



ADMINISTRATION OF CRIMINAL JUSTICE IN INDIA: AN OVER VIEW

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.Abstract :-

Law of every country is for, controlling and regulating its citizens by imposing penalties and punishments, formaintaining law and order which is the fore most duty of the state. The aim and objectiveof criminal justice system is to punish the offenders who commits wrong or transgress the rights of other. The core principal of the Indian legal system is, let a hundred guilty be acquitted, but one single innocent person cannot be arrested.But in Indian perspective it was seen that false accusation, wrongful conviction and malicious prosecution leads to injustice. To overcome such situation this paper tries to discuss the concept of justice and legal approach involved with the rights and interests of the offender instead of those of the victims which is paramount of Rule of law. Researcher has even tried to focus on existing administration of criminal justice system and also wantedto highlight the various challenges before administration of criminal justice system.

Key Words: Justice, Administration of Criminal justice System, Interest of offender

INTRODUCTION :

“SatyamevaJayate” i.e Truth alone Triumphs, is enumerated in the Indian Jurisprudence. Truth and Justice go hand in hand, thus, when justice fails, truth stands defeated. Therefor effective criminal justice system should not only focus on the means to deliver justice but also on its ends to secure Justice.

Criminal Justice System comprises of various independent agencies such as police, prosecution, courts and jails, which are inter-related to each other to deal with prevention, investigation prosecution and punishing the Criminal and curbing the criminal activities. The main goal of Administration of Criminal Justice System is, to maintain peace, to protect the society, and to punish the wrong doer.

Concept of Justice:

From ancient era ‘justice’ is treated as highly legal moral and political concept. As a whole the concept of justice occupied a significant place in many religious, political morals and legal philosophers. According to them it is in terms of rules, or merit or utility or liberty or equality.

For Aristotle, Justice consists in what is lawful and fair, with fairness involving equitable distribution and the correction of what is inequitable. According to Plato, "Justice is a quality". In other words, themeaning of justice is to discharge one's duties honestly and not to interfere in other actions.So justice is concerned with the human welfare.¹

- Natural JusticeNatural justice means the innate quality of being faire, thereby what is right and what is wrong. Natural justice was considered as part of natural law which relates to the administration of justice.

- Economic Justice: It revolves around the idea of equal economic values opportunity and right for all and prohibition of economic discrimination between men and women in financial matter.

- Political Justice: The State should establish political justice by simply creating conditions under which all including the minorities

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<https://shodhganga.inflibnet.ac.in/bitstream/10603/67805/6/06.chapter%202pdf>

exercising their political rights by involving in adult suffrage, rule of law, etc.

- Social Justice: It is nothing but the values and social practices so that, all persons can enjoy economic security, social security, even they can participate in decision making which is paramount for any democratic state which reflects the mutual respect and understanding for one another and live their lives to protect and sustain in natural environment.

Interrelation with Justice and Law:

Justice is based on ethics and morals. It should maintain the idea of fairness, equality and righteousness. It is the duty of the court to impart justice by using their own laws. Therefore Justice is an integral part of law. Law and Justice are different, as law refers to the body of rules and regulations which is created by the state to regulate the citizens. However Justice refers to administration that includes fairness, justness and equality and totally based on ethics moral and dignity. Therefore Justice cannot be separated from law, because law acts as a mechanism to get Justice.

Administration means it is a mechanism and justice means quality and rights to be imparted. Administration of justice is needed to resolve the conflict and protects the interest of individuals. Every state must have some mechanism to impart justice to every citizen. Therefore administration of justice is needed to bring uniformity, continuity, and consistency so as to develop the law of the state.

Administration of Criminal Justice System

The aim of effective criminal justice system is to deliver justice, to secure justice and to bring fairness in its outcome.² The administration of criminal Justice System is composed of various components such as police, prosecution, defence, courts and corrections. Every

component is expected to administer justice and to implement the laws aimlessly in order to impart justice.³ Injustice is always a threat to justice.

The Administration of Criminal Justice System are of two types.

A. Adversarial System

B. Inquisitorial System

Adversarial system: It is inherent from British colonial rule. Accused is presumed to be innocent and burden lies on prosecution to prove beyond all reasonable doubt that accused is guilty. In this system, police play's very important role during investigation. Truth is supposed to be emerged from the facts of prosecution. In this judges acts as an umpire, and see that whether the prosecution has been able to prove the case beyond reasonable doubt. Therefore judges play a passive role. The judges neither take part in investigation nor give any instruction to the prosecution.

