

# Concept and Theories of Criminal Justice Administration

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**Abstract:** *The Constitution of India confers a number of fundamental rights upon citizens. The Indian State is also a signatory to various international instruments of human rights, like the Universal Declaration of Human Rights which states that: "No one shall be subject to torture or cruel, inhuman or degrading treatment or punishment" [1]. Also important is the United Nations Covenant on Civil and Political Rights which states in part: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" [2]. Therefore, both under national as well as international human rights law, the state is obliged to uphold and ensure observances of basic human rights. One of the best tenets of human rights law is that human rights are inalienable and under no circumstances can any authority take away a person's basic human rights. The fact that this tenet is not sometimes made applicable to prisoners is well documented. There are innumerable judgements of Supreme Court and High Courts, showing how prisoners' rights are violated. The judgement highlighted the highly unsatisfactory conditions prevailing inside the prisons and the failure of the prison authorities to provide an environment which is conducive to the maintenance of prisoners' rights, partly rooted in the belief that the prisoners do not deserve all the rights and the protections that the constitution provides to all citizens. Besides being morally wrong and legally invalid, this belief does not show adequate recognition of some basic facts about the prison population. Out of the total population of 2,26,158 in the country on 1.1.1997, 1,63,092 were undertrials. [3] Thus 72% of the prison population is not even convicted of any crime. Secondly, even those who are convicts, a large number of them are first time offenders involved in technical or minor violations of law. Very few are recidivists or hardened criminals. [4] Also, as was observed by the Mulla Committee, a majority of the inmates come from the "underprivileged sections of the society, as persons with the means and influence generally manage to remain beyond the reach of law even if they are involved in violation of law." [5]*

## 1. Introduction

The company must be controlled. In all ages the legislature has expatiated on this the truism that men are what everyone wants to see their own interest and passionate about following him, society can exist only in the shelter of the state, and the law and justice of the state are a permanent and necessary condition of peace, order, and civilization [6].

This end of social control is achieved by the state, by the administration of justice, through the instrumentality of law. So the administration of justice is defined as "the maintenance of the right within a political community through the physical strength of the state. "So he reads and the state is inseparable and its authority and sanction is necessary characteristic of the law. The sanctions, we have seen, do not always imply the idea of duty and punishment. Many of our laws are declarative or furthermore, it must be recognized that there could not be any permissive character replace the administration of justice by the state for the control of society, for although most people obey most laws by habit, imitation or public opinion rather than the fear of punishment, albeit with the application of the law the agencies were withdrawn, soon it was discovered that the wicked with impunity challenge every public opinion and then break down the customs and habits of obedience of others. It could still come in a moment when communities reach the maximum of civilization, when everyone uses force may cease, either by way of justice or war administration, and when that happens ... "A society in which the power of the state is never called into actual exercise marks, not the disappearance of governmental control, but the final triumph and supremacy of it. But, till the society reaches that stage of civilization force has to stay.

## 2. Concept

The term 'Administration of Justice' means exercise of judicial power to maintain and uphold rights and punish wrongs. "The expression 'Administration of Justice' include within its ambit several thing as component parts of it namely the Constitution, organization of Courts, jurisdiction, powers and the laws to be administered by the Courts." [7] In India, the Supreme Court and High Courts have the power to review the Administration of Fundamental Rights of the citizens along with limitations of powers of Government, Parliament and Tribunals with a view to administer justice according to law to ensure the supremacy of the Constitution. [8]

Under the Constitution, the ultimate authority is given to the Courts to restrain all exercise of absolute and arbitrary powers, not only by the executive and the officials and lesser by tribunals but also by the legislature and even by Parliament itself. [9] In the case of *M.R. Venkatarama v. Commissioners of Police, Madras*, Menon, J. indirectly support the notion of "justice" according to procedure established by law of the land which does not offend or is neither indecent. Thus no one is to be deprived of life, liberty and property in disregard of those fundamental rules of procedure which are well established in the Indian Legal system. The object of 'justice, according to law' is to save from arbitrary interference by the Executive and the Legislature. Such Fundamental Principles of procedure which are well recognized as principle of justice. [10] The Supreme Court laid down the doctrine of prospective overruling and re-emphasized the supremacy of the rule of law and of justice according to law. [11] The Indian philosophy of justice according to law alone guarantees the individual liberty and dignity against the despotism of Executive or of Legislature or of inferior Tribunals. It alone reassures men, the government, of laws and not of men. In such system people are governed by certain laws and not by men or by a party or person as we come across in totalitarian

system of China, Spain and U.S.S.R. etc. According to Salmond 'Administration of Justice' ensures infirmity and certainty in the Administration of justice.

