



Administration of Criminal Justice and Forensic Medicine

KEYWORDS

E.Chitrashekharappa

Research Scholar,

Dr. NARAYAN CHARAN PATNAIK

Principal Lingaraja Law College BERHAMPUR-
ODISHA

ABSTRACT *Crime is a natural phenomenon of any given society. In a sense, it is a spontaneous occurrence in response to the deviant behaviour exhibited by the irrational human beings. Every society formulates its own legal strategy to combat diverse facets of criminality. Consequently it is not far from truth to say that society, crimes and laws are intertwined segments in the system, acting, reacting and interacting with one another.*

General:

Crime control and Administration of justice is one of the major functions of a state even during ancient time. Of course, in the primitive society administration of justice was not divided into two branches i.e., administration of Civil Justice and Administration of Criminal Justice as is being done in modern times.

However, ancient Hindu law broadly distinguished between Civil and Criminal branches of law but did not strictly adhere to the distinction between crimes and civil wrongs so far as the procedure and remedy were concerned.

With the passage of time, recurring incidence of deviant behavior and its impact on the society warranted a strict enforcement of law and order to keep a vigil on the protection of person and property, a rudimentary form of criminal justice came into existence. It is the duty of the state to protect the person and property of the citizens as fundamental rights. The state has constituted the criminal justice system to protect the rights of the innocent and punish the guilty.

The system devised more than a century back, has become ineffective. The very purpose of administration of Criminal Justice is that an accused person should get a fair trial in accordance with the accepted principles of natural Justice; every effort should be made to avoid delay in investigation and trial.

To speed-up the investigation process and systematic trial, scientific methods and advanced technology are used by the investigating agencies. Forensic Science developed in the last two centuries has become a very important tool for the investigating agencies in particular and judiciary in general. Forensic Medicine is the most useful tool in recent times in the administration of Criminal justice.

In modern times, all over the world, dispensation of justice through legal system has become much dependent on the Medical Science.

At present in India, the application of Forensic Medicine in the Administration of Criminal Justice has become order of the day. It would be hard to imagine any significant criminal investigation today in which some aspect of Forensic Medicine Endeavour did not contribute. But does this mean Forensic Medicine is used effectively in the broader Justice System? Is Forensic Medicine robust and reliable?

Is Forensic Medicine effective and efficient in support of Criminal Investigation?

In India, crimes are increasing rapidly and new types of crimes are proliferating. There is huge pendency of criminal cases in the country. As per the figures for 2011 published by the National Crime Record Bureau, there were 89.39.161 criminal cases under the IPC pending at the end of the year 2011. During this year, only 12.11.225 cases were disposed of. So far as criminal cases under the special and local laws are concerned 84.72.922 cases were pending out of which only 35.97.455 cases were disposed of during that year. In many session courts serious cases are pending for trial for more than 15 years. The rate of conviction of cases under IPC is 41.8. The rate of conviction of much serious crimes is much lower.¹

The rate of conviction in countries like USA, US, Australia, Singapore, France, Germany, Japan is more than 90%. Criminal justice system, virtually, collapsing under its own weight. As it is slow, inefficient, ineffective and costly, people are losing confidence in the system. The system that is followed in India was inherited from the colonial rules more than 150 years back.

In modern times, new devices, technical knowledge and advanced technology is being used by the Investigating Agencies. However, still the conviction rate is far below when compared to Western Countries. The reason being the following age old principles of criminal liability i.e.,

Burden of Proof in a Criminal case lies on the Prosecution/ State.

Right to Silence

Right against Self-Incrimination

Guilt of the accused person must be proved beyond any reasonable doubt.

Always benefit of doubt should be given to the accused.

Till the guilt is proved, the accused is presumed to be innocent.

United Nations Declarations of Human Rights of 1948.

1 National Crime Record Bureau, 2000.

In view of the above, Investigating Agencies are using modern technique like DNA test, Brain Mapping, Narco Analysis test, Lie-detection methods etc.

According to some Human Rights activists, some of the well established Fundamental Rights & Human Rights are being neglected due to the use of knowledge of Medicine in the Investigation process. Right to silence, Right against torture, Right against self incrimination are few among them. Now the crux of the problem is to strike a balance between these rights and the use of Forensic Medicine in the Criminal Justice Process.

Right to Silence

Main legal hurdle against the use of Forensic Technique is Art, 20 (3). The question of Art, 20(3) should be narrowly construed as a trial right or a broad protection that extends to the stage of investigation has been conclusively answered by our courts. It is held that, this right is confined to the oral evidence of a person standing his trial for an offense when called to the witness stand.

The Right to Silence and the privilege against self-incrimination go hand in hand. They are also closely related to the presumption of innocence. As the responsibility is placed on the prosecution to prove the guilt of a person, it follows that the accused should not be forced to assist the prosecution by being forced to speak. Therefore, no responsibility lies with the accused to prove his innocence.

The Constitutional embodiment which exemplifies the bar on self incrimination has been enshrined in Article 20(3) of the Constitution of India. Self incrimination has been recognized in the Magna Carta, the Talmud and the law of almost every civilized country. Article 20(3) is considered to be one of the most important provisions of the Constitution of India. It deals with Constitutional safeguards against Self-incrimination and is as well the fundamental cannon of common law jurisprudence. The essential feature of this article is that the accused is presumed to be innocent and cannot be compelled to make any statement against his will. The onus is on the prosecution to prove the guilt of the accused. The privilege against Self-incrimination thus enables the maintenance of human privacy and observance of civilized standards in the enforcement of Criminal Justice.