In this system parties put their case or grievance and reach to the final solution before the impartial judges. Adversarial system does not impose any positive duty on the judge to discover truth as; judge's plays a passive role. Several lacunae exist in Adversarial system as large numbers of criminals were escaping from conviction.

Therefore it is necessary to examine how to plug the escape routes and to block the possible way. Judges do not bother if relevant evidence is not produced or an inadequacy of evidence or mistake in investigation leads to failure of the court to search the truth.

Inquisitorial System:

In this system, the judges can himself investigate the matter and decide the case on the basis of investigation and inquiry. The decision and its accuracy depend on the prudence and skill of judge.

²Vishwakarma, s(2021)<https://doi.org/10.21744/lingcure.V5nS4.2009>.

³(Prof. N.V. Paranjape, criminology penology, victimology. Page No. 384)

The Criminal Justice System in India is based on adversarial system. This System is basically accused centric. The System is based on postulate 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 core agencies of Administration of criminal justice system are investigating agencies, prosecution, courts, and prison authorities.

1. Investigating agencies: Police plays an important role in investigation of crime. The Primary duty of the police to investigate the matter fairly, collect all evidence, file a charge sheet before the magistrate.
2. Prosecution: It is the duty of prosecution to initiate the matter and prove the guilt of accused person beyond reasonable doubt.
3. Court: It is the duty of court to try the case and prove the guilt of accused person, punish him and restore justice in the society.
4. Prison: It is a place where accused is kept during its trial. After the conviction offender are also placed in the prison to undergo sentence.
5. Correction :

Issues and Challenges

The Indian system adopted the adversarial criminal Justice System, therefore the responsibility is to discover the truth, collecting and presenting the evidence and defending the parties. It is the responsibility of police to investigate the matter and prosecution has to put the case before the Judge during trial. Most of the time it was seen that an accused may be acquitted because of benefit of doubt, lack of evidence, improper investigation. Due to inefficacy of investigation it lowers down the conviction rates, on the other hand there is a possibility of miscarriage of justice by wrongful conviction malicious prosecution due to wrong evidence used in criminal proceedings.

In Babloo Chauhan (a) Dabloo V. State Gov. of NCT ⁴ Delhi High court requested the law

⁴Babloo Chauhan (a) Dabloo v. State Government

commission of India (LCI) to undertake the issue of wrongful incarceration and malicious prosecution in India. It emphasis on addressing illegal confinement and malicious prosecution, but the notion of determining the innocence of the convict is missing from the deliberation of law commission. LCI further observed in its report that 'Factual innocence' is very difficult to prove, and wrongful conviction is too high a standard to address legally in India.⁵

Existing Criminal Justice System has been constituted to protect the rights of individual it is the primary responsibility of police to protect life liberty and to maintain law and order in the society. The role of police is to investigate the matter skillfully, technically and logistically to find out the truth. Protection of society being paramount consideration; law procedure and police practices must be in such a way so as to ensure that the guilty are apprehended and punished and innocent are not harassed or exploited. The police psychologically and morally bound to do everything possible to curb crime and investigate the case successfully to meet the expectation. But in reality the police officers prefer to option short cut method to investigate the matter, such as use of third degree methods, defensiveness, lack of inventive etc. which may leads to injustice. There are so many difficulties before ensuring speedy, effective and fair investigation.

(i) Non Supportive of the public mind-set at large.

(ii) In sufficiency of logistical and forensic backing support for speedy and effective investigation requiring a lot of tolerance, skill, education and transparency in the existing.

In adversarial system, evidence plays a very crucial role in administration of justice. Further collecting evidences and doing proper investigation by investigating agency is to be

⁵ Revisiting reforms in criminal justice system in India – forwarded by J.B.R Gavai

done by police. After that the case is put up before the court to testify the existing evidence and witness to prove the case beyond the reasonable doubt. Even though investigation is the foundation of criminal justice system it is that it is not trusted by the laws and the courts due to, error, political intervention, and untrained police system while dealing with scientific investigation, corruption and lack of seriousness.

In *Prakash Singh and ors. V. UOI and ors.*⁶. The S.C. gave direction to the state government that, 'Constitute Security Commission to

(i) Ensure that the State government does not exercise unwarranted influence or put pressure on police.