Prof. Pound has found that there are many advantages of the Administration of Justice according to law:- The idea of justice according to law is supported by Prof. Pound on the ground that it successfully includes the personal equation on all matters affecting life, liberty and property. The administration of Criminal Justice has a social dimension and society at large has a stake in impartial justice. Therefore, the Bench and the Bar as a collective profession must respond to current chaos if it has patriotic commitment

## 2.1 Criminal Justice Administration in Different Periods

The criminal justice administration in India developed in several stages and then the present form came, so it is essential to know the precise form of criminal justice in different periods.

**(i) Ancient Hindu Period:** In ancient India, we find a proper criminal justice system which was chiefly based on retribution and deterrence. The penal law of ancient communities is not the law of crimes; it is the law of wrongs [12] because in those days there was no such classification of wrongs as torts and crimes. At that time the deviations from the prescriptive standards of behavior was minimum and the system was efficient in checking that. The guilty intention was not necessary element of crime in those days. There was not much difference in the nature of punishment for the two modern varieties of wrongs. This view of ancient penal law, though true in case of almost all systems of the world, is not correct in case of ancient Hindu Criminal Law. In the Hindu law, punishment of crimes occupies a more prominent place than compensation for wrongs. Although under certain circumstances wrongdoer had to compensate the person but it was generally levied in addition to or in substitution for the penalty. [13] The right to punish the offender lay in the hands of individual in western criminal jurisprudence and this right was only during middle ages transferred from individual to the society and later on to the state. But in ancient Hindu law, it was the duty of the king to punish the offender. The Hindu Law, gives did not expressly distinguish between civil wrong and crime.

According to Manu, if the king failed to punish the offenders unremittingly, the powerful would roast the weak life fished on a pit. [14] In Matsya Purana, it is stated that if the king did not inflict punishment, the strong would oppress the weak just as big fish swallow the smaller one. [15] Kautilya stated that if punishment is too deterrent, it will create fear but if it is proper and just then it will inspire to behave properly. Vedic literature nowhere refers to the king as a judge either in civil or criminal cases, offences like murder, theft and adultery are mentioned, but there is nothing to indicate that they were tried by the king or any officer authorized by him. It has been suggested that Sabhapati of the later Vedic period may have been a judge. Such slight indications as exist seem to show that normally it was the Sabha or the popular village assembly rather than the king who tried to arbitrate where it was feasible to do so. [16]

**(ii) Muslim Period:** This law was based on Quran and Hadis and was developed through Ijma and Kiyas. The Kazis were responsible for elucidating and expounding of the laws. Crimes were divided in to two classes, namely (i) crimes against God e.g. adultery and drunkenness; and (ii) Crimes against man (e.g. murder and robbery). The offences against God were considered as public wrongs and could, therefore, be punished by community society. The offences against man were private wrongs and therefore could be punished by individual in most of the cases, crime was a wrong done to the individual wronged and not to the state. Therefore, prosecution lay in the hands of the individual. Punishment was of four kinds namely, (i) qisas (Retaliation), (ii) Diyut (blood money), (iii) Hadd (defined punishment which could either be increased or reduced), and (iv) Tazer and Siyasa (discretionary and exemplary punishment).

The rules of evidence were also defective. Some of them were even against the rules of natural justice. The procedure to be followed by the courts in trial of criminal courts was also unsatisfactory. In some cases, the law was defective to such an extent that it was impossible for any civilized government to administer it. For example, a non-Mohammedan could not be admitted as a witness in evidence in any case affecting a Mohammedan. Similarly, the punishment of stoning for sexual offences or mutilation for theft was impossible to enforce.

