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ISSN (Online) : 2455 - 3662  
SJIF Impact Factor :4.924

## EPRA International Journal of **Multidisciplinary Research**

Monthly Peer Reviewed & Indexed  
International Online Journal

Volume: 4 Issue:5 May 2018



**Published By :**  
**EPRA Journals**

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**EPRA International Journal of  
Multidisciplinary Research (IJMR)**

## EXPANDING SCOPE OF CRIMINAL JUSTICE SYSTEM IN SOCIETY

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### ABSTRACT

*On the rise of the sun, humans get up and greet each other saying good morning. Sitting in the comfort of their cozy homes, they say good night when sun sets. It seems that everything is not so good in between day and night throughout the life. Insecurity is threatening all: men, women, young and old, the rich and powerful as well as the poor and downtrodden.*

*There is always threat to individual life, limb, health, tranquility and possessions. Rules are made by day but are broken by minute. Crime may come from a punch-up between lovers, ego-ridden spouses, agro in the nightclub, resentful family members, envious friends, greedy colleagues, jealous rivals, from strangers. Criminals hold anger, envy, jealousy, resentment, and vengefulness. Victim of a crime may die today and the doer of crime dies tomorrow but crime hangs on. Crime is a curious tradition humans have been studiously practicing since ages.*

**KEYWORDS:** *life, limb, health, tranquility and possessions, criminal justice*

### DISCUSSION

*If men were angels, no government would be necessary.<sup>1</sup>*

On the rise of the sun, humans get up and greet each other saying good morning. Sitting in the comfort of their cozy homes, they say good night when sun sets. It seems that everything is not so good in between day and night throughout the life. Insecurity is threatening

all: men, women, young and old, the rich and powerful as well as the poor and downtrodden.

There is always threat to individual life, limb, health, tranquility and possessions. Rules are made by day but are broken by minute. Crime may come from a punch-up between lovers, ego-ridden spouses, agro in the nightclub, resentful family members, envious friends, greedy colleagues, jealous rivals, from strangers. Criminals hold anger, envy, jealousy, resentment, and vengefulness. Victim of a crime may die today and the doer of crime dies tomorrow but crime hangs on. Crime is a curious tradition humans

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<sup>1</sup> James Madison

have been studiously practicing since ages. The real anxiety is about the ordinary citizen's feelings concerning the problem of security while living. What is underlying the lawlessness is waning of traditional authority, the decline of punishment, disappearance of moral self-discipline.<sup>2</sup>

State is the guardian of law and order. Law enforcement and punishment is monopoly of State through its institutions. "It is the responsibility of every government to ensure that its legislative agenda has, at its core, a genuine concern for the well being of the common man, reflecting their hopes and aspirations".<sup>3</sup>

Like in every civilized society, in India to a criminal justice system evolved. Socio-economic and political conditions prevailing during different phases of the history of India influenced its evolution. Accordingly, the objectives of the criminal justice and methods of its administration changed from time to time and from one period of history to another. To suit the changing circumstances the rulers introduced new methods and techniques to enforce law and administer justice. In early society the victim had himself (as there was no State or other authority) to punish the offender through retaliatory and revengeful methods; this was, naturally, governed by chance and personal passion.<sup>4</sup> Even in the advanced Rig-Vedic period there is a mention that punishment of a thief rested with the very person wronged.<sup>5</sup> Gradually, individual revenge gave way to group revenge as the man could not have grown and survived in complete isolation and for his very survival and existence it was necessary to live in groups. Group life necessitated consensus on ideals and the formulation of rules of behavior to be followed by its members. These rules defined the appropriate behavior and the action that was to be taken when members did not obey the rules.<sup>6</sup> This code of conduct, which governed the affairs of the people, came to be known as Dharma or Law. In course of progress man felt that it was more convenient to live in society rather than in small groups. Organizations based upon the principle of blood relationship yielded, to some extent, to larger associations the societies. In the very early

period of the Indian civilization great importance was attached to Dharma. Everyone was acting according to Dharma and there was no necessity of any authority to compel obedience to the law. The society was free from the evils arising from selfishness and exploitation by the individual.<sup>7</sup> Each member of the society scrupulously respected the rights of his fellow members and infraction of such rights rarely or never took place. The following verse indicates the existence of such an ideal society:

"There was neither kingdom nor the King; neither punishment nor the guilty to be punished. People were acting according to Dharma; and thereby protecting one another".<sup>8</sup>

However, the ideal stateless society did not last long. While the faith in the efficacy and utility of Dharma, belief in God and the God fearing attitude of people continued to dominate the society, the actual state of affairs gradually deteriorated. A situation arose when some persons began to exploit and torment the weaker sections of society for their selfish ends. Tyranny of the strong over the weak reigned unabated. This situation forced the law abiding people to search for a remedy.

