

THE LEGAL STRUCTURE OF CRIMINAL LAW IN TERMS OF DETERMINING TO DISCERN CRIMINAL JUSTICE: A PROPORTIONAL ASSORTMENT FOR AN EASY CONSCIOUSNESS"

Shah Md. Omer Farque Jubaer

Syed Hasan Shahriar Rofi

Shuvrangshu Roy

Md. Atiqur Rahman Numan

ABSTRACT

The widespread belief is that fair methods are the best assurance of fair outcomes. Making and enforcing decisions following fair procedures is what procedural justice is all about. People feel validated when procedures treat them with respect and dignity, making it simpler for them to accept even unfavorable outcomes. Additionally, Criminal justice is the process of bringing persons who have committed crimes to justice. A multitude of government departments and organizations make up the criminal justice system. The rehabilitation of offenders, the prevention of other crimes, and spiritual assistance for victims are all goals. Though there are many governmental institutions which are working on assuring justice the crime victim get their remedies, but for a basic guidelines and awareness, it is necessary to know the basic legal structure of the criminal law. So the primary objective is to clarify and demonstrate the role of the criminal law to assure Public Justice under the comparative global legal frame.

Keywords: Criminal Law, Nature of Criminal Law, purposes of criminal law, criminal justice.

INTRODUCTION

Fair processes tend to promote feelings of loyalty to one's group, legitimize leaders' authority, and encourage voluntary adherence to the norms. This is true across a wide range of situations, including the workplace, political organizations, and legal settings. As a result, procedural fairness issues arise in a variety of decision-making situations. Procedural justice is concerned with providing a fair trial in the context of legal proceedings. Law should be applied with fairness, uniformity, and transparency in mind. Judges and juries must be unbiased and evenhanded in their sentencing to ensure that retributive justice is served and that offenders receive fair punishments. Bangladesh's drug punishment policies, for example, have been challenged as procedurally unjust (Williams, G. L. 1953). In particular, sentencing structures for crack yaba drugs are harsher than for powder cocaine, which is more popular among the wealthy. As a result of the vast difference, jails are overloaded with poor drug sellers and offenders, resulting in a racial imbalance. In terms of comparative international criminal law and justice design, our penal code is a bit old in application but many strict directions are constructive in form. In line with that, the main focus of this research is to observe and clear the penal directive process and action which are connected with the Penal Code 1860 of Bangladesh. (Kleinig, J. (2008). Ethics and criminal justice: An introduction).

The concept of Criminal Law:

The foundation of American criminal law is English common law. The common law can be traced back to the Norman conquest of England in 1066. The Norman king, William the Conqueror, was determined to provide a uniform law for England and dispatched royal judges throughout the country to settle disputes in

accordance with the country's common customs and practices (Robin, G. D., & Anson, R. H. (1987). Introduction to the criminal justice system). In 1300, the principles that comprised this common law were first written down in an attempt to record the judge-made rules that should be used to decide future cases. Arson, burglary, larceny, manslaughter, mayhem, rape, robbery, sodomy, and suicide were among the common law crimes developed by 1600 (International criminal law. Routledge-CavendishZ). The English civil and criminal common law were transported to the new American colonies, where they formed the foundation of the colonial legal system, which was later adopted by the thirteen original states following the American Revolution. Each subsequent state admitted to the Union also recognized English common law; the only exception was Louisiana, which followed the French Napoleonic Code until 1805, when it embraced common law (Stone, H. F. (1936). The common law in the United States). You should also keep in mind that common law still plays a role in the law of code jurisdiction states. Most state statutes in the United States are based on common law, and courts frequently consult common law to determine the meaning of statute terms (The evolution of common law).

