharge of duty by the police officials and maintenance of discipline. During this period, many state governments enacted laws for their own State in order to regulate the working of Police Force such as the Bombay Police Act, 1951, Kerala Police Act, 1960 etc.

The police in India is divided into State Police and Central Police. The powers and functions of police authority are conferred by Criminal Procedure Code, 1973, Indian Evidence Act, 1872 and other state laws. The police system started since British times but efforts have been taken to modernize the police, to improve its function and administration. However, many old method and procedure of police working still continues in India.

Bar (prosecution and defence) plays a vital role in administration of criminal justice. Before independence, there was no unified system of legal profession in India. A need was felt to establish an All India Bar Council to manage the legal professionals. The Law Commission of India recommended enactment of a law for legal professionals which was named as Advocates Act, 1961. In India, whenever a crime is committed, injury caused to the victim is considered to be caused to the State and hence, State becomes the complainant on behalf of the victim and the prosecutors or assistant prosecutors are appointed under Section 24 or Section 24A of Criminal Procedure Code, 1973 to conduct the trial to prove guilt of the accused persons. The function of the prosecutor is to bring out the case in the trial court and prove the guilt of the accused person on the basis of the charge sheet filed by the police authority. The whole process of providing justice to the victim is in the hands of the prosecutors.

Judiciary is one of the three main organs of the Government of India. Justice is to be administered through courts which form an integral part of criminal justice system. There are various hierarchy of courts under the Code of Criminal Procedure whose function is to conduct trials to bring out truth in relation to the commission of crime. As per the Criminal Procedure Code, 1973, there are following set of criminal courts established in India-

a. High Court;
b. Sessions courts;
c. Chief Judicial Magistrates Court;

d. First Class Magistrates;
e. Second Class Magistrates and
f. Executive Magistrates. [10]

Jails and correctional body in the criminal justice system is not only to detect, investigate and try the wrongdoer but to punish the offender and also to correct him, bring change in his behaviour in the interest of the society. For this, establishment of correctional agency becomes crucial which consist of prisons, probation and parole system. Establishment of prisons falls under the State list of Seventh Schedule of Indian Constitution. Administration of prison is the responsibility of the State Government. The prisons are run under the Prisons Act, 1894 and the State jail manuals. The Supreme Court in Sunil Batra's case issued certain guidelines regarding the working and management of the jails in India. It recommended that it shall be the duty of the State to maintain standards relating to housing, work and treatment of prisoners with dignity and with a view to correct them and help them become better people. [11] With the passage of time, jails have reformed with respect to co-ordination between various criminal justice agencies. Various advisory board and bodies have been constituted to improve the working of this system by filling the gaps in the existing prison system.

Conclusion:

Our criminal justice system needs to focus on protection of human rights of the people. Under this system, it is recommended that while investigation and trials are undertaken, the human rights of the people are not violated in any way. While protecting the society from crime, individual human rights are balanced with the societal interests. It is observed that the authorities who are responsible for investigating crime and maintaining law and order are usually found violating the human rights of the citizens. Today, the criminal justice system has fallen into disrepute because of –

- non-usage of science during investigation of crime;
- excessive delay in trial and judgement of the case;
- low rate of convictions;
- lodging false and fabricated case by the police authorities;
- poor performance of the prosecutors in the cases;
- unfair manner of conducting the trial;
- collapse of prison system due to overcrowding of prisoners and under-trials and the worsening condition inside the jails.

The problems pertaining to police, prosecutors, courts and prison is increasing with passage of time. Because of this apathy on the part of system, people are resorting to safeguard their human rights by filing public Interest Litigations. It is through the judicial intervention in the form of PIL that human rights of under-trial prisoners and others who are badly affected by the criminal justice system are safe-guarded.

Criminal justice administration today is not flawless. It suffers from anomalies and needs to be tackled effectively. It has to ensure that-

- investigations are conducted efficiently and scientifically;
- the delays in conducting trials and passing judgement be reduced;
- trials must be conducted effectively and honestly by the prosecutors and judges;
- victims are compensated appropriately;
- guilty people are punished adequately as per law;
- the prison system be improved in order to ensure humane treatment to the under-trials and convicts undergoing sentence.

As discussed before, the recommendations from Malimath Committee relating to the principles of criminal justice system needs to be discussed, debated and amended to suit the current scenario. The need of the hour is to dig deep down into human rights of the accused person, convict, victim, by the state authorities like police, prosecutors, judges and prison and try to establish a sound judicial system in the country. The State or the Government is to be reminded of its obligation under the Indian Constitution, Universal Declaration of Human Rights and Covenant on Civil and Political Rights to see that people's human rights are respected and ensure that it should not be undermined by the administrators of our criminal justice system. Much stress is on the need to have a fair and humane criminal justice administration. [12]

References-

[1] Code of Criminal Procedure, 1973, S.24 and S. 24A, Professional's Bare Act, 2018
[2] Sanders Andrew et al., Criminal Justice, Butterworths, London, 2000
[3] Langbein John H, The Origins of Adversary Criminal Trials, Oxford University Press, 2003
[4] Bakshi P M, Continental System of Criminal Justice, 36JILI
[5] Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs,Volume I, 2003
[6] Jois Rama, Legal and Constitutional History of India, Volume I
[7] The Gazetteer of India, Volume II
[8] Kulshrestha V D, Landmarks in Indian Legal and Constitutional history, 2015
[9] Jain M P, Outlines of Indian Legal & Constitutional History, Lexis Nexis Butterworths, Sixth Edition,2012
[10] Code of Criminal Procedure, 1973, S.6, Professional's Bare Act, 2018
[11] Sunil Batra v. Delhi Administration, 1980 Supreme Court 1579
[12] Vibhuti K I, Criminal Justice - A Human Rights Perspective of the Criminal Justice Process in India,First Edition, 2004, Eastern Book Company