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“ Crime & Justice “

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Crime is inevitable in any human society since some violation of any code of conduct, prescribed for the members of the society, is bound to occur. The inevitability and universality of the phenomenon of crime has been described by Emile Durkheim in the following words:

"There is no society which is not confronted with problem of criminality. Even a society composed of persons possessing angelic qualities would not be free from violations of the norms of that society with the result that faults which appear venial to the layman will create there the same scandal that the ordinary offence does in ordinary consciousness."

So, the fact remains that crime is a phenomenon, which is of primary concern to every member of the human society. Moreover, crime differs in societies as fingerprints differ in case of every human being. Crime is not a nascent phenomenon; it has been a vexing problem of society for centuries. Crime and society are inseparable from time immemorial. They are interrelated. Dating back to the history, it is an undeniable fact that ever since human beings started living together, the commission of crime erupted. A few types of crimes have become obsolete and many new forms have taken different dimensions in the present society for which promulgation of new law has become an urgent need to have an effective control over that area of crime. Every country either developed or developing is facing and confronted with problems of crimes. In fact, crime is the litmus test of human civilization.

Moreover, crime is the index of the reactive indicators which reflects the prevailing public order and tranquility, communal and religious feelings, juvenile delinquency, unemployment or misemployment, addiction to alcohol and drugs etc. This can be perceived from the following quote of Frank

Tennenbaum:

"Crime is eternal- as eternal as society. It is best to face the fact that crime cannot be abolished except in a non-existent utopia."

However, the rising wave of crime might cause alarm among the public but our police and politicians remain unruffled about the deteriorating law and order situation. The non-ruling political parties are concerned with the figures of crime only in one way. They use the figures to criticize policies of the ruling party so that the latter could be defamed and disempowered, yielding place to a new governing elite.

Sociologists and Criminologists have been broadly concerned with locating the causes of crime and analyzing the effectiveness of the criminal Justice delivery system. Recently, some scholars have moved beyond these narrow twin concerns and have raised questions about the enactment of laws, improving the police system, judicial activism, protecting the interest of the victim, improving the condition in prisons and humanizing the deviant. Such concept gives new look to identify the crimes and criminals, since official statistics are based on the legal definition of crime, as the system of criminal justice is perceived from a legal approach. In fact, all empirical studies on criminals focus on crime defined by law, and since legal definition of crime is considered to be precise, as far as possible unambiguous and capable of measurement, let us examine this legal definition of crime in this short span.

Crime may be defined in the language of Hall Jerome "as legally forbidden and intentional action, which has a harmful impact on social interests, which has a criminal intent, and which has legally prescribed punishment for it." Thus according to him, no action is to be viewed as crime unless it has five characteristics: 1) it is legally forbidden, 2) it is intentional, 3) it is harmful to individual as well as society 4) it has criminal intent and 5) penalty is prescribed for it.

In fact, society protects itself against wrong-doers by enforcing its laws and inflicting punishment. In its fight against crime, the state makes elaborate arrangements for enforcing its laws by a number of mechanism like the police, the courts, the jails etc. The purpose of promulgation of law is the success of justice and our goal is to ensure social justice where law is its tool.

Keeping this view in mind, it can be said that crime is costly and has many dimensions as to constitute a real threat to our way of daily life. In fact, criminals are not born but made. The human potential in every one is good and so, never write off any criminal beyond redemption. In the year 1935 Dr. Pritchard described crime as expression of "moral insanity." According to Alfieri "society prepares crime and criminal commits it."

So, when a crime is committed, a variety of factors are responsible for making the offender commit the crime. The factors may be social, economical, may be the result of value erosion or parental neglect, may be because of the stress of circumstances or the manifestation of temptation in a milieu of affluence, contrasted with indigence or other privation. Even sentencing a man to prison may often embitter him and when he comes out of the prison, he becomes an enemy in the society and rebellious against authority.

So, sovereign authority is to establish an effective mechanism to ensure justice in the society by inflicting punishment on the wrong-doers and also to establish rule of law in the country. Rule of law thus regulates the functioning of every organ of the state machinery. In fact, the legislature, the executive and the judiciary, including the agency responsible for conducting state prosecution and investigation, must confine themselves within the four corners of the law and the constitution and cannot be permitted to exceed the limits of decency, fairness, and principle of natural justice.

Undoubtedly, the aim of criminal justice is the protection of individual's life, liberty and property and also society at large, but in attempting to ensure that protection it also intends to protect and promote human rights, including those of accused. The idea is to secure a conviction, if it can be had, by the use of utmost fairness, both at the stages of investigation and subsequent prosecution.

Moreover, the dynamic character of Rule of Law in a changing society has become the need of the day.

Social values change with the march of civilization and with them also change both the concept of crime and the system of penal and procedural laws, just as with altered condition new offences have been added, to have old ones dropped Law, therefore, could not remain static where everything else moved on. Out of necessity, it has got to be dynamic. If Law is to be an instrument to secure social justice, it must be changed with time and place and it is dangerous to cling dogmatically to so-called perennial qualities. An eminent Jurist Dr. Roscoe Pound too held that form of the law should be a matter what is most suited to the ends of legal order in time and place.

Thus, in a society governed by the concept of rule of law, the problem, therefore, arises as to how to maintain a just and fair balance between the minimum human rights of the accused and the demand of the societal security through effective administration of criminal justice. In the language of Justice H.R. Khanna, Supreme Court of India, it can be summarised in the following manner:

"Human beings, it is said, surrender all their freedom in return of the blessing of the government. The blessing of government would degenerate into tyranny of government unless it is accompanied by a recognition that there are certain basic rights which are possessed by citizen not only good but also bad citizens. These are the rights where there are interest in all citizen. These are the rights which are inviolable because they are not only vital for the integrity and dignity of human personality but also because without them men could be reduced to the level of animals. If, however, in order to safeguard the individual rights of the accused too many brakes are applied on the wheel of criminal justice, then justice itself may get stifled. When justice fails to reach the aggrieved citizens in a large number of cases through the process of law the common man gets bewildered and begins to lose faith in the administration of justice and may even take law into his own hands or rebel against the established social order."

It has also been observed by Justice G.C Das that lawless elements in society are bound to be encouraged if the police fails to investigate offences properly and if the prosecuting agency fails to conduct the prosecution with utmost ability in the court of law. Similarly, if due to the shortcomings of the judiciary there is either no fair trial or if offenders are acquitted on insufficient grounds, the problem of maintenance of law and order will certainly become difficult.

Moreover, to acquit a criminal is to commit by his hand all the offences of which he is afterwards guilty. The difficulty of proceeding against offences is a great cause of feebleness in the executive power of justice and of impunity to crime. The question that poses itself is: what are the weaknesses and inadequacies of the law? If so, how best could they be rectified to make the administration of criminal justice more effective and beneficial to the larger society. In fine, I would like to recollect the observation made by Justice H.R. Khanna in Mathura Bar Association in the year 1978 which is as follows:

"It is a mistake to suppose that Rule of Law can be ensured by drafting well-worded code. It will depend, in the long run, upon the way those codes are worked and more essentially upon the general attitude of the people. It is rather trite to say that even the best laws and the best of constitutional provisions will be of no avail if there is a failure in the quality of human personnel who will enforce those laws and the constitution."