**(iii) British period:** When East India Company took over the administration of Indian dominion, Muslim criminal law was in force. In 1765, the East India Company acquired the Nizamat of the three provinces of Bengal, Bihar and Orissa. The Company had then to administer justice. In the beginning they adopted the policy of maintaining status quo. Gradually the defects of Muslim Criminal Law became clear and therefore, efforts were made to remove those defects. The first attempt was made by Warren Hastings who tried to do away with the punishment of mutilation for dacoity. Some important criminal reforms were made by Lord Cornwallis. Law of homicide was changed and murder was no more a private wrong. Law relating to robbery, penury and sexual offences were also changed. Effort was made to rationalize the punishment by making it proportionate with the crime. A Regulation of the year 1832 provided that in case of a trial for an offence under the Regulations non Muslims could claim exemption from trial under the Muslim criminal law. But the changes introduced in Muslim criminal law were not uniformly applicable to all Presidencies. Most of them applied in Bengal alone. The result was that different rules prevailed in different Presidencies. These shortcomings became quite obvious when all the Presidencies were put under the control of central government.

Therefore, a commission was appointed to examine these conflicting features and suggest necessary modifications. Later on it was realized that no satisfactory improvement was possible by piece meal legislation and a penal code was thought necessary. In the Presidency of Bombay a penal code was enacted under the guidance of the Governor Elphinstone which code was known as Elphinstone code. This code was short and sketchy and consisted of forty-one sections only. In 1884, a separate code was drawn for the

Province of Punjab after its annexation. These codes were meant for the respective provinces only.

## 2.2 Theories of Punishment

There are five theories of punishment; retributive theory, deterrent theory, preventive theory, reformatory theory and theory of compensation.

**(i) Retributive Theory:** In primitive society, punishment was mainly retributive. The person wronged was allowed to have his revenge against the wrongdoer. The principle of “an eye for an eye, a tooth for a tooth” was recognized and followed. Justice Holmes writes: “It is commonly known that the early forms of legal procedure were grounded in vengeance”. Early criminal law was based on the principle that all evil should be required. [17]. It was believed that the community could be regarded as purged of the evil only in that way. Among the ancient Jews, even animals which killed human beings were regarded as contaminated and were got rid of for the good of the community. Plato was a supporter of the retributive theory. He wrote; “If justice is the good and the health of the soul as injustice is its disease and shame, chastisement and is their remedy. If a man is happy when he lives in order, than when he is out of it, it is of importance to him to enter it again and he enters it through chastement. Every culpa demands expiation; the culpa is ugly, it is contrary to justice and order; the expiation is beautiful because all that is just is beautiful and to suffer for justice is also beautiful”. [18]

**(ii) Deterrent Theory:** To quote Salmond, “Punishment is before all things a deterrents and the chief end of the law of crime is to make the evildoer an example and a warning to all that are likeminded with him”. A similar view was expressed by Locke when he stated that the commission of every offence should be made “a bad bargain for the offender”. According to the deterrent theory of punishment, the object of punishment is not only to prevent the wrongdoer from doing a wrong a second time but also to make him an example to other persons who have criminal tendencies. A judge once said, “I do not punish you for stealing the sheep but so that sheep may not be stolen” [19].

**(iii) Preventive Theory:** Another effect of punishment is preventive or disabling. The offenders are disabled from repeating the offences by such punishments as imprisonment, death, exile, forfeiture of office etc. By putting the criminal in jail, he is prevented from cutting another crime. By dismissing a person from his office, he is deprived of an opportunity to commit a crime again. Paton writes: “The preventive theory concentrates on the prisoner but seeks to prevent him from offending again in the future. Death penalty and exile serve the same purpose of disabling the offender”. Justice Holmes writes: “There can be no case in which the law-maker makes certain conduct. Prevention would accordingly seem to be the chief and only universal purpose of punishment. The law threatens certain pains if criminal without thereby showing a wish and purpose to prevent that conduct of you do certain things, intending thereby to give you a new motive for not doing them. If you persist in doing them, it has to inflict the pains in order that its threats may continue to be believed”. [20]

**(iv) Reformatory Theory:** According to this theory, the object of punishment should be the reform of the criminal. Even if an offender commits a crime, he does not cease to be a human being. He may have committed a crime under circumstances which might never occur again. The object of punishment should be to bring about the moral reform of the offender. He must be educated and taught some art or industry during the period of his imprisonment so that he may be able to start his life again after his release from jail. While awarding punishment, the judge should study the character and age of the offender, his early breeding, his education and environment, the circumstances under which he committed the offence, the object with which he committed the offence and other factors.

