

OUTLINE OF CRIMINAL JURISPRUDENCE

Justice S.C. Mohapatra
Chairman,
Orissa Administrative Tribunal,
Bhubaneshwar (Orissa)

When we think of Criminal Jurisprudence, we have to think of the society to which we belong because law which is based on human behaviour varies from society to society. All the same present day civilisation leads to a common goal of protecting human rights so that there would be peaceful co-existence and each human being can have a sense of security that during his life time he will live comfortably with dignity. All laws tend towards the same. This gives rise to the behaviour of man towards others I.e. what he ought to do and what he ought not to. When a man acts it has reflection on others. This reflection creates imbalances. Mode of balancing the imbalances is law. It deals with rights obligations and their enforcement. When a man is put to an uncomfortable position by action or inaction of another it is said to be wrong. Disturbance of right of one, non-discharge of obligation can be classified as wrongs. Whether the action or inaction is wrong and eradication of the wrongs are called adjudication. Result of adjudication is justice. This system of justice can be called jurisprudence.

Where sovereignty of a society is likely to be affected directly or indirectly by act or omission of a man, criminal jurisprudence emerges. Prevention of wrongs to society for protecting society itself by laws comes within the domain of criminal jurisprudence. Methods of such prevention are by giving direction not to do, attaching a stigma to wrongdoer so that society will identify the wrong doer, taking away or suspending some privileges which otherwise a man enjoys being a member of the society. This assures the members of the society that they are comfortable during their lifetime and can live with dignity in the society.

Broad object of criminal jurisprudence being protection of society from apprehended or committed wrongs, all laws made in this regard come within the scope of criminal jurisprudence. Law being an expression of the will of the community for their peaceful living, disturbance or likelihood of such disturbance are prevented or eradicated by provisions therein. In modern society, old concept that

wish of the monarch which is depository of sovereignty has been given a nice burial. Yet in international law, the theory of victor and vanquished has been in existence to regulate which, league of Nations came into existence after the 1st world war and United Nations came into existence after the 2nd world war. By resolutions, this organisation makes endeavour to protect human rights by regulating conduct of one nation towards another and conduct of the sovereign power internally. All this is to give assurance to a man so that he lives in comfort and with dignity. If we enter into that branch it will be never ending. Therefore, shortly it can be stated that internationally also the internal laws are regulated so that man is assured to live comfortably with dignity and expression of Rousseau, the French philosopher who was the thought provoker of French nationals to give rise to revolution for change of sovereignty that all men are born free but every where they are in chains does not recur again.

These human rights have been incorporated in our Constitution as fundamental rights. They are based on equality, liberty and fraternity. Sovereignty thus shall not be discriminatory, each one shall have freedom to live comfortably with dignity and mutual harmony would be such that fraternity shall develop among members. Laws made by legislature are to have the same object. Executive while enforcing the law is to modulate its action in such a manner that these objectives are fulfilled and judiciary is to consider whether the law in view of its object and language fulfils the object, and where the law is in accordance with these objectives, It considers whether a person has committed the wrong and in case he has so committed, how best it can be dealt with within the framework of the law so that peace and tranquillity in the society are restored or protected.

Liberty being the main object of an individual which brings peace in his mind so that social peace is maintained, a person committing wrong is deprived of this liberty to the extent required. Curtailment of right to enjoy one's property temporarily or permanently, curtailment of right to have association with others either temporarily or permanently are the two broad modes of enforcing the laws. But before such actions are taken a person gets opportunity, to know why such steps are required to be taken so that in a competent forum he can explain that he has not committed any wrong, or even if it is wrong, he does not deserve the proposed deprivation. It is not in a straitjacket formula but law prescribes how this would be satisfied. Object behind this is that person does not proceed ahead to commit the wrong or is prevented from doing the wrong or even If wrong is committed, he realises that in future he should not commit the wrong, others who know about it become careful that in

case they commit such wrongs, they may face the same consequences. Ultimate object is to keep the society in order.

Some wrongs invite punishments. Some wrongs do not invite punishments. Those wrongs which invite punishments are called offences. Those which do not invite punishments to a person are executive actions for enforcement and maintenance of peace. They are so overlapping that the enforcement authorities of the law require care and caution for the same. Few illustrations in short will give an idea of the same. It may not be taken to be exhaustive. They are only illustrative.

Let me take up deprivation of enjoyment of property first. Under the Code of Criminal Procedure, a provision has been made to prohibit persons from ; creating disturbance in possession of immovable property or obstruction to free enjoyment of a road, watercourse or the like. These provisions are not remedy of the persons in respect of whom wrongs are committed. Their remedy is in other forums. However, they can initiate such proceeding against persons so that the persons doing wrong can be prohibited until they establish their right in forums provided, from committing wrong. Similarly, properties of a person which are used in commission of offences can be seized and confiscated. Where it is proved that offences have not been committed, the properties are either returned or value thereof is returned. These provisions can be found in the Essential Commodities Act and orders made there under, Forest Acts. Prevention of Corruption Acts and the like.

Curtailment of liberty either by prohibiting a person to be in the society of persons which he desires is another mode. They are causing death of the person against his will, confining him in custody or not allowing him to be in the society he desires. There is no scope in our law to cause death of a person unless he has committed an offence declared to have such penalty. Confining a person in custody may be an accent of committing an offence or on accent of steps for prevention of breach of peace or an accent of disturbing public order. Similarly, restraint imposed on a person to mix with others he desires is a mode of prevention. A person is also directed to have good behaviour. These provisions are found in National Security Act, Criminal Procedure Code, Police Act, Criminal Law Amendment Acts and the like. Where a person is found to have committed an offence he is convicted and thus a stigma is attached to him. In respect of some such offences, he is not punished immediately and allowed to change his behaviour. For some offences he is sentenced to pay fine. For some other offences on conviction, he is sentenced to substantive imprisonment and for committing some

offences he is deprived of his life. This is the broad principle of criminal jurisprudence.

As has been indicated earlier, a person deprived of his liberty or property gets a chance to have his say before forums created that he does not deserve to be dealt with in the manner provided in law. For this purpose, where the matter relates to public order, he gets a right to represent and an independent forum called Advisory Board considers whether detention is justified. Ultimate power is given to High Courts and the Supreme Court in exercise of writ jurisdiction of both and appellate jurisdiction of Supreme Court to consider whether detention is justified. Where the action relates to law and order and not public order, forum created adjudicate the same where action is an offence, person committing the offence is called accused and he faces trial in a competent court adopting procedure laid down in the Code of Criminal Procedure. Evidence adduced is appreciated on basis of provisions of the Evidence Act. On being satisfied that all the ingredients of the offence are satisfied accused is convicted. In some cases accused is sentenced and in some cases imposition of sentence is deferred until convicted person. accused of an offence, is presumed to be innocent.

[J.T.R.I. JOURNAL – First Year, Issue – 2 - Year – April – June, 1995]