

Subject: Law

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Paper : Substantive Criminal Law

Module : 1- An Introduction to Criminal Justice and Criminal Law in India



## An Introduction to Criminal Justice and Criminal Law in India

### Quadrant- I- Description of the Module

Description of Module	
Subject Name	Law
Paper Name	Substantive Criminal Law
Module Name/Title	An Introduction to Criminal Justice and Criminal Law in India
Module Id	Module 1
Pre-requisites	A general understanding of the primary principles of criminal law is required for a proper understanding of this module.
Objectives	<p>To learn the basic concepts of criminal justice and criminal law</p> <p>To know the characteristics of criminal justice system adopted in India</p> <p>To identify criminal laws &amp; legal framework of criminal justice system at operational level</p> <p>To identify the features of criminal justice procedures in India under our Constitution &amp; Criminal Procedure Code( Cr.P.C.),1973.</p>
Key Words	Criminal justice, Herbert Packer, crime control model, due process model, adversarial system, inquisitorial system

### Quadrant- II- E-Text

#### CONCEPTUALIZING CRIMINAL JUSTICE

The idea of justice in the context of criminal law refers to the ideal that a person guilty of any crime should be detected, convicted and duly sentenced. Criminal justice administration concerns the procedures by which the substantive criminal laws are actually implemented. Criminal justice is widely assumed to be the major means through the nation-state assumes responsibility for constructing criminal law, punishing those who offend such laws and

protecting the innocent. The study of criminal justice cannot be separated from broader issues of power and governance within particular social structures.

## PURPOSE OF CRIMINAL LAW

There are two primary objectives which define the orientation of Criminal Law. First is to define what behavior should be included as crime or offence. Though it appears straightforward, this particular aspect of criminal law is subject to extreme and opinionated perspectives which is evidenced in the debates surrounding the criminality of homosexuality, prostitution, euthanasia and attempt to commit suicide. The other objective of criminal law is to recognise and at times establish the difference between *mala in se* (acts which are offence itself like murder and theft) and *mala prohibita* (acts which are offences because there are prohibited by the law on account of some social policy like abortion). In addition to this,, the state has to justify the basis for criminalising a particular conduct. Andrew Ashworth remind all lawmakers to take note of this.

## MODELS OF CRIMINAL JUSTICE PROCESS

**Herbert L. Packer**, an American criminologist, visualized two models of criminal justice system which incorporate principles of different emphasis;

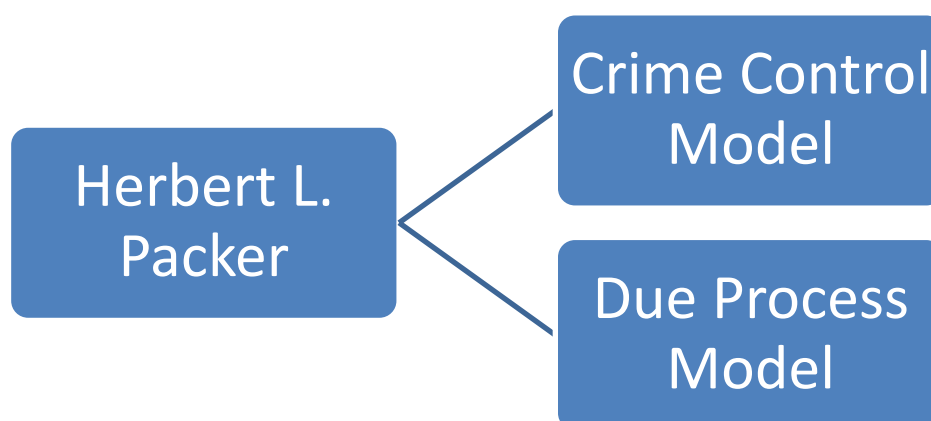
### Crime Control Model:

This model holds the efficient, expeditious and reliable screening and disposition of persons suspected of crime as the central value to be served by the criminal process. The object is that criminal conduct must be kept under tight control in order to preserve public order.

### Due Process Model:

In this model function of criminal justice administration is limited by and subordinate to the maintenance of the dignity and autonomy of the individual. It protect an accused from coercive easily abused power of the state.

In this context it is also pertinent to refer to the Family Model of John Griffith where an offender would be treated as a person with respect and the role of the society is to perceive an crime occurrence as criminal deviance and reacting to it accordingly.



