

Crime, Criminal Justice and Human Rights, H.R.

Bhardwaj

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Abstract

The standards of criminal justice are declining as the years are passing. This becomes a great matter of concern for everybody in general and particularly to the ones who are directly associated with the justice system in the country. The book, Crime, Criminal Justice and Human Rights is a work of an eminent and experienced lawyer of the country, H.R. Bhardwaj. The author has been the Law Minister under Prime Minister Rajiv Gandhi. Mr. Bhardwaj has served as a senior standing counsel for the State of Uttar Pradesh and has many laurels as a crusader for improvement of the judicial infrastructure. Having a wide experience in the field of law, the author felt a need to pen down the reasons he has confronted about the criminal justice administration in India. Hence the advent of the book, Crime, Criminal Justice and Human Rights. The Police, Magistrates, Public Prosecutor and courts are directly connected to the criminal justice system in a country. This book attempts to review the working of these persons and institutions. The book consists of 13 chapters ranging from the history and reforms of criminal justice in India, functions of the Police, courts and public prosecutors, the principles and general rules of criminal justice, human rights with respect to crime and criminal justice and many other subject matters which are imperative for the fair and just administration of criminal justice in India. This piece of the author presents the criminal justice in India in a new dimension by quoting the observations and comments of eminent jurists. This book through the in-depth analysis of the author serves as a benefit to the entire legal community and several others working in the field of civil liberties and human right.

Keywords: Courts, Criminal Justice, Human Rights, Police, Public Prosecutor.

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Introduction

“Our treatment of crime can be analogized to a community that is drinking contaminated water because of someone upstream is polluting the stream. We can never control water pollution until we clear up the source of pollution.”²(According to Jeffery)

The presence of crime is found in all societies. Every crime in its ultimate analysis, is a challenge to the sociological reality. The book, *Crime, Criminal Justice and Human Rights*, begins with analyzing the nexus between the criminals, civil servants and politicians which became obvious after the commission of N.N. Vohra Committee in 1993. This committee collected information in shape of unpublished reports and other sources which revealed an explosive situation created by the nexus of the underworld and with the powerful persons holding high positions, some of them having international linkages. The author moves forward by examining the internal security system of the country. Highlighting how every day officers of police, para-military forces and even army personnel are being killed, the author says that “the internal security forces speaks for itself and is crying for reforms in criminal justice. Mr. Bharadwaj, expeditiously deals with the faults in the criminal justice system in India through a plethora of case laws, both national and international, numerous reports by different recognized committees and of course the primaryintrinsic legislations which deals with the concept of criminal justice administration.

The author alludes towards the history of codification of criminal law in India by commenting that the framers of the Anglo-Indian Codes- Macaulay and Stokes and other names famous in the Indian legal history did their best to modify and adapt the standards of conduct implied in the rules of Common Law to Indian conditions. But they did not and, in the very nature of things, could not, build on existing foundations. The book focuses on the topics, Criminal Justice in India, the role of police, courts and Public prosecutor, the trial process, granting of bail and punishment, and Human Rights in relation to Criminal Justice system. The following subheadings are divided to give an overview of how these topics dealt by the author in the book.

Criminal Justice in India

The book, in Chapter 2, deals with the patterns of criminal justice in India right from the early sources of law. There was no uniformity in the criminal justice system for whole of

²SIR HAROLD, SCOTLAND YARD, p. 18, (1998).

India. Justice according to Dharma was administered by a bench of three magistrates according to the principles of natural justice, religious precepts and practices of the society. Islamic concept of justice speaks that all institutions of Government exist only as agents of high authority, and are pledged solely to fulfil the legal and moral code laid down by Allah. In Aryan system, justice was administered under the rule of King, which though vested with supreme authority was subjected to Aryan common law and tradition.

Much was changed in the legal system of India during the British Raj. The author has presented an in-depth study about the codification of laws by the British jurists like, T.B. Macaulay, J.M. Macleod & G.W. Anderson and F. Millet who composed the First Law Commission for the purpose of codification of laws under the Charter Act of 1833. The adversary justice system, also known as the accusatorial system, which is administered by the “Common Law Courts” in England was introduced in India after the codification of the Indian Penal Code, 1860, Criminal Procedure Code, 1861 and the Evidence Act, 1872. The legal principles underlying the new Codes brought about a perceptible change in the criminal justice system in India. The system introduced investigation by the police, trial by independent magistrates and judges who interpreted the laws impartially assisted by the independent public prosecutor. In the words of the author, the procedural glory of system of criminal justice, in its happy hypothesis, is its fairness, minimum judicial prejudice, judicial focus on the point in issue, assistance of the counsels, absence of element of surprise in trial and the application of the rule of *Audi alteram partem* (a party to an action is entitled to have it heard in his presence).