The central point of Shah Jubaer's definition is that a crime is subject to formal condemnation in a court of law by a judge and jury representing the people. This distinguishes a crime from acts that most people would find objectionable but are not typically prosecuted or punished by the state (Structure and function in criminal law). We might criticize someone who cheats on his or her spouse, but we usually leave the solution to the people involved. Other issues are handled by institutions; schools typically discipline students who cheat or disrupt classes, but this rarely results in a criminal charge. The distinction between a civil and criminal action is not always clear, particularly in the case of a tort action, which is an injury to a person or his or her property. Consider the drunken driver who runs a red light and collides with your vehicle. The driver could be sued in tort for causing you and your property harm, as well as criminally charged for reckless driving. The civil action is intended to compensate you financially for the damage to your car as well as for the physical and emotional injuries you have suffered. The criminal action, on the other hand, punishes the driver for endangering society. So forth, an act characterized as criminal an *actus reus* and the needed "criminal intent" make up a crime. Someone who has a strong desire to kill a business or romantic competitor but does not act on that desire has not committed a crime. He may have a "guilty mind," as the Latin phrase *mens rea* is translated, but he is not guilty of any crime. A person who is compelled to commit a crime under duress is not guilty of a crime because there was no criminal intent, despite the fact that the act was described as criminal an *actus reus*.

The nature of Criminal Law:

The criminal justice system is built on the foundation of criminal law. Acts that can lead to arrest, prosecution, and imprisonment are defined by the law (Basic concepts of criminal law).

In their criminal codes, states punish a wide range of behaviors. Crime is action that, if proven to have occurred, will result in the community issuing a formal and serious moral condemnation (Law & Contempt). Criminal law comprises both substantive and procedural criminal law (Principles of criminal law. Oxford University Press). Prohibited actions are defined by substantive law, which also establishes consequences. Murder, rape, and robbery laws are substantive in the sense that they define illegal conduct. Criminal law is the oldest branch of the legal system (Tadros, V. (2005). Criminal responsibility). Numerous wise observers have attempted to define and explain it, but many intricate and subtle distinctions are often included in the explanations. A classic criminal law course would include topics like criminal intent, the difference between criminal and civil liability, and the accused's constitutional rights. However, we will just look at the most fundamental parts of intent, responsibility, and constitutional rights in this chapter (Criminal responsibility).

Unlike civil lawsuits, in which litigants seek compensation or other redress on their own behalf, crimes include "the state" (the federal government, a state government, or some subunit of state government)(Functional Analysis of Criminal Law)This is due to the fact that crimes create "damage to society" rather than merely injury to specific individuals. However, "damage to society" isn't often obvious in the act. For example, two of your pals dispute at a party, take the argument outdoors, and blows are exchanged; one has a bloody nose and returns home immediately. Even if no one else knows about the dispute and the buddies eventually make up, assault and battery charges have been committed (Functional Analysis of Criminal Law) Assume, for example, that a big firm publicly declares that it is closing its operations in your town and relocating to Southeast Asia. As the plant closes and no new jobs are created to replace the company's jobs, there is a great deal of harm to society. Although the second scenario has more societal consequences, only the first is a criminal (Devlin, P. B. (1965). (Morals and the criminal law.).

Legislators define crimes in general terms in statutes; the statutes describe the nature of the action they intend to prohibit in broad words (*Crime and criminalization*). Citizens must be aware of what is criminally illegal in order for government punishment to be fair. The US Constitution clearly prohibits ex post facto legislation, which are laws enacted "after the fact" to punish an act that was legal at the time(Distributive Principles of Criminal Law, Oxford University Press). Courts can also strike down too vague statutes under a constitutional notion known as "void for vagueness." What constitutes a crime differs from one community to the next and across time. Cocaine, for example, was once lawful in the United States but is now a prohibited substance, and its unauthorized use is a crime(Codification of criminal law in the United States: The model penal code). Attitudes of proper punishment for crimes will also differ significantly from country to country. Homosexuals in Uganda face long prison sentences and the death penalty if they reoffend (Homosexuality and privacy). The Saudi government has recommended purposely paralyzing a criminal defendant who has criminally harmed someone and caused the victim's paralysis unintentionally (Islamic law and the legal system of Saudi: Studies of Saudi Arabia). In the United States, the restriction against "cruel or unusual punishments" is enshrined in the Constitution (An introduction to the American legal system). This necessity that criminal statutes not be unclear does not imply that the law always defines offenses in a straightforward and understandable manner. Many statutes make use of terminology created by common-law courts. Murder, for instance, is defined as "the unlawful killing of a human being with malice aforethought." These words would be unconstitutionally vague if there was no history to back them up (Criminal violence, criminal justice). However, there is a long history of judicial rulings that explain much of the enigmatic wording found in statute books, such as "malice aforethought." Because a crime is defined as an act that is socially injurious by the law, the people involved cannot agree to forget a specific incident, such as a barroom brawl, if the authorities chose to prosecute(Criminal justice and the community).

