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CRIMINAL JUSTICE SYSTEM

By

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Criminal justice system in India is modelled, like the legal system as a whole, on the western model. It represents the adoption of the accussatorial system of the common law although a good part of the Penal Code draws its inspiration from the Code Napolean. Contemporary Criminal Justice administration in our country therefore is dependent upon the Indian Penal Code and a number of other Acts and statutes passed from time to time to deal with problems that arose after the Penal Code. In fact last half a century has seen an alarmingly increasing use of the punitive sanctions for a number of merely regulatory measures made necessary by the increasing complexity of society and the responsibilities of welfare politics. The legislature and the politician in India has neither the time nor the desire to look deep into the problems and think of suitable measures to handle his welfare responsibilities. The academic and the scholarly elite has also not provided any models on the basis of which the legistor could think of more feasible and practical alternatives to deal with have been handled by the so called new crimes. Penal sanction is the maximum instrument of coercion available with the State and its sporadic use not only threatens the legitmacy of the State but reduces the efficacy of the sanction.

The contemporary crises of criminal justice administration in India is largely a result of the operation of these two effects due to an unthinking and sporadic use of penal sanction in these new crimes. The State is fast losing the legitma-cy and with it the institutions of the law and administration responsible for administration and enforcement are themselves being alienated. In terms of efficacy, it is common knowledge, that the significant areas of regulatory action like adulteration of food and drugs the legislation has not only failed to provide relief but has allowed deviant patterns of behaviour to develop leading to corruption at mass scale. The enforcement of law in this area

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has been known to be superficial. A recent study relating to Ph.D. work in this area showed that the rich and economically better off individuals continue to escape the clutches of law and compliance is shown by catching-up petty and poor hawkers who are largely innocent. It is possible to pick upt many areas and show that administration of criminal justice for regulatory purposes is not only defective but greatly harmful. In my opinion the first step in the direction of reform of criminal justice in India should be delink these areas of new crimes from the traditional criminal justice area and devise different methods and procedures for handling them. An experiment could be made for instance by handling over the entire area of adulteration to regulatory boards, something on the lines of the company Law Boards. These boards would then have the responsibility of enforcement and need not wait for cases to be filed in the Court by inspectors and other staff. Sound legislation, licensing, information, investigation, informal conferences and publicity would provide much more likely means of influencing legitimate business. For the incompetents who cannot conform to decent standards even after warning information and counselling by regulatory boards there is no other alternative except to bar them from the pursuit of activities which are harmful to the public. It is undoubtedly true that the penal law functions much less onerously than would the revocation of a license to do business. The community is entitled to protection from those persons who engage in potentially harmful vocations of activities. The board should encourage consumer complaints and should have a continuing link with the consumers in the area. The administration of this method of dealing should not be left to the inspectorate of the Food Department but should be made largely dependent on the consumer committees who should have direct access to the board in each area. The staff concerned can also be used for gathering data and evidence whenever necessary. The staff should also be trained to handle specific problems and the training should see to it that they do not regard themselves as officers of the State like the Police. One advantage of such delinking this area from criminal justice administration would be that the staff concerned will not have the urge to model itself on the pattern of the police and would regard itself only as a social service agency. This psychological build up is absolutely necessary if the objective of the legislature is to be partially met. Under the present administration all the evils of the police methods have crept into the enforcement staff in these areas also.

The second area in which serious thinking is called for innovative changes in criminal justice administration both in structure and procedure is that of social legislation particularly area like untouchability, dowry and

immoral trafficking etc. The evils that are intended to be dealt with by these legislations have become part of the behaviour patterns of society for a long period of time and some of which are deteriorated forms of social adjustments earlier found necessary. For instance, proposition was a safety value of society to prevent spread of sex immorality over the whole society in such a manner that the evel could not be identified. At least prostitution confined the immorality to a known area or sector keeping the home and institution of family more secure. The abolition of prostitution has not eradicated sex immorality but has widened its spirit in such a manner that the very security of home and family life has been endanagered. It is a sensitive area but if painstaking research is carried out it will be seen that the evils that the SITA was intended to mitigate have increased and the benefits that were expected to accure to forsaken women have not been received. In social living misfortunes will contine to occur and situations where women will find themselves forsaken and forced to fend for themselves will continue to arise and in a society with mass illiteracy it is not possible to provide economic benefits to every one. The area of prostititon therefore needs to be dealth with not by passing punitive legislation but by involvement by voluntary social reform work and by measures of social ostracism rather than jail sentences. Prostitution must be looked in its historical and anthropoligical perspectives as an empirical phenomenon. Proper philosophical explanation of proper scope of the public morals as a basis for criminal sanctions as against the case for a right to sexual authonomy and the appropriate limits to such a right have to be considered and then alternative approaches to regulation of commercial sex are to be reviewed. The untouchability area also discloses faulty enforcement. The new Civil Rights Act of 1974 had suggested a small innovative change for effective handling of untouchability but even this innovative change has not been implemented. The innovative change referred to was that areas where untouchability was found to predominate should be deemed as such area and punitive fines to be imposed on the whole population of that area. Dr. Baxi had written to the then Prime Minister Mr. Morarji Desai to implement this provision but the Prime Minister had replied that social and political conditions in India are not yet conducive for such a declaration. Perhaps the reason was that the persons responsible for untouchability offences were persons of power and influence and touching them would mean danger to the political power of the party concerned in that area. Dowry again a prelevent evil which cannot be effectively met by normal channels of criminal justice administration. In fact the law itself as a whole can act as an instrument of defining values and ideas but should not seek to implement them through punitive measures. New methods like providing