The advocates of the reformatory theory contend that by a sympathetic, tactful and loving treatment of the offenders, a revolutionary change may be brought about in their characters. Man always kicks against pricks, whipping will make him balk. The view of Salmond on the reformation theory is that if criminals are to be sent to prison to be transformed into good citizens by physical, intellectual and moral training, prisons must be turned into comfortable dwelling places. The theory of reformatory punishment alone is not sufficient and there should be a compromise between the deterrent theory and the reformatory theory and the deterrent theory must have the last word. [21]

The primary and essential end of criminal justice is deterrence and not reformation. In modern times, there is a tendency to ignore or minimize the deterrent aspect of punishment. What is required is that the value of the deterrent elements must be given its proper place. Salmond writes: “The deterrent motive should not be abandoned in favour of the reformatory altogether since permanent influence of criminal law in this stem aspect contributes largely to the maintenance of the moral and social habits which shall prevent any but the abnormal from committing crime and also directly deter any but the sub-normal, apart from exceptional circumstances, from committing crimes”.

**(v) Theory of Compensation:** This theory contends that the object of punishment must be not merely to prevent further crimes but also to compensate the victim of the crime. The contention is that the mainspring of criminality is greed and if the offender is made to return the ill-gotten benefits of the crime, the spring of criminality would dry up. In certain cases, the Supreme Court has awarded compensation to persons who have suffered at the hands of government servants: Bhirn Singh case [22] and Rudal Shah Case [23] etc. But a perfect system of criminal justice cannot be based on any one theory of punishment. If the offender is a rich person, the payment of any amount may be no punishment for him. Every theory has its own merits and every effort must be made to take the good points of all. The normal and free life is better than life in jail. The government should set up mental hospitals and reformations in place of jails and living conditions in jail should be improved.

## 2.3 The Sentencing of Offenders

Administration of Justice is one of the essential functions of the State. The Law and Order within the State is maintained



through the 'Administration of Justice' and the citizens are made to realize the existence and the importance of the State. The purpose of the Criminal Justice is to punish the wrongdoer. The end of the Criminal Justice is to protect and add to the welfare of the State and the Society. The action of the State may be preventive, deterrent, retributive expiatory or reformatory according to individual cases but the aim is to protect the society and welfare of the people.

A wide discretion is given to the Judges in sentencing the offenders. The sentences may be: I. Death II. Imprisonment (including imprisonment for life) III. Fine (includes forfeiture of property)

The determination of appropriate sentence for the convicted person is as important as the adjudication of the guilt of the accused in the modern sentencing system. The significance of the modern sentencing system lies in the individualization of punishment and consequently to the rehabilitation of the offenders. That is the reason that the IPC and the other Penal Laws normally indicate the maximum punishment awardable for an offence and then leave it to the discretion of the court to pass a suitable sentence within such maximum limit. The impossibility of laying down standards is at the very core of criminal law administered in India invests the judges a very wide discretion in the matter of fixing degree of punishment. That discretion in the matter of sentence is liable to be corrected by Superior Courts. Laying down of standards to the limited extent possible as was done in the model judicial code would not serve the purpose of the exercise of judicial discretion. One well recognized principle is, in the final analysis, the safest possible safeguards for the accused [24]. After the decision of Jagmohan's Case the new Code Criminal Procedure, 1973 incorporated for the first time Sec.325(2) and 248(2) to ensure a great awareness on the parts of Courts to examine each case more closely, so as to determine the most appropriate sentence. [25]

In India there is also a system for capital punishment. The constitutional validity of capital punishment was challenged in Jag Mohan Singh's case. [26] But in Bachchan Singh's Case<sup>29</sup> the Supreme Court held that "the legislative policy now writ large and clear on the face of Sec. 354(3) is that on conviction for murder and other capital offences punishable, in the alternative with death under the Penal Code, the extreme penalty should be imposed only in extreme cases. The Supreme Court finally held that a real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be save in the rarest of the rare cases when the alternative option is unquestionably foreclosed.

