

## **THE PIVOTAL ROLE OF COURTS IN CRIMINAL JUSTICE ADMINISTRATION**

The preamble of the Indian Constitution signifies that the framers of our constitution were influenced by the French, American and Russian revolutions. Its contents in Part-III and Part-IV reflect the values declared in the Universal Declaration of Human Rights and the UN charter. It is relevant to note that it was in the critical forties that these documents were created. Our founding fathers were aware of the inherent tension between Part-III and Part-IV, the FRs and the DPS policies respectively. Both were to have equal importance and it was a question of time for them to have been treated with equal importance. Initially as was expected, fundamental rights – individual rights were given precedence and there arose the conflict which came to be adverted to by none other than the first prime minister who in the course of debate in connection with the fourth amendment to the constitution commented thus:

“I would like to draw the attention of the house to something that is not adequately stressed either in Parliament or in the country. We stress greatly and argue in courts of law about the Fundamental Rights. Rightly so, but there is such a thing also as the Directive Principles of Constitution. Those are, as the constitution says, the fundamental in the governance of the country. If there is an inherent contradiction in the constitution between the F.R. and Directive Principles of State Policy, it is upto this parliament to remove the contradiction and make the F. Rights subsume the Directive Principles”<sup>1</sup>

The role of the judiciary in resolving the contradiction was reflected in the statement of the then CJI who at the time of the inauguration of the Supreme Court said thus:

“On the court will fall the delicate and difficult task of ensuring to the citizen the enjoyment of his guaranteed rights consistently with the right of society and the state”<sup>2</sup>

Thus the Chief Justice was emphasizing the balancing function of the judiciary while the constitution envisaged the judiciary to be proactive in achieving justice social, economic and political (Preamble and Art. 38). After independence it was expected that our District Judiciary would rise to be expectations reflected in the constitution. But the British Indian mould of our judiciary well versed in the implementation of preconstitutional laws like the IPC, Cr.PC, CPC, Evidence Act etc. and cast in the form of a law and order machinery as the

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<sup>1</sup> Quoted in Chinnappa Reddy, 'The court and the constitution', (2008) 18-19.

<sup>2</sup> Quoted in Chinnappa Reddy, 'The court and the constitution', (2008) 21.

bastion of the strong administration was reticent in getting into the role of a proactive agent of social change. This reticence still persists despite the frequent exhortations by the apex court and others. Old habits die hard. But we have to activate ourselves if we are to achieve the aims set by our founding fathers.

In fact the preconstitutional laws like IPC, Cr.PC, Evidence Act, CPC etc. despite their being preconstitutional enable the courts to be proactive and to achieve the new role assigned to them by the constitution. Interestingly if willing, the courts could also give the impression of resorting to balancing of the private and public interests while deciding cases under these statutes. This is because of the primordial role assigned to them by the statutes. This situation helps the courts with imagination to interpret the statute law in accordance with the constitutional vision. An examination of these statutes indicate that they are court centric enabling them to play the lead role. This becomes clear if one examines the application of provisions of IPC, Evidence Act or Cr.PC.

Let us examine, by way of example, the application of IPC provisions in certain fact situations. In the case of application of mistake of fact as a defence, the concept of reasonable man comes quite often tainted by the segment of society the judge belongs. This is so when one applies sudden and grave provocation, insanity defence, right of private defence etc. etc. This can be brought home by way of an analysis of the decision in **Ram Bahadur Thapa v. State of Orissa**<sup>3</sup>, wherein a Gurkha happened to kill and injure several persons by way of his knife mistaking them to be evil spirits during night. The Orissa High Court granted him the defence of mistake of fact saying that he actually by mistake thought his victims to be evil spirits. Still, the question whether the man exercised ordinary prudence of a reasonable man' could be raised against this decision. Similarly, an analysis of **Madhavan v. State of Kerala**<sup>4</sup> also indicates that the 'reasonable man' who is suddenly provoked could be different depending upon the segments of society to which the judge belongs. The decisions in **Cherubin Gregory v. State of Bihar**<sup>5</sup> and **Ashraf v. State of Kerala**<sup>6</sup> could be analyzed to show how the court could respond differently in appreciating the similar fact-situations viz-a-viz the same statutory provision in the IPC.

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<sup>3</sup> AIR 1960 Ori 161.

<sup>4</sup> AIR 1966 Ker 258. It was a case where the husband was found to have been suddenly provoked by the throw of the mangal sutra at him by his wife. There could be difference of opinion as to 'prudent man' in the same circumstances if the judge is of a different hue and holds different view.

<sup>5</sup> (1964) 1 Cri. L.J. 138

<sup>6</sup> 1993 1 KLT 501

It is fruitful to examine the various provisions in the Indian Evidence Act to show that the Indian System empowers the judge to do justice in criminal cases. Leaving apart the malleability or manoevrability of provisions like S-8, 9 etc, the provision in S-165 declares in unequivocal terms the supremacy of the Indian trial judge in conducting the trials. It enacts:

S-165.<sup>7</sup> Judge's power to put questions or order production: The judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the court, to cross examine any witness upon any answer given in reply to any such question.

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor should the judge ask any question which it would be improper for any other person to ask under section 148 or 149 nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Apart from other relevant provisions, section 310 Cr.PC becomes quite relevant while considering the position of the trial judge in dealing with evidence. Section 310 Cr.PC enacts:

Section-310.<sup>8</sup> Local Inspection – (1) Any judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after new notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

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<sup>7</sup> See Ram Chander v. State of Haryana, 1981 SCC (Cri.) 683, Vincent v. State of Kerala

<sup>8</sup> See State of Himachal Pradesh v. Mast Ram (2004) 8 SCC 660

(2) Such memorandum shall form part of the record of the case and if the prosecutor, complainant or accused or any other party to the cases, so desires, a copy of the memorandum shall be furnished to him free of cost.