incentive to those who lead social reform movements in this area or like public criticism in newspapers or like not providing discretionary benefits to the offenders could be used. Dowry today has become a perverted form of "Var - Dakshina" envisaged in the ancient scriptures. Now that a hindu marriage is necessarily monogamous the power of parents of an unmarried man of good earning capacity to hold out for high dowry is great. The religious and social obligation on parents of daughter to secure their marriage at all costs tend to strenthen the bargaining capacity of their opposite parties. The ancient idea was that Var Dakshina should serve as the nucleus of the married couple's matrimonial estate and it was to be held by the father of the bridegroom as an express trustee for the bridegroom himself. Although at present few sons will sue their father as trustee, the death of the dowry system may come if this aspect is emphasized more. The dowry prohibition Act should expressly vest the dowry in the bride and no valid title should be allowed to pass on any person in the family of the bridegroom. If the bridegroom's parents know that they cannot spend that dowry for their own use they would lose the incentive for demanding dowry.

Thirdly my suggestion is that in the area of normal criminal justice administration sentencing should be reformed. The problem is how to solve the issue to reconcile the reformer's view that sentences for various crimes be imposed uniformly and reflect the relative gravity of the crime and at the same time sentences tailor to the circumstances and characteristics of the individual offender. Wide variance in sentencing patterns is found not only among the High Courts but at the level of trial judges in the same High Court for similar offences. Particularly in the area of economic crimes or the so-called white collar crimes there should be a period review of sentencing pattern and the judiciary should be required to submit reasons for not awarding the maximum punishments.

The victim of crime should get greater care and concern from criminal justice administration I suggest that some micro-studies be undertaken in selected areas. These reports will project as to what really happens to the victim after the crime has been committed and it has been handled through normal procedures. The victim is a forgotten individual and appears to be the concern of no one but this is a Sad State of affairs. After the sociological studies have revealed the nature of the fate of these victims steps should be taken to ameliorate their conditions. Innorations have to be dewsed in favour of the victim to compensate him either by the State or by the offender himself or by insurance for particular types of crimes or by voluntary effort of members of society who act from a sense of solidavity.

Combining civil and criminal proceedings in this regard is bound to serve this purpose properly. Special measures are required to deal [illegible] sexually abused juveniles rape victims and the unemployed.

Lastly, the area which calls for a serious new look in the administration of criminal justice in India is to take stock of cost benefit account of the whole area of rehabilitation or treatment of the offenders. Under the influegce of a world wide movement for approximately half a century for individualisation of punishment, rehabilitation schemes became a fashion. While there is no gainsaying the fact that in certain very limited areas rehabilitation may have a purpose but a whole sale use of rehabilitation for all types of crimes and for all criminals (when he has already languished in jail as an under trial prisoner for a considerable period of time) displaces the very purpose of use of criminal sanction which is based upon the concept of guilt and morality. People in general always wish to find in punishment a confirmation and re-informement of their views and experience that they are effectively protected from offenders. Public acceptance of rehabilitation schemes is very necessary for their success. Complete collapse of rehabilitative ideal have led few western countries recently to change their penal policty. In England & Netherland are now experimenting with community service order (CSO) in place of probation and parole. Cavendh G in New England Journal of Prison Law (1978) pp 1-20 has recently pointed out the false link between parole and rehabilitation. The legal profession has to depend in this area primarily on the certificates of outside experts like the psychiatrists and social workers whose opinions cannot be taken to be precise and scientifically validated to support formulation of exact principles on the basis of which rehabilitation or treatment could be retionalised. In India particularly rehabilitation has become almost a mechanical process and calls for a reassessment. In this area also sociological fact finding studies should precede revies and examination and suitable steps taken to modify existing schemes of treatment. While, in general, one applands the sound individualization of treatment and feasible programme of crime prevention, it should also be remembered that the rule of law, especially as regards crime and punishment, is the greatest achievement of the current political experience.