Criminal Administration of Justice yesterday and Today

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Abstract

In modern world every civilized country has it's own constitution and every responsible citizen should follow it. There should be not such a rule as might is right. In the old time the there was only a single rule as Tulsidas said in Ramcharit manas that "samrath ko nahi dosh gusaee". And above all in modern world the concept of might is right is not acceptable in modern world at any rate and in any situation. The modern criminal justice system was evolved since ancient times, with new forms of punishment, added rights for offenders and victims, and policing reforms. During the Middle age, payment to the victim (or his/her heirs), known as wergild, was another common punishment, including for violent crimes. For those who could not afford to buy their way out of punishment, harsh penalties included various forms of corporal punishment included mutilation, branding, and flogging, as well as execution were imposed.

INTRODUCTION

At first we should know what is criminal justice criminal justice is the system of practices, and organizations, used by national and local governments, directed at maintaining social control, deter and controlling crime, and sanctioning those who violate laws with criminal penalties. The primary agencies charged with these responsibilities are law enforcement (police and prosecutors), courts defense attorneys and local jails and prisons which administer the procedures for arrest, charging, adjudication and punishment of those found guilty.

Giving the definition of Criminal Justice professor Madhav Menon says-

"Criminal justice means the criminal law, the criminal procedure, the institutions of enforcement of the criminal law and the personnel involved in administering the system. Its objects 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 the law, punishment and rehabilitation of those adjudged guilty of committing crime and generally protecting life and property against crime and criminals.

In U.S. A. criminal justice policy has been guided by the 1967 President's commission on Law Enforcement and Administration of Justice, which issued a ground – breaking report "The Challenge of Crime in a Free Society." This report made more than 200 recommendations as part of a comprehensive approach towards the prevention and fighting of crime. The criminal justice system in England and Wales aims to reduce crime by bringing more offences to justice, and to raise public confidence that the system is fair and will deliver for the law-abiding citizen. In Canada, the criminal justice system aims to balance the goals of crime control and prevention, and justice (equity, fairness, protection of individual rights). In Sweden the overarching goal for the criminal justice system is to reduce crime and increase the security of the people.

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DEFINITION OF LAW

According the religious books of Hindus to follow the religion is called law. When the Pandaws were in exile , in the reply of Yaksha's question Yudhishthara answered that Dharm is the only shield of a man in the world. In Mahabharata when Bhishma was asked about Dharam, he said, "It is most difficult to define Dharam. It has been explained to be that which helps to uplift of living beings. The learned rishis have declared that which sustains is Dharma."

Origin of Dharma

Dharma was founded to make life easy and smooth for all human beings. Dharma is a source to solve the eternal of problems of a man. There are four elements in the world for every man to get. Dharma, Artha, Kama and Moksha.

In ordinary words it can be said that if a man does not harm another man in any way, he does not steal anything of others, he respects the elders and he behaves in a proper way to all he is religious. Dharma does not allow to steal, to make violence and not to tease the weak and poor men. According the Vedas and other holy books of Hindus there are ten qualities of Dharma. Dharma does not exists in any temple, Church or Mosque, but it exists in the hearts of a man. It is a matter of soul and final achievement of the Dharma is the Moksha.

Basic aspects of Dharma

While Dharma touches on wide varieties of topics, the essence of Dharma also declared by the various works. Ahinsa or non-violence, Satya, Astya(not to take anything without permission of his owner) , Shoucham (purity) and Indriyanigraha are in brief the common Dharma for all.

Dharma protects only those who protect it. If a man gives up Dharma, then Dharma also gives up him. A society would be in existence if everyone acts according Dharma. If a man or a society does not the follow the rules of Dharma, then it is certain that he will ruin very soon. Shortly put, Dharma regulated the mutual obligations of individual and society. Therefore it was stressed that protection of Dharma was in the interest of both the individual and the society. Manu warns, 'Do not destroy Dharma, so that you may not be destroyed.' State of Dharma was required to be always maintained for peaceful co-existence and prosperity.

History of law

The history of law is closely connected to the development of civilizations. Ancient Egyptian law, dating as far back as 3000 BC, had a civil code that was probably broken into twelve books. It was based on the concept of Ma'at. Characterized by tradition, rhetorical speech, social equality and impartiality. By the 22nd century BC, Ur-Nammu, an ancient Sumerian ruler, formulated the first law code, consisting of casuistic statement ('if…… then ….."). Around 1760 BC, king Hammurabi further developed Babylonian law, by codifying the kingdom of Babylon as stelae, for the entire public to see; this became known as the Codex-Hammurabi. The most intact copy of these stelae was discovered in the 19th century by British Assyriologists , and has since been fully transliterated and translated into various languages, including English, German and French.

Ancient India and China represent distinct traditions of law, and had historically independent schools of legal theory and practice. The Arthashastra, of Kautilya perhaps compiled around 100 AD (though containing some older material) and the Manusmriti (c.100-300 AD) were foundational treatises in India, texts that

were considered authoritative legal guidance. Manu's central philosophy was tolerance and Pluralism, and was cited across Southeast Asia. This Hindu tradition, along with Islamic law, was supplanted by the common law when India became part of the British Empire. Malaysia, Brunei, Singapore and Hong Kong also adopted the common law. The eastern Asia legal tradition

Reflects a unique blend of secular and religious influence. Japan was the first country to Begin modernizing its legal system along western lines, by importing bits of the French, But mostly the German Civil Code. This partly reflected Germany's status as a rising power in the late 19th century.

