

Exploring Critical Criminal Law – A Research Study

The tradition of teaching and research in critical criminal law have yet to take place in India. Criminal law as a discipline in India has largely been a normative subject without bringing a dimension of criticality in it. On the other hand the emerging scholarship in the western world is gradually shaping to evolve critical perspective in criminal law. These perspectives mainly adopted two approaches. One, critical legal studies perspective which looks at criminal law as a theoretical critique by applying philosophical and radical linings. The second approach is that all the critique of system and institutions associated with criminal law. This perspective is a functional critique of the institutionally working of the system.

In its historical context criminal law has been seen as a repressive regime of the state which sanctions in enforces its definition right and wrong. Thus a critical approach is to give same explanation about the justification and limits of criminal law. It questions the legitimacy and rational of criminal law as an instrument of state power. This perspective is quite oppose to the mainstream theme in criminal law where criminal law is considered to be an essential feature of social order. In the critical legal study perspective the choices of explanation fall between the realistic and left idealistic positions. In this sense the critical writers focus precisely on the ideological significance of criminal law. The bigger critique of criminal law stands from fact that it has been used reinforce slavery, to secure the labour force, to maintain religious political hierarchies to convert customary rights in the poaching, and so on the grant tradition in criminology also question the culpability, it is process and its necessity in dealing with the challenges of crime. The whole debate in contemplating idea of criminal law also situated between the two notions of 'law and context and normative law'. The law and context approach brings in several external factors into play which may have some bearing of the functioning of criminal law and its institutions. Thus the context in criminal law has now become a major point of defining element.

The proposed research

The present research is to be an exercise for developing and installing the idea of critical criminal law as a sub discipline in the larger framework of studies in law. This study is conscious of the fact that the conventional expositions in criminal law in India does not offer causal, critical, functional and radical insights into the manner in which the law is conceived, designed, applied and interpreted. This study relies on assumption that the interaction of criminal law with its stakeholders in India now require to answer many issues which are emerging in complexities. The plain implementation and interpretation will not be able to answer these issues. The idea is to identify and document the critical perspectives which are relevant to criminal law may be located in the policy critique by the thinkers and activists, critique by the judges in their judgements and critique by jurists about the institutions of criminal law. The systematic analysis of all these categories is to be collated and combined to prepare a set of prepositions leading to the development of a robust theory of criminal law.

Objectives:

The research study will have the following objectives:

1. To identify and explore the development of critical perspectives in criminal law scholarship.
2. To documents and analyse the specific works especially those carried out by Ashworth, Duff Norrie, Nicola, Gardner, Husak etc.
3. To conduct a critical analysis with regard to the critical outcomes in criminal process like acquittal, wrongful prosecution, wrongful conviction, abuse of power, arrear of criminal process.
4. To analyse documents and critical reflections made by the Supreme Court in its selected judgements.

5. To undertake a survey of reflections and critical comments with the experts in India and abroad on the chosen parameters.

Issues

1. Normative Criminal Law Vs. Critical Criminal Law
2. Study of normative critique, institutional critique and social critique.
3. Review of critique perspectives through selected writings and developing of relevant postulates.
4. Situating critical criminal law in the Indian context by studying selected Supreme Court judgement critical of law policy and institutions in the criminal law regime.

Methods of research

The research would combine the doctrinal and empirical methods in identifying, collecting and interpreting the relevant data. The doctrinal techniques would entail the instruments like critical deduction, comparative analysis and meta-analysis on the empirical side. The idea is to conduct a survey with expert respondents to generate specific data in the form of their reflections on critical criminal law as a discipline of knowledge.

Outcome:

The research would attempt to develop a report leading to identifying and installation of critical criminal law as discipline.