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**Criminal Justice Ethics**

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### **Abstract**

Legality is always coupled with morality and that is why the study of the criminal justice system is incomplete without the introduction of ethics in the system. Ethics refers to the code of conduct in determining whether a decision is right or wrong. Every criminal justice system has certain ethics for its better administration. Several ethical theories are construed in reference to the criminal justice system. These theories are Normative ethics, Metaethics, and Applied ethics. While some aspects deal with the standard of conduct, the others deal with the morals and behavior of the person. In a criminal justice system, ethics influences not only the court and offender but also the attorney, police, and a common man. The ethical system can be categorized into two heads such as Deontological Ethical systems and Teleological Ethical systems. The former one is the non-consequential system and the latter one being the consequential system. Ethics also helps the courts in the formulation of a rationale decision. Any criminal justice system without ethics shall be considered as a hollow system. The beliefs and behaviors helps in maintaining the status quo in the system. There are different categories of ethics such as Police ethics, Court ethics, Correctional ethics and Probation & Parole ethics. The utilitarianism approach aims at achieving good for the maximum people. Every country has its own criminal justice ethics. While surveying, the criminal justice system with ethics is proved to be more successful and beneficial than the one without the ethics and that is why ethics plays a vital role in the criminal justice administration.

**Keywords:** Ethics, Morality, Criminal justice system, Crime, Administration.

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## 1. Introduction

*“I count him braver who overcomes his desires than him who conquers his enemies, for the hardest victory is over self.”*

*-Aristotle*

The most commonly appreciated Public service system is the Criminal Justice System. Ethics plays a vital role in the administration of the criminal justice system. Ethics not only helps in the formulation of the policies but also in determining the legality of the policies framed by the policy makers. Ethics is commonly known as moral philosophy. Morals help the courts in delivering a rationale judgment.

Ethics is considered as an asset in the Criminal justice system for it is not based upon biasness. Criminal justice ethics is independent of prosecution or defence. It helps in determining whether a decision is right or wrong. Though right or wrong is an arbitrary term. It differs from person to person but that rationale shall be inferred from the sight of a prudent man.

There are two views as to study of ethics in the criminal justice system.<sup>1</sup> The first view says that the implementation of ethics can be done without having the proper knowledge of ethics. In this form, the ethics is completely abstract. It depends upon what the judge feels to be right or wrong at the moment, such as concept of equity. The other view regarding study of ethics contains a completely standard code of conduct in the determination of right or wrong.

The complete study of ethical behavior not only figures out what is evil but also determines the factors that caused evil to occur. The criminal justice system with an ethical code of conduct shall be binding on the professionals too so as to restrict them to act fiercely in a particular matter. The concept of ethical pluralism specifies that where the ethical standards differ from each other, then it shall be resolved by the four principles such as:

- 1) The principle of understanding
- 2) The principle of tolerance

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<sup>1</sup> Banks, C. (2020). *Criminal justice ethics : theory and practice*. Sage Publications, Inc.

- 3) The principle of standing up against evil
- 4) The principle of fallibility

The more sorted the ethical standards are, the more they keep relevance in the criminal justice system.

## 1.1 Origin and Development

During the 1940s the United States National Institute of health wantonly infected the Guatemalans prisoners, prostitutes and mental health patients with sexually transmitted diseases to evaluate the efficacy of penicillin treatment protocols.<sup>2</sup> In the early 1963 under the custody of Washington and Oregon state prisons, 131 convicted offenders were exploited so that the researchers can assess the effect of radiation on testicular function.<sup>3</sup> Similar incident occurred during the 1960s when inmates were administered psilocybin and LSD in an attempt to reduce recidivism.<sup>4</sup>

The prisoners were subjected to such experiments for a long time including the injection of liver cancer cells, electric shock therapies and many more. Such unethical behavior with the prisoners demanded the need of reformation of criminal justice system. Subsequently, in 1970s by the government intervention an alert was set to the authorities to use ethical policies having regard to the rights of the participants who were traumatized by the researchers.