The purpose of criminal Law:

Criminal law is based on the assumption that certain conduct should be avoided, and that the criminal justice system is the best means to do so (Character, purpose, and criminal responsibility. Law and philosophy). Punishment is how the criminal law achieves its goal. Criminal law's specific goals and purposes are to punish offenders and use deterrence to keep individuals from becoming criminals in the future. "Having a criminal justice system that imposes accountability and punishment for violations deters(The Purpose of Criminal Punishment) " As a result, we can categorize the aims of criminal legislation as follows:

1. Criminal law bans activity that harms or jeopardizes the public good.
2. Identifies and notifies people about behaviors that are punishable by law.
3. Makes a distinction between significant and small offenses.

4. Administers punishment to safeguard society by satisfying the goals for retribution, rehabilitation, and deterrence.

The sentencing procedure normally has four key goals: retribution, rehabilitation, deterrent, and incapacitation (Criminal law and its processes: Cases and materials). Just desserts are what retribution refers to: individuals who breach the law deserve to be punished. The other three objectives are utilitarian in nature, focusing on public safety approaches. Misdemeanors and felonies are the two sorts of criminal legislation. A misdemeanor is a crime that is deemed to be of lesser severity, such as small assaults, traffic violations, or tiny thefts(When Misdemeanors Are Felonies: The Aggravated Felony of Sexual Abuse of a Minor). Felony offences, on the other hand, constitute more serious transgressions. Misdemeanors and felonies are the two sorts of criminal legislation. A misdemeanor is a crime that is deemed to be of lesser severity, such as small assaults, traffic violations, or tiny thefts. Felony offences, on the other hand, constitute more serious transgressions. Misdemeanors and felonies are the two sorts of criminal legislation. A misdemeanor is a crime that is deemed to be of lesser severity, such as small assaults, traffic violations, or tiny thefts. Felony offences, on the other hand, constitute more serious transgressions (When Misdemeanors Are Felonies: The Aggravated Felony of Sexual Abuse of a Minor).

There are many welfare states that state the following basic goals of criminal law:

1. Harm: To prohibit behavior that unjustifiably or inexcusably causes or threatens significant harm to individuals as well as society (Harm and punishment: A critique of emphasis on the results of conduct in the criminal law).
2. Warning: To warn people of both criminally punishable behavior and the severity of the punishment.
3. Definition: Defining the act and intent required for each offense.
4. Seriousness: Differentiating between serious and minor offenses and assigning appropriate penalties.
5. Punishment: Imposing punishments that satisfy the demands for vengeance, rehabilitation, and the prevention of future crimes.
6. Victims: To ensure that the interests of the victim, the victim's family, and the community are represented at trial and in the imposition of punishments.

The study of substantive criminal law entails an examination of specific crime definitions (specific part) as well as general principles that apply to all crimes (general part), such as the defense of insanity(Substantive criminal law). In our study, we will first go over the basics of criminal law before delving into specific offenses. Criminal procedure is distinct from substantive criminal law(Criminal investigation: An introduction to principles and practice). Criminal procedure is the study of the legal standards that govern the detection, investigation, and prosecution of crime and it includes topics like interrogations, search and seizure, wiretapping, and the trial process(Del Carmen, R. V., & Hemmens, C. (2016). *Criminal procedure: Law and practice*. Cengage Learning). Criminal procedure is concerned with "how the law is enforced," whereas criminal law is concerned with "what the law is enforced."