Similarly, traditional Chinese law gave way westernization towards the final years of the Ch'ing dynasty in the form to six private law codes based mainly on the Japanese model of German law. Today Taiwanese law retains the closet affinity to the codifications from that period, because of the split between Chiang Kaishek's nationalists, who fled there, and Mai Zedong's communists who won control of the mainland in 1949. The current legal infrastructure in the people's Republic of China was heavily influenced by Soviet Socialist law, which essentially inflates administrative law at the expense of private law rights. Today, however, because of rapid industrialization China has been reforming, at least in terms of economic (if not social and political) rights. A new contract code in 1999 represented a turn away from administrative domination. Furthermore, after negotiations lasting fifteen years, in 2001 China (World Trade Organization. The constitution of India is the largest written constitution for a country, containing 444 Articles, 12 schedules, numerous amendments and 1,11,369 words.

Philosophy Of Law

The philosophy of law is also known as jurisprudence. Normative jurisprudence is essentially political philosophy and asks "what should law be ?" Analytic jurisprudence on the other hand, is a distinctive field which asks "what is law?". An early famous philosopher of law John Austin, a student of Jeremy Bentham and first chair of law at the new University of London from 1829. Austin's utilitarian answer was that law is "command, backed by threat of sanctions, from a sovereign, to whom people have a habit of obedience". This approach was long accepted, especially as an alternative to natural law theory. Natural lawyers, such as Jean-Jacques Rousseau argue that human law reflects essentially moral and unchangeable laws of nature. Immanuel Kant, for instance, The philosophy of law is also known as jurisprudence. Normative jurisprudence is essentially political philosophy and asks "what should law be ?" Analytic jurisprudence on the other hand, is a distinctive field which asks "what is law?". Carl Schmitt, Kelsen's major intellectual opponent, rejected positivism, and the idea of the rule of law, Because he did not accept the primacy of abstract normative principles of the exception (state of emergency), which denied that legal norms could encompass of all political experience

Later in the 20th century, H.L.A. hart attacked Austin for his simplifications and Kelsen for his fiction in The Concept of Law. As the chair of jurisprudence at Oxford University. Hart argued law is a "system of rules".Ronald Dworkin In his book Law's Empire, Dworkin attacked Hart and the positivists for their refusal to treat law as moral issue. Dworkin argues that law is an "interpretive concept", that requires judges to find the best fitting and most just solution to a legal dispute, given their constitutional traditions. Joseph Raz, on the other hand, has defended the positivist outlook and even criticized Hart's soft social thesis' approach in the Authority of Law.

Concept of Crime

The concept of offence under the ancient Indian criminal Law had its origin from the word pataka(sin). As to what acts or omissions constitute Offence or sin depends upon the law and moral and social values evolved in a particular Society. In the ancient Indian society the concept of pataka originated in the Vedas and was developed in the Dharmashastras.

The object of the law of crimes in ancient India, as it was in other systems of law and as also under the existing system, was to specify offences and to provide for the imposition of penalty by the State against a person when it was proved that he has committed an Offence punishable in law.

Origin of Criminal Law

According the Hindu Vedas and other religious books bad thinking is also a crime.

"A crime is an act or omission which is prohibited by law as injurious to the public and Punished by the state. "Disobedience to the command or prohibition made the reference to the matter affecting public peace, order, or good government to which a sanction is attached, by way of punishment or pecuniary penalty, in the interest of the state by way of punishment or as a whole, and not by way of compensation for the injury which the act or omission may have caused to an individual.

In simple words, if we are going to do such a deed which is against the law of the country, that is crime. There are two kinds of crime, moral and legal.

In *Vinay Devanna Nayak Versus Ryot Seva Sahakari Bank Ltd*, the Supreme Court of India observed that it is no doubt true that every crime is considered to be an offence against the society as a whole and not only against an individual even though an individual might have suffered thereby. It is, therefore, the duty of the state to take appropriate action against the offender[1].

Historical Background of Criminal Administration of Justice

In ancient Greece crime was viewed as private matter. Even with offenses as serious as murder , justice was the prerogative of the victim's family. Publicly-owned slaves were used by the magistrates as police in Greece in those days

The modern criminal justice system has evolved since ancient times, with new forms of punishment, added rights for offenders and victims, and policing reforms. These developments have reflected changing customs, political ideals, and economic conditions. In the ancient times through the middle ages, exile was a common form of punishment. During the middle ages, payment to the victim (or their') known as wergild, was another common punishment, including for violent crimes. For those who could not afford to buy their way out of punishment, harsh penalties included various forms of corporal punishment. These included mutilation, branding, and flogging, as well as execution.

Through the history of criminal justice, evolving forms of punishment, added rights for offenders and victims, and policing reforms have reflected changing customs, political- ideals and economic conditions. The legal process of trials in colonial America was quite different from the modern one in many ways. After an alleged crime was reported, a magistrate, or judge would consider the Presented evidence and decide whether it was a true crime. If the magistrate decided that a crime was indeed committed the accused was apprehended and sent to be ask a question by the magistrate. The interrogation was usually held in the magistrate's own house with a few marshals or deputies as witnesses. However, during this step in the procedure, no lawyers were involved on behalf of either party. Upon hearing the answers and explanations of the accused, the magistrate would determine

whether a trial was necessary. If he decided on the affirmative the defendant was usually free to leave until the trial without bail.

The role of the defense attorney was minuscule, if not unheard of, in the colonial period. This stemmed from an English legal tradition of severely restricting the role of the defense to challenging or questioning narrow points of the law. In time the American practice of trials allowed a greater and more vigorous role to defense of the accused. Since probation was not yet known to the colonists, they used a system of nods to guarantee trouble makers would not cause any problems. Courts began to require many problem-causing people to put up money to make sure they would stay out of trouble. This system worked especially well in communities where everyone minded each others' business.

(jermy Taylor, Works XIII.306)

[2](Honnes, Leviathan, chapter 13)

[3] [A. S. Diamond. The Evolution of law and Order (London.1951)]

[4] 2008 (3) SCC 602