

An Introduction to Criminal Justice and Criminal Law in India

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Learning Objectives

- To learn the basic concepts of criminal justice and criminal law
- To know the characteristics of criminal justice system adopted in India
- To identify criminal laws & legal framework of criminal justice system at operational level
- To identify the features of criminal justice procedures in India under our Constitution & Criminal Procedure Code(Cr.P.C.),1973.



Characteristics of Crime

- Jerom Hall's extensive analysis has resulted description of seven(7) interrelated and overlapping characteristics of crime:
- 1.Harm
- 2.Outlawed
- 3.Conduct
- 4.Mens rea
- 5.Fusion of mens rea and conduct
- 6.Causal relation
- 7. Punishment

Concept of Criminal Law

- The characteristics that distinguish the criminal law from other set of laws regarding human conduct are;
- Politicality
- Specificity
- Uniformity
- Penal sanction

Purpose of Criminal Law

- To define what behavior should be included as crime or offence- that is why the debate continuing whether prostitution, homosexuality, attempt to commit suicide etc.
- To recognize the difference between *mala in se* and *mala prohibita*.

Conceptualizing Criminal Justice

- Aim of the administration of criminal justice is that the guilty should be detected, convicted and duly sentenced.
- Criminal justice administration concerns the procedures by which the substantive criminal laws are actually implemented.

Types of Criminal Justice System

- **1. 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 defendants has the burden of proving innocence.
- **2. 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.

Models of Criminal Justice Process

- **Herbert L. Packer:** Two Models-
 - A. **Crime Control Model**- that criminal conduct must be kept under tight control in order to preserve public order.
 - B. **Due Process Model**- It protect an accused from coercive easily abused power of the state
- **John Griffith-Family Model**- 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.

Criminal Justice System in Post Independence India

Under Art.372 of our Constitution “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

- Constitution of India
- Indian Penal Code,1860
- Indian Evidence Act,1872
- Criminal Procedure Code,1973 by repealing Cr.P.C. 1898
- Special Legislations-
 - (i) The Juvenile Justice(Care and Protection of Children) Act,2000;
 - (ii) Protection of Women from Domestic Violence Act,2005; etc.

Constitutional Rights of Defendants

- Art.20. Protection in respect of conviction and punishment under an ex post facto criminal legislation.
- Doctrine of Double Jeopardy
- Right against self- incrimination
- Art.21. Protection of Life and Personal Liberty
- Art.22. Protection against arrest and detention

Criminal Justice Agencies

- Police
- Prosecutors
- Defence Counsel
- Judges
- Defendants
- Victims
- Prison & Correctional Administration

Role of Police

- Arrest and apprehension
- Maintaining peace and order
- Investigation
- Submission of Investigating report to court
- Producing suspects before court
- Search and seizure under order of the Court



Role of Prosecutors

- State Prosecutors/Public Prosecutors
- Directorate of Prosecution
- Assistant Public Prosecution working in court room
- Prosecutorial Ethics-
 1. Court room misconduct
 2. Mishandling of evidences
 3. Failing to disclose evidence
 4. Tampering with witnesses
 5. Using false and misleading evidence
 6. Expressing bias or having vendette against the defendant or defendant 's counsel



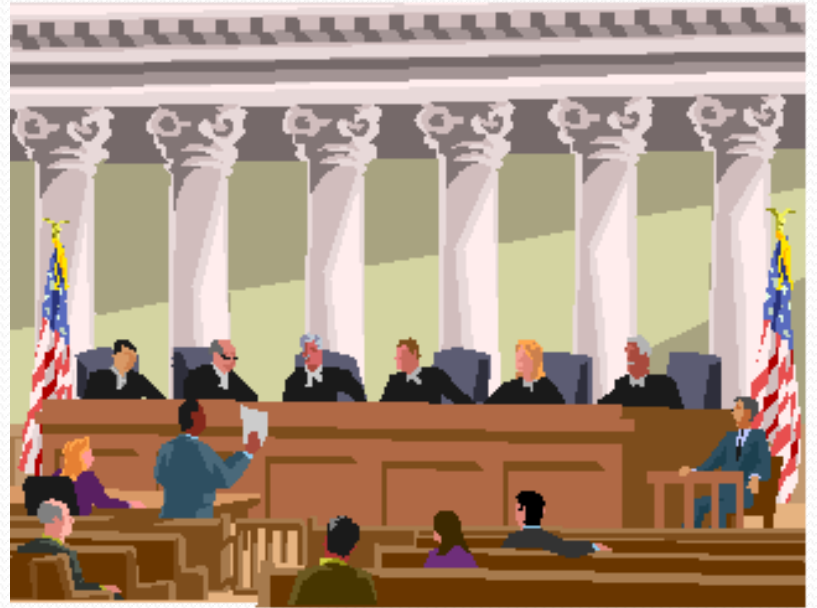
Defence Counsel

- Right to have own lawyers
- At what point of the proceeding?
- Right to have lawyers through State Legal Services Authority
- Right to self representation