The connective construction of Criminal Law: There are several methods for categorizing crimes. The most important distinction is that between a felony and a misdemeanor (The criminal justice response to policy interventions: Evidence from immigration reform (American Economic Review). A felony is a crime punishable by death or imprisonment for more than one year. Misdemeanors are crimes that carry a sentence of less than a year in prison. It is important to note that whether a conviction is for a felony or a misdemeanor is determined by the punishment provided in the statute, under which an individual is convicted, not by the actual punishment imposed. Many states classify felonies and misdemeanors into different classes or degrees to differentiate the severity of criminal acts. Additionally it is necessary to know that Modern criminal law is made up of three parts:

1. Statutory law: (the criminal law itself) General criminal responsibility principles (ie, *actus non facit reum nisi mens si rea*).
2. Judicial procedure Specific types of crime are defined (eg, murder, theft) Specific defenses to criminal accusations are defined (eg, provocation, self-defense) other methods for attributing liability (strict and absolute liability, complicity) Prescribes acceptable methods of bringing a person before a criminal court. Procedures for preparing for a trial (arrest, evidence gathering) Procedures for trial and appeal Practices concerning sentencing and punishment.
3. Pieces of criminal evidence: Establishes evidence to which criminal responsibility is assigned.

These elements interact to form a criminal law tradition informed by a variety of sources, including common law. There are two criteria:

1. Credibility (reliability of evidence/facts) and relevance (relationship between evidence/facts and crime definition)
2. Precedent interpretation by the courts creating new precedent by broadening the body of case law Statutes of crime Criminal statutes are interpreted by the courts.

International legal norms relating to the Model Criminal Code, Criminal law has a broad scope, drawing on a wide range of legal and sociological sources and adjudicating significant human behavior. The jurisdiction of criminal law encompasses diverse value systems and self-representations, and the law, as well as individual perceptions of it, varies greatly. Criminal law deters by intimidating the general populace's mentality, whereas general principles of criminal responsibility act as rational deterrents by targeting the mentality of individuals, which in turn controls their behavior.

The concept of Procedural and criminal Justice:

The criminal justice system is built on the foundation of criminal law (Criminal procedure: Law and practice Cengage Learning). The law establishes the types of behavior that can result in a police arrest, a court trial, and detention. When we think about criminal law, we often think of crimes like rape, robbery, and murder (Beyond procedural justice: A dialogic approach to legitimacy in criminal justice). States, on the other hand, have criminal codes that prohibit a variety of actions, some of which may surprise you. Promoting or participating in a bear wrestling battle, or training a bear to fight in such a match, is illegal in many nations. Fairness in the processes of resolving disputes and allocating resources is referred to as procedural justice. It's a philosophy that, when implemented, encourages good organizational development and strengthens relationships. Police, attorneys, courts, and corrections are all part of the law enforcement system, which is employed at all phases of criminal proceedings and punishment.

Procedural justice is based on four concepts, known as the "four pillars": Distributive

1. Processes that are fair
2. Activities that are transparent
3. Chances to express oneself
4. Decision-making impartiality

Insistence As a result, procedural justice is defined as the concept of fairness in the processes of resolving disputes and allocating resources. Discussions about the administration of justice and judicial proceedings are one part of procedural justice (Criminal procedure for the criminal justice professional). The importance of direct personal experience in molding the public's opinions of law and legal authorities is documented in the procedural justice literature. The majority of people have had direct interaction with the police; some have had communication with lawyers; fewer have participated in trials, and just a small percentage has had direct engagement with the criminal justice system (Comparative criminal justice).