How enabling it is to deliver justice in a case becomes evident if one ventures to exercise this power. Criminal Procedure Code, right from arrest of the accused till the finalization of the case seems to repose maximum faith on the judicial officer.

Theoretically speaking, a person is restrained from movement by way of arrest when he is accused of a cognizable case by the police the representative of the society. The accusation is brought before the magistrate the independent and impartial authority interposed between the individual and the society. It is therefore the magistrate to resolve the conflict. The magistrate is also authorized to peruse the records of his arrest, deal with the request for remand, bail etc. S-44 authorizes the magistrate to effect arrest. It declares thus:

S-44 Arrest by magistrate: When any offence is committed in the presence of a magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.<sup>9</sup>

S-57<sup>10</sup> makes it obligatory for the arrested person to be brought before the magistrate within 24 hours of the arrest. In fact this provision reflects Art. 22 of the constitution which in material part lays down thus:

Art. 22 (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate, within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

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<sup>9</sup> D.K. Basu v. State of W.B. (1997) 1 SCC 416

<sup>10</sup> Khatri (II) v. State of Bihar (1981) SCC (Cri.) 228  
I.G. of Police v. Prem Sagar (1999) 5 SCC 700.

Examination of various provisions dealing with initiation of investigation and trial, at every stage shows the tremendous faith the system reposes on our judiciary. While S-157 requires a copy of the FIR to be forwarded to the magistrate S-156 (3) empowers the magistrate to order investigation independently of police. S-159 authorizes the magistrate to hold investigation or preliminary inquiry. The power for remand and granting of default bail rests again with the magistrate. While the policy of the code seems to keep the investigation close to the chest of the police, S-172 shows its faith in the impartiality of the judge. For S-172 (2) enacts thus:

“(2) Any criminal court may send for the police diaries of a case under inquiry or trial in such court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial”

The report of the investigation is also to be submitted to the court under S-173<sup>11</sup>. The provisions enabling the court to inquire into the cause of death (S-174) avoiding presence of the accused from appearing before the court (S-205) supply of copies of documents to the parties (S-207) framing of the charges etc. are to be attended by the court.

If there is no case found against a person it is for the magistrate to record it and discharge him. Similarly, on charges being found not sustainable it is for the court to record acquittal. In the case of trial before a court of sessions also the position of the judge is above all. It is for him to consider discharge (S-227), framing of charge (S-228) or conviction on plea (S-229).

In chapter XIX on trial of warrant cases by magistrates it is again the court which plays the active role. It is for it to see whether supply of copies of documents has been complied with and to discharge the person if no prima facie case is found (S-239). If not discharged, again it is the court which frames the charge (S-240) and proceeds further.

The new chapter XXI-A on plea bargaining also emphasizes the role of the court in the working of the scheme (S-265 A–265 H).

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<sup>11</sup> The accused has a right to fair investigation. See Manu Sharma’s decision, (2010) 6 SCC 1. See also observations in Zakira Sheikh (2004) 4 SCC 158 with regard to the duties of the court.

The court is empowered to summon new witness (S-311), get the signature or handwriting samples (S-311 A), obtain a statement of the accused direct from him (S-313) and to examine the accused as a witness if he so desires (S-315). The court can also dispense with the presence of accused in certain cases (S-317).

One of the important provisions in chapter XXIV is S-319 enabling the court to proceed against other persons appearing to be guilty of offence. Though its dimensions are yet to be explored it may be stated that this is a very strong provision empowering the court to initiate criminal proceedings against a person if the court is satisfied about such a step having regard to the evidence in the case.

In effecting compounding of offences (S-320) and withdrawal of case also the court's role is pivotal. The Cr.PC makes provisions enabling the magistrate not to commit any mistake as to his jurisdiction for trial or punishment of an offence (See S-323, 324, 326 etc.).

The code also provides for the trial and punishment of offense affecting administration of justice. Under this chapter XXVI also it is the court which has the power to deal with these offences. Section 344 provides for a summary procedure for trial for giving false evidence. Section 348 empowers the court to discharge the offender on tendering of apology whereas S-349 enables the court to impose punishment for refusing to answer court's questions.

Some of the important provisions the court should focus are the sections, dealing with payment of compensation (S-357) victim compensation (S-357-A)<sup>12</sup>, payment of compensation for groundless arrest (S-358)<sup>13</sup> and the statutory obligation to consider release of persons on probation (S-360 and 361).

In short, the District Judiciary has ample powers in all the matters connected with criminal justice administration<sup>14</sup>. Some of the powers given to the court go to the extent of reposing much faith on the courts for the protection of the accused. Simultaneously, it is believed that the court will also look into the interests of the society though the police and public prosecutors would be primarily taking care of the societal interests. The provisions in the Cr.PC and Evidence Act are indeed judge centric and therefore the, judge's role as

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<sup>12</sup> See Palaniappa Gounder v. State of T.N. (1977) 2 SCC 634.

<sup>13</sup> See Mallappa v. Veerabasappa, 1977 Cri. L.J. 1856

<sup>14</sup> The High Court has also ample powers and duties to see that Criminal Justice Admn. is done properly. It has powers to control advocates' appearance in courts - See R.K. Anand v. Registrar, Delhi High Court, (2009) 8 SCC 106.

protector of the individuals interests and society's interests assumes importance and deserves emphasis.