## TYPES OF CRIMINAL JUSTICE SYSTEM

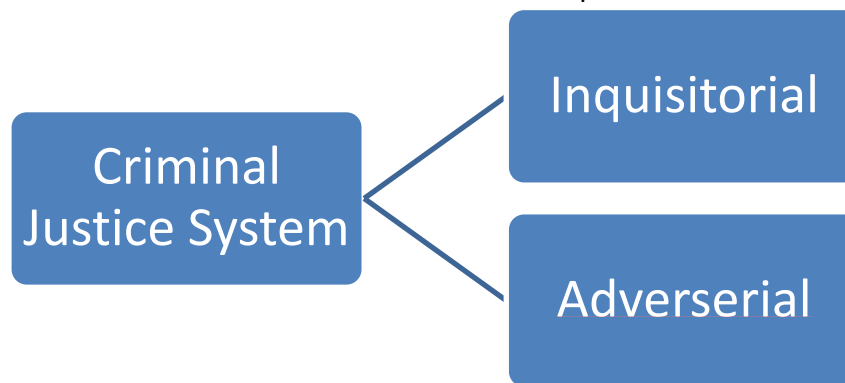
The mechanism of criminal justice system can be better understood and analysed by two kinds of legal structures;

### **Inquisitorial System:**

In inquisitorial system an extensive investigation and interrogations carried out under control and supervision of Court to ensure that innocent person is not subjected to trial. The defendant has the burden of proving innocence.

### **Adversarial System:**

Under adversarial system an accused is presumed not guilty and the prosecution is to prove beyond all reasonable doubt the guilt of the accused. This system presumes that the best way to get the truth is to have a “contest” between the prosecution and the defence.



## CHARACTERISTICS OF CRIME

**Paul W. Tappan** has defined crime as “an intentional act or omission in violation of criminal law, committed without defence or justification and sanctioned by the laws as felony or misdemeanor”.<sup>1</sup> On the other hand **Raffeale Garofalo** formulated his theory of ‘natural crime’ which he meant acts which offend the basic moral sentiments of pity (revulsion against the voluntary infliction of suffering on others) and probity( respect for property rights of others).<sup>2</sup> However a broader explanation of crime has been given by **Jerome Hall**. **Jerome Hall’s** extensive analysis has resulted description of seven (7) interrelated and overlapping characteristics of crime. First of all the criminal behavior must have certain external consequences called harm. A crime must have some harmful impact on social interests. Secondly, the harm must be outlawed. Engaging in immoral or reprehensible behavior is not crime unless the behavior has been specifically outlawed in advance because criminal law does not have a retrospective effect. Thirdly, there must be an intentional or reckless act or omission which produces the harmful consequences. Fourthly, there must be criminal intention. The intention might be to give effect an outlawed harm.

<sup>1</sup> Elmer Hubert Johnson, *Crime, Justice and Correction* (Dorsey Press) 10

<sup>2</sup> Francis Allen, *Borderland of Criminal Justice* (University of Chicago Press) 67



Fifthly, there must be a fusion of mens rea and conduct (actus rea). Sixthly, there must be a causal relation between the voluntary misconduct and the outlawed harm. Seventhly, there must be legally prescribed punishment.

## **CHARACTERISTICS OF CRIMINAL LAW**

There are certain characteristics in criminal law which distinguish it from other branches of law. These different characteristics can be classified as Politicality, Specificity, Uniformity and Penal Sanction. Politicality is regarded almost universally as a necessary element of criminal law. Thus, violation of rules or laws made by the state are regarded as crimes. Violation of rules made by a trade union or church are not crime.

Specificity is an element which distinguishes criminal law from civil law. The civil law may be quite general. The criminal law, in contrast, gives a strict definition of a specific act or omission as offence and when there is doubt the judge is obliged to decide in favour of the defendant. Uniformity is an element of criminal law because it attempts to provide evenhanded justice without respect to person's social status. An act described as a crime is crime, no matter who commits it. Penal sanction as an element of criminal law, refers to the notion that violators will be punished or at least threatened with punishment by the state. Punishment under criminal law is supposed to be imposed decently and dispassionately by representative of the state which differs from punishment imposed by a mob.

## **GENESIS OF CRIMINAL JUSTICE ADMINISTRATION IN INDIA**

The history of criminal justice administration in India can be divided under three major periods- ancient, medieval and modern. The modern period may again be divided into categories of pre-independence and post-independence. Modern pre-Independence period started from 1600 A.D. and continued till 1950 when the Constitution came into force. During this period, first in the three Presidency towns at Bombay, Calcutta and Madras and after 1858, in the rest of India, English legal system was introduced. After the Independence of India in 1947 and with establishment of the Republic in 1950 under the new Constitution, the existing laws prevailing in the country at that time were continued. It was provided under Art.372 of our Constitution that "all the laws in force in the territory of India immediately before the commencement of the Constitution are to continue in force until altered, repealed or amended."

## **LAWS REGULATING CRIMINAL JUSTICE IN INDIA**

The various value influences shaping the contours of criminal justice administration in India can be traced in a variety of statutory enactments. The Constitution of India serves as the foundation on which all existing and emerging principles in the domain of criminal law must be assessed. Apart from many special legislation governing specific sectors of criminal law, the Indian Penal Code, 1860, the Indian Evidence Act, 1872, Code of Criminal Procedure, 1973 and the Juvenile Justice(Care and Protection of Children) Act,2000 are some of the primary statutes governing the administration of criminal justice in India.



## **AGENCIES IN CRIMINAL JUSTICE ADMINISTRATION**

The administration of criminal justice is managed by different agencies and involves many actors who operate as different parts of the criminal justice mechanism.