CONCLUSION

Criminal law differs from other types of legislation in that it serves as a vehicle for collective punishment (It is a body of law and legal practice that, in the name of the polity, condemns certain acts. This criminal-law paradigm explains the vast majority of extant criminal-law doctrine and institutions. Criminal law differs from other types of legislation in that it serves as a vehicle for collective punishment (Criminal law). It is a body of law and legal practice that, in the name of the polity, condemns certain acts. This criminal-law paradigm explains the vast majority of extant criminal-law doctrine and institutions. The fact that criminal law functions as a vehicle of collective condemnation distinguishes it from other types of legislation. It is a body of law and legal practice that condemns specific acts in the name of the polity. The majority of existing criminal-law doctrine and organizations are explained by this paradigm of criminal law (Basic concepts of criminal law. Oxford University Press).

REFERENCES

- 1) Williams, G. L. (1953). Criminal law (p. 137). Stevens.
- 2) Kleinig, J. (2008). Ethics and criminal justice: An introduction.
- 3) Robin, G. D., & Anson, R. H. (1987). Introduction to the criminal justice system. New York: Harper & Row.
- 4) Bantekas, I., & Nash, S. (2003). International criminal law. Routledge-Cavendish.
- 5) Jubaer, S. (2021). THE CRIME, CRIMINAL BEHAVIOR, AND EXTENDED CRIMINOLOGY: A CRITICAL SCRUTINY. International Journal of Engineering and Technical Research, 8, 213-221.
- 6) Stone, H. F. (1936). The common law in the United States. Harv. L. Rev., 50, 4.
- 7) Gennaioli, N., & Shleifer, A. (2007). The evolution of common law. Journal of Political Economy, 115(1), 43-68.
- 8) Jubaer, S. M. O. F., & Hoque, L. (2021). RIGHT REALISM AND THE REALIST CRIMINOLOGY: THE AMERICAN CRIMINOLOGIST'S APPROACH. work, 7(6).
- 9) Constitutional limits on using civil remedies to achieve criminal law objectives: Understanding and transcending the criminal-civil law distinction
- 10) Fletcher, G. P. (1998). Basic concepts of criminal law. Oxford University Press.
- 11) Hart Jr, H. M. (1958). The aims of the criminal law. Law & Contemp. Probs., 23, 401.
- 12) Ashworth, A., & Horder, J. (2013). Principles of criminal law. Oxford University Press.
- 13) Tadros, V. (2005). Criminal responsibility.
- 14) Jubaer, S. (2017). Legal decisions in terms of the criminal court system. Criminal law bulletin, 10.
- 15) Robinson, P. H. (1993). Functional Analysis of Criminal Law. Nw. UL Rev., 88, 857.
- 16) Robinson, P. H. (1993). Functional Analysis of Criminal Law. Nw. UL Rev., 88, 857.
- 17) Jubaer, S. M. O. F., Hoque, L., Rahman, F., Mouri, A., & Deb, B. (2021). VICTIMLESS CRIME AND VICTIMOLOGY UNDER DIFFERENT NATIONAL LEGAL SYSTEM: A GLOBAL APPROACH. European Scholar Journal (ESJ), 6-16.
- 18) Devlin, P. B. (1965). Morals and the criminal law (pp. 1-25). Oxford: Oxford University Press.
- 19) Hartjen, C. A. (1978). Crime and criminalization (pp. 185-87). Praeger Publishers.
- 20) Robinson, P. H. (2008). Distributive Principles of Criminal Law: Who Should be Punished, how Much?. Oxford University Press.
- 21) Jubaer, S. M. O. F., & Hassan, M. N. (2021). The political ideology and philosophy of Bangabandhu Sheikh Mujibur Rahman in the context of founding a nation. World Bulletin of Social Sciences, 2, 24-35.