This resulted in the discovery of the institution of King and establishment of his authority over the society, which came to be known as the State.<sup>9</sup> As the very purpose of establishing the State and the authority of the King was the protection of person and property of the people, the King organized a system to enforce the law and punish those who violated it. This system later came to be known as criminal justice system.

The first and foremost objective of the criminal justice administration is to create an atmosphere of security by maintaining law and order. In pursuance of this objective the functionaries of the criminal justice system follow the principle 'protect the good and punish the wicked'. Succinctly, the criminal justice administration attempts to decrease criminal behaviour. Like in every civilized country, the people of India are entitled to enjoy certain basic rights such as right to life, personal liberty, property and dignity of the individual. The Constitution and many criminal laws aim at securing these rights of the people. Criminal acts put these rights in jeopardy and thereby undermine the authority of the Constitution and other laws. Therefore, to keep crime under control and ensure swift and certain punishment to the criminals are the

<sup>2</sup> R.N.Berki, Security and Society: Reflections on Law order and Society, J.M.Dent & Sons, London, 1986.p.23

<sup>3</sup> Sonia Gandhi, The Hindu dt.28-3-2010 Page 10, Visakhapatnam, at a National Convention on 'Law, Justice and the

common man'. Sonia Gandhi is said to be one of the most influential women in the world.

<sup>4</sup> Choudhuri, Mrinmaya, Languishing for Justice, Dattsons, Nagpur, 1995. p. 4.

<sup>5</sup> A. Berriedale: "The Age of the Rig Veda" in The Cambridge History of India, edited by J. Rapson, Vol. I, p. 87).

<sup>6</sup> Ibid., pp. 4-5

<sup>7</sup> S.D. Sharma, Administration of Justice in Ancient India, New Delhi: Harman Publishing House, 1988, p.170.

<sup>8</sup> Jois, M.Rama, Legal And Constitutional History of India, Vol 1-, N.M. Tripathi Private Ltd., Bombay, 1990 pp. 76.

<sup>9</sup> Ibid.

primary duties of various agencies of the criminal justice administration.

To achieve the final goal of establishing a just society, various components of the criminal justice system, viz. the police, bar, judiciary and correctional services, are expected to work harmoniously and cohesively. Success of one component may not endure unless other components to achieve success of almost similar degree. For example, in a case, the police may succeed in arresting an accused and submitting a charge-sheet with sufficient evidence, however, if the prosecution is not able to present the case efficiently before the court, or if the court fails to assess the evidence in proper perspective, the accused will be set free and the efforts of the police will go in vain. Even if all these three components perform their parts well and the accused is convicted and sentenced to undergo imprisonment, it is not going to have a desired effect unless the sentence is executed properly. The jail authorities, instead of reforming the convict, may, unwittingly, aggravate the criminality in him by harassing him. They may also make the punishment ineffective by providing him such facilities and comforts to which he is not entitled. Thus, like in a relay race, all components of the criminal justice system have to play their role by supplementing the efforts of each other. Therefore, the criminal justice administration needs to be evaluated as a whole and not its components separately.

In present administration of justice is one of the most essential functions of a state. The transformation of the police state into a welfare state has changed the role of the state into both prevention of commission of crime as well as a protector of its subject/people's dignity, life and human rights. The principle of rule of law is the bedrock upon which the constitution of a nation is built.