Aristotle happened to be the first western philosopher to study ethics in an organized manner. However, the development in criminal justice ethics is bifurcated into two views.<sup>5</sup>

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<sup>2</sup> Semeniuk, I. (2010). A shocking discovery. *Nature*, 467(7316), 645–645. <https://doi.org/10.1038/467645a>

<sup>3</sup> Kramer, R. C., Michalowski, R. J., & Kauzlarich, D. (2002). The Origins and Development of the Concept and Theory of State-Corporate Crime. *Crime & Delinquency*, 48(2), 263–282. <https://doi.org/10.1177/0011128702048002005>

<sup>4</sup> Doblin, R. (1998). Dr. Leary's Concord Prison Experiment: A 34-Year Follow-up Study. *Journal of Psychoactive Drugs*, 30(4), 419–426. <https://doi.org/10.1080/02791072.1998.10399715>

<sup>5</sup> Cohen, M. R. (1940). Moral Aspects of the Criminal Law. *The Yale Law Journal*, 49(6), 987. <https://doi.org/10.2307/792227>

### *1.1.1 Older View*

In older times, crime was considered as a violation of some eternal laws set by the god, nature or reason. The traditional laws can be understood in two forms:

- 1) **Theologic point of view:** This is considered to be the oldest yet most widespread form of ethics. According to theologians, all the laws especially criminal law are anointed by the Manu or by Zeus. According to them, crime means the violation of divine will. This theory includes crime as sex relation that is prohibited by the divine will, uncharitable attitude for others, etc. This theory considers crime as the violation of ethics set by the divine power.
  
- 2) **Rationalist point of view:** This theory is considered as the point of view of moral intuition. This theory suggests that the penal code shall be formulated on the basis of morality. Kant propounded the need of moral standards which then helps in stepping the foundation of ethical relations. This viewpoint has not much relation with the divine will. According to Kantian theory, ethics is mainly concerned with the popular conscience of the people.

### *1.1.2 Positivistic View*

The positivists are of the belief that ethics is concerned with the science of criminology. This view manifested that science deals with the existence of facts. They do not believe in prior legislation. According to them, crime is an abstract term that differs from person to person. This theory also talks about temporal changes in the ethical behavior of the people. Positivists claim that a crime is identified when the concerned act is inconsistent with the social norms such as smuggling, prostitution, harboring the offenders and prisoners etc.

Since there is no certain definition of what is moral and what is immoral. This led to the need of formulation of ethical code of conduct in the criminal justice system.

## 1.2 Theories of Criminal Justice Ethics

The question may arise as to why we need to study the ethical theories developed about a century ago while dealing with the current issues. The answer to that question would be that the theories lay down the philosophical standards in determining whether a particular decision is ethical or unethical. Sometimes a decision may seem to be unethical apparently but when we look in the philosophical standards then we can ascertain the root of the decision. The ethical theories for the criminal justice system are<sup>6</sup>:

### 1) *Normative Ethics*

This theory is considered with an ethical standard of conduct and the ways of behaving. The normative ethical theory is the most important theory. Since the perspective of a thing differs from person to person and therefore, there cannot be a single standard for determining the ethicality of a decision. There shall be different ethical standard in different situation. This phenomenon of setting up of different set of standard is known as *Ethical Relativism*. The decision shall be formulated on the basis of ‘what is known to be right’ across the societies.

Evans and MacMillan (2014, p.27) define the normative ethics as “theories of ethics that are concerned with the norms, standards or criteria that define principles of ethical behavior”. Normative theories tells us ‘what ought to do’ along with ‘why we ought to do that’. The normative ethics have further ethical theories such as:

- a) **Utilitarianism:** This theory focuses on achieving the maximum good of the people. This theory is best described as the ‘theory of pain and pleasure’ as also propounded by the famous jurist Bentham. According to this theory, those policies which grabs the maximum satisfaction of the people shall be adopted.