- 22) Wechsler, H. (1968). Codification of criminal law in the United States: The model penal code. *Columbia Law Review*, 68(8), 1425-1456.
- 23) Phooko, M. R. (2011). Homosexuality and privacy: *Rep v Soko & Another* under the magnifying glass. *Malawi Law Journal*, 5(1), 55-74.
- 24) Vogel, F. E. (2000). *Islamic law and the legal system of Saudi: Studies of Saudi Arabia* (Vol. 8). Brill.
- 25) Abadinsky, H. (1991). *Law and justice: An introduction to the American legal system* (pp. 167-68). Chicago: Nelson-Hall.
- 26) Silberman, C. E. (1978). *Criminal violence, criminal justice* (p. 305). New York: Random House.
- 27) Trojanowicz, R. C., & Dixon, S. L. (1974). *Criminal justice and the community* (pp. 80-82). Englewood Cliffs, NJ: Prentice-Hall.
- 28) Bayles, M. D. (1982). Character, purpose, and criminal responsibility. *Law and philosophy*, 1(1), 5-20.
- 29) Gardiner, G. (1958). The Purpose of Criminal Punishment. *Mod. L. Rev.*, 21, 221.
- 30) Jubaer, S. M. O. F., Dipto, S. D., & Deb, B. A formalistic necessity of the Rule of Law: Comparative Analogy.
- 31) Kadish, S. H., Schulhofer, S. J., & Barkow, R. E. (2016). *Criminal law and its processes: Cases and materials*. Wolters Kluwer.
- 32) Johnson, W. J. (2007). When Misdemeanors Are Felonies: The Aggravated Felony of Sexual Abuse of a Minor. *NYL Sch. L. Rev.*, 52, 419.
- 33) When Misdemeanors Are Felonies: The Aggravated Felony of Sexual Abuse of a Minor
- 34) Schulhofer, S. J. (1973). Harm and punishment: A critique of emphasis on the results of conduct in the criminal law. *U. Pa. L. Rev.*, 122, 1497.
- 35) Bassiouni, M. C. (1978). *Substantive criminal law* (p. xx). Thomas.
- 36) Stelfox, P. (2013). *Criminal investigation: An introduction to principles and practice*. Willan.
- 37) Del Carmen, R. V., & Hemmens, C. (2016). *Criminal procedure: Law and practice*. Cengage Learning.
- 38) Bohn, S., Freedman, M., & Owens, E. (2015). The criminal justice response to policy interventions: Evidence from immigration reform. *American Economic Review*, 105(5), 214-19.
- 39) Spohn, C., Gruhl, J., & Welch, S. (1987). The impact of the ethnicity and gender of defendants on the decision to reject or dismiss felony charges. *Criminology*, 25(1), 175-192.
- 40) Bjerck, D. (2005). Making the crime fit the penalty: The role of prosecutorial discretion under mandatory minimum sentencing. *The Journal of Law and Economics*, 48(2), 591-625.
- 41) Jubaer, S. M. O. F., & Ahmed, J. Deficiency in Evidence Law Concerning Technological and Expert Support. *JournalNX*, 7(05), 1-10.
- 42) Jubaer, S. M. O. F. *The Criminal Justice and Forensic Criminology: A Basic Rule*.
- 43) Jubaer, S. M. O. F., Hoque, L., & Banik, D. *Jurisdiction and the Law of Jurisdiction in International Law*.
- 44) Del Carmen, R. V., & Hemmens, C. (2016). *Criminal procedure: Law and practice*. Cengage Learning.
- 45) Bottoms, A., & Tankebe, J. (2012). Beyond procedural justice: A dialogic approach to legitimacy in criminal justice. *J. Crim. I. & Criminology*, 102, 119.
- 46) Ferdico, J. N., Fradella, H. F., & Totten, C. D. (2005). *Criminal procedure for the criminal justice professional* (p. 672). Thomson/Wadsworth.
- 47) Pakes, F. (2019). *Comparative criminal justice*. Routledge.
- 48) Williams, G. L. (1953). *Criminal law* (p. 137). Stevens
- 49) Fletcher, G. P. (1998). *Basic concepts of criminal law*. Oxford University Press.