Role of Judges

- Pre-arrest judicial role
- Pre-trial judicial role
- Judicial role at trial stage
- Judicial role in sentencing decision:
 - (i) Why punish? How much to punish?
 - (ii) Justifying punishment
 - (iii) Sentencing discretion
 - (iv) Admonition and Probation



Defendants

- Defendants presence in the court
- Defendants rights prior to prosecution
- Defendant's right in court process
- Defendants & Pleabargaining



Victims of crime

- The word victim defined in Cr. P.C.(s.2.wa)
- Victim's right to participate in the process
- Special protections to rape victim
- Victim's right to get compensation
- Victims right to appeal

Court Process-Pre-trial

- **Arrest**
- **Bail**
- **Charging decision**
- **Plea-bargaining**



Court Process-Criminal trial

- Presentation of evidence
- Role of Expert evidence,
- Forensic evidence
- Proof beyond all reasonable doubt
- Calling witnesses
- Examination of witnesses
- Closing arguments
- The verdict- acquittal or conviction
- Pre-sentence hearing



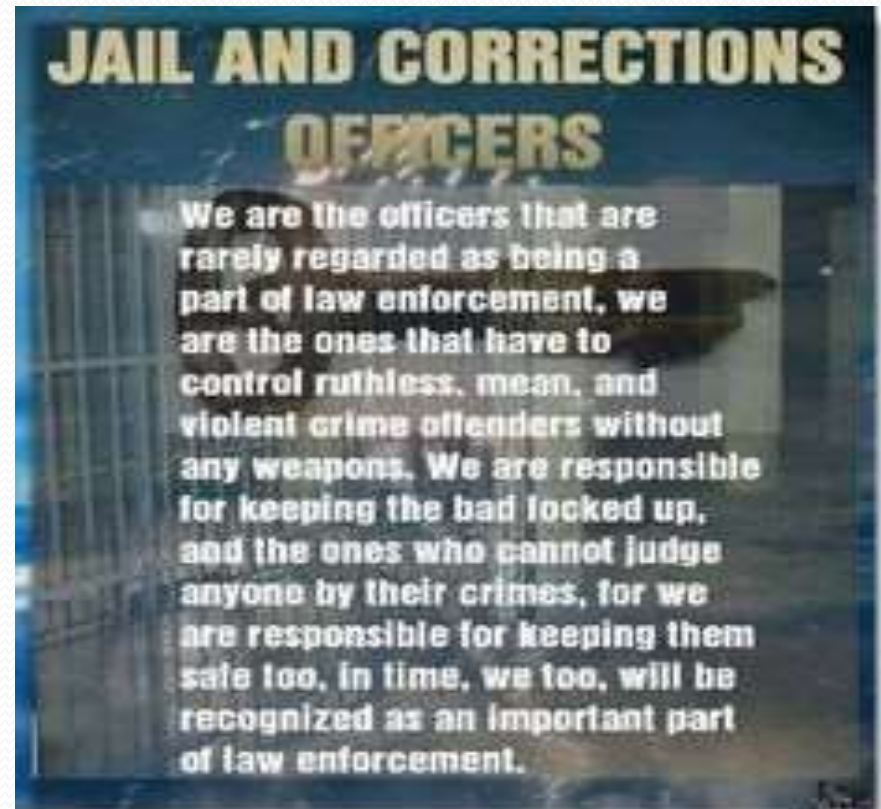
Punishment

- **Death Sentence**
- **Imprisonment**
- **Fine**
- **Confiscation of Property**
- **Correction /reformation**



Correctional Administration & Rehabilitation

- Admonition
- Probation
- Parole
- Juvenile Justice
- Correction in Prison



Judicial Activism and Criminal Justice Administration

- M.H. George v. State of Maharashtra (AIR 1965 SC 722)
- Hussainara Khatoon v. Home Secretary, Bihar(AIR 1979 SC 1377)
- Sunil Batra v. Delhi Administration(AIR 1980 SC1579)
- Bhim Singh v. State of J&K (AIR 1986 SC 494)
- Joginder Kumar v. State of U.P. and Others (AIR 1994 SC 1349)
- Bodhisattwa Gautam v. Subhra Chakraborty(1996 SCC 490)
- D.K. Basu v. State of West Bengal(AIR 1997SC 610)

Challenges to CJA

- Hydra-headed justice system
- Huge pending cases
- Delay in justice process
- Delay in getting Forensic Report
- Sentencing disparity
- Misuse of discretionary powers
- Corruptions



The Future of CJA: Addressing the cutting –edge issues

- Respecting cultural pluralism
- Providing client-oriented service
- More proactive and people-friendly approach
- Speedy trial
- Use of Information and Communication Technologies (ICTs) to bring forth transparency, accountability and accuracy in investigation and prosecution.
- Flexibility, certainty and egalitarian approach.



Thank you