(ii) Lay down broad policy guidelines and

(iii) Evaluate the performance of the state police.

But all these guideline and directions remained on paper still there is direct or indirect influence political parties while conducting investigation.

While doing investigation unavailability of investigating tools to investigate the matter in right direction. In earlier times, "Sniffer dogs" or tracker dogs were used to find out the criminal. Tracking dogs were intelligent dogs and were trained by police, but statistically the tracker dogs have been unsuccessful in detection due to some limitation. Dog tracking evidence is not necessarily frail a piece of evidence as was held earlier. The judicial thinking now-a-day is that if a tracker dog is a trained one and has the necessarily skill and talent to detect the crime such evidence can be treated or considered as evidence.

In advanced and high-tech system criminals take care to erase all the evidences of their involvement, at that time scientific and highly sophisticated methods are required to trace the involvement of criminal and to find out the truth.

Scientific methods are used to collect evidence such as Narco Analysis, Polygraphy, Brain Mapping, Lie detection tests, etc. Collectively known as deception detection test but at the same time, while using such techniques, one has to be conscious of its limitation also which will not infringers the fundamental rights under Article 20(3), right to privacy and right to health which are guaranteed under Article 21 of the Constitution.

*Kathi Kalu*⁷ - In this case it was held that, the accused was compelled to make statement likely to be incriminate of himself.

*Nandini Satpathy*⁸ - No one can forcibly extract statements from the accused who has right to keep silent during the course of interrogation.

*M. P. Sharma V. Satish Chandra*⁹ - The words used under Article 20(3) were 'to be a witness' not appear as a witness.

*Ramchandra Ram Reddy*¹⁰ - So far as Brain mapping test P300 test is concerned protection given by Article 20(3) cannot be made applicable the same cannot be said to be incriminatory in nature Narcroanalysis test unless it is shown to be incriminating the person making it, it does give rise to the protection U/A 20(3) of constitution.

When the investigating agency uses such statement as evidence, the said contention is required to be considered. Brain Mapping / P300 or lie Detector/ Polygraph tests/ Narco Analysis. Holding test in a very broad perspective question is what is sought to be provided by guaranteeing such right and it is undisputed that what is sought to be protected in the protection of human rights and dignities. Prevention of Crime is a sole prerogative of the state and the punishment of crime if proved is

⁷State of Bombay v. Kathi Kaluoghad AIR 1961 SC 1808

⁸Nandini Satpathy v. Dani (P.I) and an other AIR 1978

⁹AIR 1954 SC, 300 1978 (2)

¹⁰Ramchandra Ram Reddy and others v. State of Maharashtra 2005 (1) CCR 355

⁶(2006) 8 SCC 1

also the duty of state. The protections of fundamental right weigh more than the fundamental duty casts on the state.

In Sharma's Case the S. C. Laid down what is the extent of guarantee under Article 20(3) it is explain in KathiKalu case.

In present case we have come to conclusion that, it is not a statement in relation to the first two tests and in relation to 3rd test (Narco-Analysis Test) it is statement entry of which in evidence is adequately protected by various provisions of law.

Therefore said controversy is also considered by Karnataka High Court in case of SmtSelvi& other¹¹.

Karnataka H. C has also considered the need for Brain Mapping Test & Narco Analysis Test. Karnataka High Court has also considered the submission made on behalf of the accused that to appear for Narco-analysis Test would violate his F. R U/A 20(3) of constitution and would compel the accused to give evidence against himself which is prohibited U/A 20(3) of Constitution.

Analysis of the Criminal Procedure (Identification) Bill, 2022

On 28-3-2022, the Criminal Procedure (Identification) Bill, 2022 was introduced which permits identification, information of a Criminal while conducting criminal investigation. Even it authorized National Crime Record Bureau to collect store and maintain specific record such as finger imprints, palm print and footprint impression, biological samples for analysis. Anyone who is convicted in prisoned or arrested under preventive detention act will give measurements to police officer or prisoned official. The aim and objective of said bill is to improve the efficiency and speed of criminal investigations which also enhance the conviction rate.

The Legislature's intention to make the word measurement defined under Section 2(1)(b), which is exclusive in nature by including general words like physical and biological samples could lead to narcoanalysis and brain mapping through the use of force implicitly in collection, directly violating Article 20(3), right to self-incrimination, and Article 21, right to life, of the Indian Constitution.