Role of Police

The book attempts to review the working of the police, the public prosecutors, the magistrates and other courts and their approach towards the criminal justice system. The author remarks the police as the conscience keeper of the society and an essential organization of the State to maintain law and order and to prevent crimes. The police force inherits powers from the Police Act, 1861. As early as 1902, it was realized after extensive travelling by the Police Commission in the provinces that police force was far from efficient, defective in training and is generally regarded as corrupt and has failed to secure cordial relations with the public. The author has in detail put forward the facts and the decision of the court in the case of *Vineet Narain v. Union of India*³, where the CBI and FERA authorities were not making

³*Vineet Narain v. Union of India*, (1) S.C. 226, 228, (1998). (India)

proper investigation against the Jains and their powerful accomplices, who happened to be politicians and bureaucrats and had prima facie committed offences of bribery and corruption.

The author is of a strong view that a grave miscarriage of justice can result where the cases are monitored by superior courts in writ jurisdiction as this process reduces the normal functions of the investigating wing of police and independence of trial and appellate courts.

The police officers making investigation into offences are usually occupied with duties relating to law and order, escorting the prisoners and protecting the VIPs, hence they do not have time even to prepare their case diaries properly and most of them leave it to their subordinates. The author has cited the books and speeches of several police officers who have shown concerns about the drawbacks in the police administration. S.L. Ghose, a senior officer of Indian Police Service in his book, *Betrayal of the Police* said that the police have been reduced to a watch and ward organization by denying them their statutory powers.

The author has further compared the Indian Police force with the police forces of other countries saying with the help of published articles by eminent Police officers from the English Police force that English Police is regarded as friend and helper by the citizens. In India, the police force as a whole is not, even today, regarded as a friend of the citizen.

The author advances the topic of criminal justice administration towards the subject of investigation of unnatural deaths. Vagueness and theory have no place in forensic medicine. Police conducting investigation at the spot or where the dead body is lying has a special responsibility. The documents prepared by the police and the doctor assume special importance in a case of violent death and the courts search the truth in such documents. The author brings to light a series of judgements where the prosecution has not been able to prove the case in absence of proper documents like FIR and the Inquest Report.

The Court, Public Prosecutor and Trial

In the administration of criminal justice, the police and the court must support each other and work with due diligence. The author emphasizes on the principle of independence of judiciary which enjoys upon every judge the responsibility to act independently while deciding a case. This principle promotes confidence in public in the administration of justice.

The question of jurisdiction of a court must be raised at the earliest stage. Here too, the author has cited judgements of the court to explain the subject of jurisdiction of courts. The author

deals with the matter of criminal contempt of court in detail with the help of articles of eminent jurists like Justice V.R. Krishna Iyer and many others. Not only the common people, but also the lawyers appearing for parties have to conduct themselves with dignity and decorum of the courts. The courts also have a duty to conduct the trial of offences according to the procedure contained in the Criminal Procedure Code, 1973 and in doing so they are assisted by the Public Prosecutor who appears on behalf of the State and the counsel for the accused.

Public Prosecutor represents the State in trial of a criminal case. He performs a public duty, which by its nature warrants him to be independent and fair. The author has had a wide experience in the field of litigation, hence, he signifies that a Public Prosecutor is bound to act as *pro bono publico* to foster the ends of justice. He is neither an extension of police nor a client-litigant relation exists between him and the police. Mr. Bhardwaj presents a comparative study about the prosecution of criminal cases by the State in England, USA and France, and in India. The Attorney General for India, no doubt, is the Principal Law Officer of the Union Government and the leader of the Bar. The points out that the office of Public Prosecutor has lost its independence and credibility as most of the State Governments make political appointments without consideration of merit.

Consensus exists amongst lawyers, judges and jurists of the world about certain basic principles, which are indispensable for a fair trial of a criminal case. The rule of “presumption of innocence”, “burden of proof on prosecution” and the rule of “benefit of doubt” are principles of procedural fairness though they have no statutory basis in India. The author presents the status of application of such principles in countries like France, USA and UK. It is often believed that in French court the accused is considered guilty until he proves himself innocent. The courts in India have been successfully keeping a balance between these principles and held that the basic rule of proving a criminal offence continues to be that it is the responsibility of the prosecution to prove all ingredients of the case, but in certain cases the onus to prove certain facts may shift to the accused on the preponderance of probability of case.