## 2.4 The Principle of Legality

The basic principle of the criminal law is that no one must commit a crime unless it violates a prescribed law that defines prohibited acts. The principle is expressed by the legend of Maxim Nalun Piona Sign. In other words, no crime will be committed unless there is a violation of existing legislation that clearly and clearly defines the crime. The Indian constitution provides the following.

"No person shall be convicted of any sin, except in the case of violating the acts that are effective at the time of delegation of acts prosecuted as a crime, and this provision shall not be guilty of any crime in any country where the rule of law is" It is clearly stating what can be called a great charter. The position in the totalitarian state is different. It can be explained with reference to the position obtained under German Nazi rule. The sound recognition of the law and citizens shall be punished according to the law.

The fundamental principle of criminal law is that no one can be found guilty of an offence without his having violated some predetermined law defining a prohibited conduct. The principle is expressed by the maxim *nullumpeona sine lege*. In other words, unless there is a violation of some existing law defining a crime clearly and unequivocally, no crime is committed. The Indian Constitution provides: [27]

## 2.5 Presumption of Innocence

There are two systems, i.e. the accusatorial and inquisitorial systems, followed in different parts of the world in administration of criminal justice. In the accusatorial system followed in common law countries, the burden of proving that an accused person violated some law is on the prosecution while in the inquisitorial system which is followed in some European countries like France, and it is for accused person to prove that he is not guilty of the crime allegedly committed by him. [28] In India, where the accusatorial system is followed, there is a presumption in favour of the accused that the offence has not been committed by him and the presumption continues to be operative until the prosecution is able to prove its case according to the rule of procedure and evidence prescribed by law. The same principle has been incorporated in the Evidence Act: "Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist." [29]

## 2.6 Protection against Self-incrimination

A cardinal principle of the Criminal Justice system is that an accused cannot be compelled to give evidence against himself. The principle has been recognized in the Indian legal system. The constitutional guarantee of the right in India is that no person accused of any offence shall be compelled to be a witness against himself. [30] The principle is to eliminate the possibility of third degree method being used against the accused person to extort confession or any other information from him. Some of the provision in the Evidence Act and the criminal Procedure Code also seek to achieve a similar objective. [31]

## 2.7 Protection against Double Jeopardy

It is a well-established principle of the Criminal justice system that no man shall be twice punished if it appears to the court that it is for one and the same cause. The principle is expressed in the well-known maxim, *nemo debetbisvexari*, is const at curiae sit pro unaeteadem causa. The principle has been incorporated in the Indian Constitution thus: [32] "No person shall be prosecuted and

punished for the same offence more than once.” While the constitutional guarantee recognizes only autrefois convict (previous conviction) as a bar to the subsequent prosecution for the same offence, the provision in the Criminal Procedure Code incorporates autrefois acquit (previous acquittal) as well to bar another trial for the same offence. The main principle laid down is that a person who had once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence. [33] The same act committed by a person may amount to two different offence, i.e. the same act may invite the application of the definitions of two distinct offences and the protection against double jeopardy is not available in such situations. The offences are distinct if their ingredients are different and it makes no difference that the allegation of fact is the same in both the [34] cases.

### 3. Conclusion

Incarceration in its pure and simple form is a kind of cruel sanction, its object being primarily to deprive the offender of his liberty, which is the most serious damage, which can be caused to a human being. Prior to the arrival of British, there were no prisons, in the modern sense in India. Imprisonment as a mode of punishment was not the normal feature. Only under trials, political defectors war offenders were kept in custody as prisoners in ancient India. The pre-Buddhist prison system was most inhuman. Although the imprisonment was a very usual form of punishment in Mughal India, there were no specific rules governing it. Prisoners were treated as animals because there was no regard for their rights. The Prisons in India, at the time of the takeover of the country by the East India Company were in a terrible condition. This was inevitable in the criminal justice system where deterrence was the only aim of the Prison system.

The purpose of criminal justice administration is to prevent and control the criminal acts in the society by punishing the wrongdoer. At the same time, it should be in such a way that the end of criminal justice is to protect and add to the welfare of the state and society. Accordingly, the idea of involving pain or suffering in awarding the sentence has been modified in the modern methods introduced in dealing with criminals. Probation, parole and open prison are treated as substitute for the punishment. Even in the prison, the basic idea is not to inflict pain or suffering but to teach the convict the methods and techniques to make the prisoner a law abiding citizen.

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