### **Police**

The police functions as the investigative organ in the criminal justice administration. It is tasked with the function to arrest and apprehend suspected criminals, gathering evidence against such suspects and submitting investigative reports in the court. The police is the organ which triggers the functioning of the criminal justice system.

### **Prosecutor**

The prosecutor (representing the State) is in charge presenting the evidence against the accused persons in the court and seeking to convict them of the crimes. He is one of the most important agencies in the administration of criminal justice as the determination of the guilt of the accused is dependent on the manner in which prosecutors discharge their functions. Due to the fact that any misconduct on his part can result in punishment being levied on innocent persons, a prosecutor is expected to adhere to a high standard of ethical conduct wherein he is not to mishandle evidence or tamper with witnesses. He is not to withhold evidence from the court and not have any personal bias or vendetta against defendant or defendant's counsel.

### **Defense Counsel**

The defense counsel comprises of mostly private lawyers hired by the accused to defend himself/herself in court. When the accused is not capable of hiring a private lawyer, the state would provide such person with a lawyer through the mechanism of legal services authorities.

### **Judge**

A judge is the most important cog in the wheel of criminal justice administration as the fate of the entire legal process is ultimately determined by him. A judge has a role to play in almost all stages of the legal process. His most significant function is determining the punishment to be levied upon a person found to be guilty of having committed any crime and justifying the punishment on a scale of proportionality.

### **Defendant**

The defendant is the centre of the entire criminal justice administration as it is his guilt and innocence which is sought to be determined by the rigorous judicial process. The defendant is given many rights in order to ensure that innocent persons are not unfairly targeted by the state machinery.

### **Constitutional Right of Defendants**

The Constitution of India incorporates certain important features of the Due Process Model by vesting the accused in a criminal trial with significant safeguards. Thus, Article 20 mandates that a person can be punished of a crime only under an ex post facto law and not



under a law with retrospective operation. It further protects the accused from the prospect of double jeopardy and provides a categorical right against self-incrimination. Article 21 protects the life and liberty of all individuals and Article 22 incorporates safeguards in relation to arrest and detention.

## **Victim**

The term victim has been defined in Cr.PC under Section 2 (wa) as a person who has suffered any loss or enquiry caused by reason of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir. Though traditionally ignored in the scheme of criminal justice administration, the debate on the rights of the victims has been gaining traction in India in the last two decades. Thus, today the victims have been given some rights like the right to *in camera* trial in special cases, the right to claim compensation and also the right to appeal against an acquittal.

## **LEGAL PROCESS**

The process of criminal justice administration can be discussed in terms of pre-trial processes and trial processes. The pre-trial processes including arrest of the accused, bail application, the framing of the charge sheet and also plea-bargaining. The trial process includes presentation of evidence, the requirement to prove guilty beyond reasonable doubt, examination of witnesses, expert testimony etc. The concluding stages of the trial process include the determination of guilt and in case the accused is held guilty, then a pre-sentence hearing to decide upon the punishment to be imposed on the convict. The different punishments which the judge may impose include imprisonment, fine, confiscation of property and death penalty. The judiciary is also given the discretion to adopt a more reformatory approach with special provisions concerning probation and for juvenile offenders.

## **JUDICIAL ACTIVISM AND CRIMINAL JUSTICE ADMINISTRATION**

The judiciary has played a significant role in reforming the criminal justice administration with a series of progressive decisions which have had far reaching consequences in improving the efficiency and the value orientation of the criminal justice administration. Some landmark judgements of the Supreme Court of India in this regard include the case of *Hussainara Khatoon v. Home Secretary, Bihar* which asserted the right of the accused to a speedy trial,<sup>3</sup> the case of *Sunil Batra v. Delhi Administration* in relation to custodial violence,<sup>4</sup> the case of *Joginder Kumar v. State of U.P. and Others*<sup>5</sup> and *D.K. Basu v. State of West Bengal*<sup>6</sup> on the procedure of arrest and rights of the arrested person and the case of *Bodhisattwa Gautam v. Subhra Chakraborty*<sup>7</sup> on compensatory jurisprudence.

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<sup>3</sup> AIR 1979 SC 1377

<sup>4</sup> AIR 1980 SC 1579

<sup>5</sup> AIR 1994 SC 1349

<sup>6</sup> AIR 1997 SC 610

<sup>7</sup> 1996 SCC 490





## **CHALLENGES TO CRIMINAL JUSTICE ADMINISTRATION**

The major challenges confronting the criminal justice administration are the huge pendency of cases, unreasonable delay in the disposal of cases, delays in acquiring forensic reports and other scientific reports, disparity and discriminatory standards in sentencing patterns and allegation of corruption

## **THE FUTURE OF CRIMINAL JUSTICE ADMINISTRATION**

The future of criminal justice administration in India would depend on addressing some pressing concerns regarding its functioning. The criminal justice system must be more proactive and people-friendly while at the same time ensuring a speedy judicial process. There is the need to respect cultural pluralism and make better use of the technological aids and facilities. A flexible approach with certainty of principle based on an egalitarian philosophy are indispensable for the criminal justice administration to stay relevant in the modern times.