The mandate of Article 20(3) can be divided into 3 elements: Firstly it is the right available to a person accused of an offence. Secondly, it is protection against compulsion to be a witness. And thirdly, it is protection against such compulsion resulting in his giving evidence against himself. With respect to Forensic evidence, the third clause bears the most significant importance.

In a recent High Court judgment, in the case of Ramchandra Reddy and ors v/s State, the court had granted the investigating authorities unqualified power to drug a suspect and extract information from a accused. While deciding a case, Justice Palshikar, and Justice Kakade, drew a definite distinction between 'statement' and 'testimony'. It was held that the right against Self- incrimination applies only to court proceedings and not to police interrogations. Further, Justice Palshikar also held that compelling a person to undergo the Forensic tests would not violate his rights. Sec 161 (2) of Cr.P.C states that, every person is bound to answer truthfully all the questions put to him by an Investigating Officer. In my view, interpretation of Justice Palshikar would be ideal, appropriate and need of the hour

in context of the increasing incidence of organized crimes and terror attacks where lives of hundreds of innocents are at stake.

Often it is also argued that subjecting persons to Forensic Tests against their will is a violation of their right to privacy and amounts to torture. The right to privacy is not expressly mentioned in the Constitution, but falls within the ambit of the 'Personal Liberty' guaranteed under Art.21 of Constitution. In *Rajo George v, Dy S.P*, the Kerala High Court disagreed and held that Forensic Tests do not amount to deprivation of Personal Liberty or intrusion into privacy. The Court also rejected the contention that Forensic Tests can be potentially hazardous and can violate the right to health. In my view, this is also a correct interpretation of right to privacy making way for the use of Forensic Tests against the accused.

Most interestingly, in *R vs Ledham* we find the often-quoted statement of Crompton. J "It matters not how you get it; if you steal it even, it would be admissible". The courts in India and elsewhere have chosen to apply this remark to wide range of situations where the right to a person's liberty and privacy is at stake. Supreme Court in *Malkani's* case gave the police freedom to steal evidence and the court to admit this stolen evidence. In view of this judgment, illegally or even falsely obtained evidences are still admissible in the court and the courts still accepts them as proper evidence. In *Navjot Sandhu vs NCT of Delhi*, the illegality of the evidence is also not taken into consideration at all. The same can be said for Forensic Tests as they are techniques of obtaining evidence, with or without the consent of the accused.

The vast strides that have been made in the field of Scientific Technology in the recent past have brought people closer than like never before. As long as criminals and terrorists seek to misuse technology in pursuance of their evil motives, the Governments world over will continue to use the Forensic Technology to invade the private spaces. Now, the big question would be 'should the States imperil the liberty and the right to privacy of entire populations in order to apprehend dangerous criminals?' Human right activists and liberal intellectuals believe the privacy is too important a right to surrender to the state.

Off-course care must be taken for proper and effective protection of Human Rights. A comprehensive strategy for protection of Human Rights needed considering the Community, National, Regional and International dimension of these Right.

The Human Rights enforcement machinery under International and Indian law has by and large played its role quite effectually, and always upheld the basic principle of Human Rights by promoting, protecting and implementing Human Rights.

The larger question would be whether the interest of the community at large is important or privacy of a miniscule number of dangerous criminals is important. The fundamental question regarding the appraisal of the Right to Silence is that of balance between the interest of the community in bringing terrorists and criminals to justice and liberties of the individuals.

In other words, whether Forensic Medicine Technology should prevail over the Fundamental/Human Rights, or, Fundamental/Human Rights should prevail over the Foren-

sic Medicine Technology is a question to be answered.

In my view, neither Forensic Medicine Technology should prevail over the Fundamental/Human Rights, nor, Fundamental/Human Rights should prevail over the Forensic Medicine Technology; there must be a harmonious relationship between the two.

References:

1. B. R. Sharma, Firearms in Criminal Investigation and Trials: 4th Edition, Universal, Law Publishing Company. New Delhi.
2. Chakraverty M, "Human Rights, and Refugees "Deep & Deep Pub., New Delhi, 2000.
3. Chandra.V, Human Rights, Allahabad Law agency, 3rd Edn. 2006
4. D.D. Basu- Human Rights in Constitutional Law (1994).
5. Dr. Avtar Singh, Principles of the Law of Evidence, Central Law Publication, 4th Edition, 2013.
6. Dr. Joga Rao .S.V., Current Issues in Criminal Justice ND Medical Law, Eastern Law House, New Delhi,1999.
7. Dr. Mrs. Rukmani Krishnamurthy, Forensic Science in Crime Investigation.
8. Dr. N.V Paranjape, The Code of Criminal Procedure, Central Law Agency, 4th Edition, 2013.
9. K. Vijay, Textbook of Forensic Medicine: Principles and Practice 135 (New Delhi; B.C. Churchill Livingstone, 2001).
10. K.S, Narayan Reddy, The Essentials of Forensic Medicine and Toxicology 387 (Hyderabad: Sugunadevi K. Rao NG, 2004).