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<sup>6</sup> Evans, D. R., & Macmillan, C. S. (2014). *Ethical reasoning in criminal justice and public safety*. Emond Montgomery Publications.

- b) **Deontology:** This theory claims to be the duty based theory. It says that an individual has certain obligations and responsibilities towards another while engaging in decision making and that is when the ethics shall come into picture.
  
- c) **Rights:** The rights are bestowed by the society upon the individuals and they are deemed to be ethically correct and valid. The rights shall be conferred with utmost care as such rights are enforceable in the court of law.
  
- d) **Virtue:** This theory judges a person by its character and not by action. It specifies that ethical standards are formulated on the basis of a man's behavior, reputation and conduct. One loophole of this theory is that it does not take into account the changes moral behavior of the person.

## 2) *Meta Ethics*

This theory deals with study of ethical theory itself. Evans and MacMillan (2014, p.27) define the Meta ethics as “theories of ethics concerned with the moral concepts, theories and the meaning of moral language”. Meta ethics theory deals with the manner of looking at a situation. It deals with the interpretation and evaluation of the language used within the normative ethics theories.

## 3) *Applied Ethics*

Applied ethics theory look for solving the practical moral problems that usually arise in the profession and hence useful in the administration of criminal justice system. The applied theory deals with the application of normative theories in a particular issue. Evans and MacMillan (2014, p.27) define the applied ethics as “theories of ethics concerned with the application of normative ethics to particular ethical issues”.



## 2. Criminal Justice Ethics

“When discretionary decisions are guided by ethics, decisions can be said to be fair and just, because there are always shades of moral obligations that are higher than others” (Souryal, 2006). Criminal justice professionals are the agents of the government and hence they are expected a higher degree of morals than the others. This higher degree of morals helps them in attaining the confidence of the people. All the criminal justice professionals be it attorneys, courts, correctional officers etc. faces a situation of ethical dilemma at some point in their careers and that is when the need of ethical standards are required in the delivering of fair and rationale judgment.

### 2.1 Types of Criminal Justice Ethics

The criminal justice ethics<sup>7</sup> can be categorized into many areas such as:

#### 1) *Police Ethics*

The police ethics is the set of standards for the policemen who are acting as community professionals. The goal of police ethics is to maintain social peace in the community.

The police ethics prototype performs twofold roles:

- (i) **The traditional (crime control) role:** This prototype is more dominant in the United States and considered as less formal. Under this paradigm, the police is considered as an army personnel to control the crime and the aim is to catch the criminal who is considered as an enemy since he breaks the peace norms (Kleinig, 2008). This gives rise to the birth of the police subcultures where loyalty is the key. Many a times, the police subculture indulges in the unethical behavior which leads to weakening the system (Pollock, 2007).
  
- (ii) **The modern (public service) role:** This paradigm is more prominent in the Europe. This viewpoint is the total opposite of the traditional one. This prototype

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<sup>7</sup> Kleinig, J. (2008). *Ethics and criminal justice : an introduction*. Cambridge University Press.

is more of 'right based and duty oriented'. Under this role, police acts as a friend of the people by mingling in the community. The offender is not considered as an enemy but a neighbor who just lost track. (Pollock, 2007).

## 2) *Correctional Ethics*

The offenders in the correctional facilities shall not be dealt with excessive force than actually required. In 1980 under the New Mexico Prison, the guards of the prison got engaged with goon squad as a mean of achieving control over the inmates. In 1998, three of the female inmates in federal penitentiary in California were sold as sex slaves to the other male inmates.<sup>8</sup> These incidents clearly determine how the prisoners were treated unethically in the correctional facility. They were not only subjected to physical brutality but also by sexual assault. Also, there were cases when the staff members were indulging in the unethical behavior with the inmates and so the need of correctional ethics arose.