The changing attitude of the society from deterrent and retributive punishment to reformatory punishment is a reflection of the changed role of the State. The cumulative effect of such basic transformation of state's attitude towards crime is a society that shuns all forms of atrocities and brutalities and takes a holistic approach to human life and dignity.<sup>10</sup>

Although it is the duty of the functionaries of the criminal justice system to ensure that those who undermine the societal harmony by committing offences of any kind do not go unpunished, they must also protect the human rights of those who come in

<sup>10</sup> Sujit Biswas, Custodial Violence and Role of Police, A Paper Presented at the National Seminar on "Protection of Human Rights and the Role of Law Enforcement Officials, 2001, at Department of Law, University of North Bengal

contact with them. This calls for a fine balancing of individual rights and social interests while combating crime.<sup>11</sup>

The criminal justice system is an apparatus that a government employs to enforce standard of conduct required by that government of people subject to its authority. It is consciously contrived and deliberately implemented mechanism of formal control that has been brought into increasing play in attempts to deal with crime paradox.<sup>12</sup>

Proper Administration of justice is a must for every democracy to succeed. It is encouraging to see that now a day, stating from politician to common people all are expressing their concern about their proper Administration of justice and the media is also not lagging behind in this respect. But unfortunately no concrete result has yet been achieved.<sup>13</sup>

Human Rights are generally manifested in the individual and collective being of the people with liberty and equality and their concomitant attributes. The contentment of Human Rights obviously came to be developed with the development of society. Particular with respective representative governments having constitutional norms for governance consequently, preservation of basic rights of the people became a basic norm of governance.<sup>14</sup> Since it is the state which came to be entrusted with power to govern, the basic fundamental right came to be jealously guarded the state power and the functionaries of the state. The international concern in this respect culminated in the charter of the United Nations as "to reaffirm faith in fundamental human rights and to promote social progress and better standards of life in larger freedom."<sup>15</sup> and in the universal declaration of human rights as "everyone has the right to life, liberty and security of persons".<sup>16</sup> Subsequently, the international covenant, on economic, social and cultural rights and civil and political rights of 1966 provided specific guarantees in their respect. The declaration on

<sup>11</sup> K.I.Vibhute, Criminal Justice, "A Human Rights Perspective of the Criminal Justice Process in India" J.I.L.I. Vol. 49, 2007.

<sup>12</sup> S.P. Srivastava, "Criminal Justice Administration in India," Indian Journal of Criminology, Vol.15, 1987(July) P.95

<sup>13</sup> Sadhan Kumar Gupta, "Administration of Criminal Justice - Basic Problem that Require Immediate Attention, An article Published in Platinum Jubilee Celebration, 2006, Bar Council of West Bengal. P. 77.

<sup>14</sup> Vijay Kumar, "Human Rights and the Criminal Justice System, C.I.L.Q., Vol. XVI, 2003, P.397.

<sup>15</sup> The Preamble of U.N Charter 1945.

<sup>16</sup> "Everyone has the right to life, liberty, security or person."

the rights to development on the right to development (1986) directing the states to eliminate the violations of human rights and making development as the basis for promotion of human rights broadened their area. There are other documents like the constitution, the protection of human rights Act 1993 etc in this respect. Maintenance of law and order is a primary task vested with the executive. The state cannot remain aloof from allowing the people to enjoy freedoms absolutely. To maintain order and peace in society and to prevent, detect and control crime, the state provides its law enforcement machinery, particularly the police, with wide ranging powers. If used arbitrarily, these powers could impinge on the dignity and liberty of the individual. To preserve human rights of the citizens, it becomes necessary to build in safeguards in the criminal justice Administration. Presently, it is a great question whether the state of the common people at the hand of the police is safe from being frequent violation or not.<sup>17</sup>

However, it is a common perception that administration of criminal justice in our country is deteriorating day by day and laymen are losing faith in the entire system due to obvious reasons. It is therefore; repeatedly felt that there is an urgent need to review the entire criminal justice system, especially investigation of crime by the police and lacking interest of witness in the prosecuting machinery due to which conviction rates are declining at a very rapid pace. This has also been attributed to the lack of continuous and effective coordination amongst the law enforcement agencies, i.e. the police, magistracy, judiciary and correctional administration in general, and the police and prosecuting agencies in particular.<sup>18</sup>

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<sup>17</sup> Dr. S.Subramanian, Human Rights International Challenges, [1st Edition, 2004], Manas Publication, New Delhi, P. 222.

<sup>18</sup> K.I. Vibhuti, Criminal Justice, [1st Edition, 2004], Eastern Book Company, Lucknow, P. 142.