The author clarifies that the rule of presumption of innocence does not encourage acquittal of guilty persons. It simply cautions against the conviction of an innocent person because the conscience of the society is shaken by wrong convictions as well as when guilty men are acquitted.

Bail, Punishment and Human Rights

When the question of overcrowding of prisoner is raised, the concept of right to bail must be accurately applied. Arrest leads to deprivation of liberty of the person arrested and disruption of his family life. The author, lays down great prominence on the laws relating to bail in India. He states that the laws regarding bail has not progressed much in Indian and it remains a matter of judicial discretion. If it is not possible to give speedy trial to those who are in custody, the judicial discretion must weigh in favour of bail rather than keeping an undertrial person in jail. The author terms the concept of punishing a person at the threshold by denying him bail if the trial may not result in conviction as a grave miscarriage of justice.

Law prescribes the sentence in respect of every offence. The author describes every sentence is a conditioned deprivation of life and liberty, with civilized norms built in and unlimited trauma interdicted. The courts have the discretion to decide the quantum of sentence in each case unless law prescribes a minimum. The author stresses upon the reformatory sentencing which was discovered by Justice Krishna Iyer in *K. Ammama v. State of Andhra Pradesh*⁴. The court created history by granting pre-sentencing hearing to an accused that is held guilty by the court. The concept of social justice, new trends of penology and sentencing procedures was injected in the sentencing by P.N Bhagwati in *Santa Singh v. State of Punjab*⁵. Crime and punishment are inseparable according to the traditional way of administering criminal justice

The purpose of justification of a sentence of imprisonment or a similar measure of deprivation of liberty is ultimately to protect the society against crime. The author is of the view that the end can be achieved if the period of imprisonment is used to ensure, so far as possible that upon his return to society the offender is not only willing but be able to lead a law-abiding and self-supporting life.

The concept of human rights has been an integral part of the Indian culture and heritage. In the international arena, the advent of United Nations unified the concept of human rights from worldwide. The author has laid down in this book the period trends in human rights at the international level. The author has mentioned, en passant, the series of international conventions and protocols on human rights while also highlighting the rights entrusted in people through legislations of different countries.

⁴K. Ammamav. State of Andhra Pradesh, A.I.R. 1974 S.C. 799. (India)

⁵Santa Singh v. State of Punjab, A.I.R. 1976 S.C. 2386. (India)

Speaking about the statutory rights in India, the author emphasizes that everybody has the right to an effective remedy by the competent national tribunals for various acts violating the fundamental rights granted to him by the Constitution or by any other law. No one shall be subjected to arbitrary arrest, detention or exile. Not only the victims or the prosecution of a crime are entitled to human rights, but the convicts or accused are also entitled to some basic human rights that are recognized by the domestic as well as international law. These laws are dealt in-depth by the author in this piece of his work. The number and nature of complaints received by the National Human Rights Commission as indicated in their annual reports relate to failure of criminal justice. The author studied these reports thoroughly and concludes that most gruesome violations of human rights result from custodial torture, deaths in police lock ups and jails, illegal detentions, false implication in criminal cases, indignity to women and children, and atrocities on Scheduled Castes, Scheduled Tribes and minorities.

The author brings to our notice that the violations of human rights invariably involve the violations of one or more of the 'Fundamental Rights' enshrined in the Constitution of India. The studies by various eminent jurists have shown that the slow pace of criminal justice and low percentage of convictions result in large number of under-trial prisoners languishing in the jails. The solution to this problem is identification and application of the right to bail and right to legal aid.

Conclusion

The author concluded by saying that a new jurisprudence of human rights is being evolved in India slowly but steadily. Soon lawyers and judges will have to shoulder new responsibilities in shaping the jurisprudence of human rights as an inalienable part of administration of justice.

This informative piece of the author has linked human rights with the administration of criminal justice in India and has meticulously compared the criminal justice system in India with the criminal justice administration in other parts of the world. It has shown that the acme of criminal justice administration lies in development of areas like, legal aid, forensic medicine, training the police force, impartial appointment of Public Prosecutor, new trends in penology, etc. This book is a boon to the entire legal community, academicians, researchers, human rights and civil liberties activists.