## 3) *Court Ethics*

As in the police ethics, the in-court practitioners also have the tendency to indulge in unethical and unprofessional activities. This is so because they have the discretionary power to act in their own way. The ethics differs in the case of prosecution, defence and judges.

**Prosecution Ethics:** It is the prosecutor who opens up the case. He has the authority to decide which case shall be sent for trial and which one to be dismissed. The prosecutor shall not be impartial. His motto shall be the seeking of justice and not compulsory conviction. The U.S Supreme court in *Brady v. Maryland*<sup>9</sup> held that the suppression of evidence (exculpatory information) by the prosecutor led to the violation of due process of law against the defendants.

**Defence Ethics:** The defence attorney shall aim to provide a fair representation to his clients. He shall not care about whether his client is guilty or innocent. Also, he shall not encourage his clients to commit perjury in order to save themselves from the

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<sup>8</sup> Lucas v. White, (1999)

<sup>9</sup> 373 U.S 83 (1963)

conviction. In *Burdine v. Johnson*<sup>10</sup> the defendant was given the benefit of violation of his legal right as his attorney fell asleep during the trial and held that a new trial shall be ordered on the ground of incompetent defence counsel.

**Judges Ethics:** The weight of justice lies on the shoulders of the Judge. He shall be impartial while delivering the judgment. He shall not be indulged in any organization based on discrimination such as caste, creed, race, sex etc. While delivering a judgment a judge shall keep this in mind that someone's life is at stake. He shall interpret the law carefully and shall analyze the evidence wisely. He shall use his own conscience too apart from the evidences produced.

#### 4) *Probation and Parole Ethics*

Since probation and parole is a type of correctional facility. All the correctional ethics shall be applicable in the case of probation and parole ethics too. Apart from that, efforts shall be made to reform the offender. He shall be provided employment, job training. The probation and parole officers shall not be indulged in any unethical behavior. The authorities shall not misbehave with the offenders and even with their family members (Souryal, 2006)

## 2.2 Role of Criminal Justice Ethics

Ethics lays down the very foundation of the Criminal justice system. It is because of the ethics we can determine what a *due process* is. It is because of ethics we can analyze which decision is right and which one is wrong. Ethics determines which moral standards shall be used so as to make it acceptable by the society. Ethics can be adopted by surveying about how a prudent man reacts to a particular situation.

Ethics usually plays key role in the criminal justice system in the following ways:

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<sup>10</sup> 262 F.3d 336 (2001)

**1) Attorney Behavior**

As discussed above in the court ethics, the role of attorney is to provide a fair representation to his clients. He shall not aim to win the case at all costs rather he should focus on representing his client in a best possible way. There shall be ethical code of conduct for the attorneys by maintaining the spirit of the law. Ethics influences the criminal justice system in a way that by keeping the standard code of ethical conduct no attorney can indulge in unscrupulous activities.

**2) Police Operations**

Previously discussed in the police ethics, a police shall behave ethically while dealing with the crime and the criminal. They shall not treat offender as an astray but a member of the community only. The policemen shall get mingled in the community for the purpose of preventing crime. He shall act as the friend of the people living in the community. By adopting this ethical way of conduct, the criminal justice system can nourish itself and will result in reduced recidivism.

**3) Self Participation**

The criminal justice system usually does not take into consideration the will of the common people. The personnel shall take the opinion of the people about what ethical measures can be adopted in the system, how they want to get the offender treated in an ethical way. They shall impose a duty on the people to self participate in the assistance of the authorities and that to report the local authority anytime they heard of any crime occurred.

**3. Ethics and Criminal Law**

Legality & Morality is the basis of every criminal justice system. Gert (2006) defines morality as “a set of beliefs about what is good or bad, a code of conduct or a guide to behavior that is considered to be overriding, but generally confined to a specific culture of society”. The terms ‘ethics’ and ‘morality’ can be used interchangeably. Both terms denotes the conduct as to right or wrong. The only difference between the two is that morality is more of a perception. It can

differ from person to person. On the other hand, ethics is a set standard of conduct framed by some superior authority.