It should be noted that it is also in violation of the United Nations Charter's Human Rights requirements. Privacy is a fundamental human right, and there are various aspects of privacy of body, privacy of space, privacy of information, and privacy of choice that have evolved over time through a catena of Supreme Court judgments beginning with K. Gopalan v. State of Madras, Kharak Singh v. State of U.P., Charles Sobraj v. Supt. Central Jail, Sheela Barse v. State of Maharashtra, and Pramod Kumar Saxena v. Union of India.

The Bill allows for the retention of measurements of records under Clause 4(2) for 75 years, which infringe right to forgotten, which is recognized by Supreme Court S. Puttaswamy v. Union of India.

In Narayan Dutt Tiwari Rohit Shekhar, the court declared that nobody should be compelled to be subjected to any techniques in question in any circumstances, even when it is in the context of an investigation in a criminal matter. Such actions would constitute an unjustified infringement into an individual's personal liberty

Cyber Crime investigation

Again in digital world, cyber-crime is rising day by day therefore it is clear that, cybercrime investigation plays a critical role in keeping the internet safe and secured. Cybercrime is a crime that includes the usage of a computer, phone or any other digital device connected to a network. Such electronic devices can be used either to perform the cybercrime (i.e cyber-attack), or act

¹¹AIR 2010

as a victim (i.e. receiving the attack from other malicious sources).

There are various types of cybercrime such as hacking, child pornography, cyber staking, cyber terrorism, identity theft, malicious, software phishing, fake news sharing in social media, etc. Therefore cyber-crime investigation is required some definite process of investigation, to analyze and recovering critical forensic digital data from the network involved in the attack.

Approaches of cyber-crime investigation

- Track internet Protocol (IP)
- Examination webserver log
- Inspection of Electronic mail account
- Attempting to retrieve destroyed evidences
- Try to extract concealed information¹²

Cybercrime investigation techniques

In order to find out the truth, a cyber-forensic investigator must follow, the proper procedure for investigation some common techniques were used during investigation such as,

- Information gathering – Whether the attack was automated attack or a human based targeted crime? What is the scope and impact?
- Tracking and identifying the authors – During information gathering process, depending on how much information is already handed. In order to find out or identify the criminals behind the cyber-attack, both private and public security agencies work with ISPs and networking companies to get valuable information. But it requires legal permission from prosecutors and court order to access the needed data.
- Digital Forensics – Once the information his gathered enough about the cybercrime It is to be examine the digital system that were affected or supposed to be involved in the origin attack.

Cyber-crime Investigation challenges :

(i) Limited Access to data – cybercrime investigation is the part of criminal

investigation. Rising in technological growth and internet use, authorities were refused to access the computer data there it bring obstacle for law enforcement agency.

(ii) Location problem – Cyber offenders uses different type of technology like E chipper for committing illegal activities therefore it is very difficult for law authorities to track the offenders and criminal organization.

(iii) Ambiguity in legal Framework – Every country has its own legal frame work to deal with cybercrime, so as to criminalize and how to carry out investigation. Again it is very difficult to have co-operation with other nations due to lack of globally standard legal frame work as cyber-attacks takes place beyond the territories.

(iv) Lack of technical tools, expertise which is required for cybercrime investigations.

CONCLUSION :

Justice is an evolutionary concept the concept of justice reflects the fairness, moral righteousness and equality.

The Justice is related with human welfare and protection of reasonable interests. The main purpose of the justice is bringing development of human beings welfare and protection of reasonable interest. Every society there should be a proper combination among equality, liberty and justice.

There are many loopholes in functioning of criminal justice system specifically in the area of investigation. An efficient functioning of criminal justice system is the need of an hour. Criminal Justice System needs to emphasis on protection of Human Rights of the people while using scientific technology during investigation and trials. When technology intrudes in the ambit of legal rights it is checked by law.

Investigation is the foundation of any case, but fails to identify the problem of investigating officer as they are not equipped with resources, relay on limited and old resources and training provided to them.

¹²<https://www.lawaudience.com/cybercrime-investigation-issues-and-challenges/>

Introducing the identification bill violates the fundamental rights of citizens as it allows the state to preserve the record and conduct physical and biological test, which is contrary to the law and arbitrary. Supreme Court many a times reaffirmed that; the prisoners do not become victims.

Another task for administration of criminal justice system to investigate in to the matter of cybercrime which is upcoming challenges before the investigating agencies There is less convictions rate and poor remedial measures for cyber victimization.

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