Ethics keeps much relevance in the criminal justice system. The only requirement is that it shall be fair and in an organized manner. It shall not be rigid. No penal law can be drafted equitably without considering the ethics in mind. To rule out the injustices in the system, the ethical conduct of conduct shall be reviewed frequently and modifications shall be made accordingly.

### 3.1 Ethical Systems

Plato considered the idea of ‘goodness’ holds much virtue even than the ‘justice’ (Souryal, 2006). According to him, ethics lights up the inner soul of the people ultimately forcing them to behave ethically. Ethics helps an individual and the society to create social peace in the community.

In the history of western world, Aristotle provided the first ever systematic study of ethics. He specifies 10 ethical virtues to be enlightened such as *courage, prudence, justice, temperance, truthfulness, pride, wittiness, ambition, having a good temper and being a good friend.*<sup>11</sup> There are several ethical systems that justify the ethicality of a judgment.

#### 3.1.1 Deontological Ethical Systems

Deontologist is the non consequential ethical system. They deal with the inherent nature of the act. Immanuel Kant (1724-1804) is the most eminent deontologist. He saw ethics as a duty that everyone must do. He propounded the concept of categorical imperative. According to this system, men should just follow the duties conferred upon them without worrying about the consequences (Close & Meier, 2003).

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<sup>11</sup> Aristotle. (2020). *Nicomachean Ethics*. Penguin Publishing Group.

### ***3.1.2 Teleological Ethical Systems***

Teleological is the consequential ethical system. This is called teleological because it is concerned about the needs of the one affected by the decision. The concept of teleological ethical system was first ruled out from the theory of utilitarianism propounded by the Jeremy Bentham. The concept of Utilitarianism aims to achieve maximum good of the people. The maximum satisfaction can be achieved by the hedonism principle i.e. the theory of pain and pleasure, also propounded by the Bentham. This ethical system says that the ethical rules shall be framed so as to keep in mind the consequences that one may go through because of the decision based upon this ethical code of conduct.

### **3.2 Relation between Ethics and Criminal Justice**

The most common question arises as to why there is need to study about the relationship between legal and moral. One possibility is that it is a common belief of the people that the one who commits the wrong shall be punished. The basic tenet of the Indian legal system (including the criminal justice system) is based upon the principle “Equals should be treated equally and unequal’s unequally”. This principle is emanated from the basic moral norms. Also, the legal philosophies of eminent jurists such as Plato, Aristotle & John Rawls are associated with Ethics and moral principles.

For the better functioning of the Criminal justice system, there shall be an organized and unambiguous ethical code of conduct. The ethical code of conducts is specifically significant for the members of the criminal justice system as they are in powerful position and they administer the justice to the society. It is most important that the machineries and agents administering the criminal justice system shall be far away from the biasness. They shall act according to the moral standards. Honesty, impartiality, fairness etc. are the key essentials of a criminal justice system. The agents shall have a fair knowledge of the criminal justice system so as to create balance of interest and to best facilitate the society.

One thing about the morality is that it is not certain. It can differ from person to person or time to time. The criminal justice system shall be so flexible so as to adapt the changing morals in the society. The Indian Legal System also encourages the shift in moral perspectives. In *Naaz*

*Foundation v. Govt. of NCT of Delhi*<sup>12</sup>, the Supreme Court decriminalized section 377 of The Indian Penal Code, 1860 and put forward that homosexuality is not immoral. Also, in the case of *Joseph Shine v. Union of India*<sup>13</sup>, the Supreme Court decriminalized Adultery under Section 497 of the IPC but still considered it as a ground of divorce.

Ethics plays a vital role in the punishment itself. The administration shall provide the punishment as only necessary to prevent the offender from further wrongdoing. Excess force shall not be used. Rehabilitation shall be put above the punishment. Also, the harm caused shall be taken into consideration while granting the punishment. An ethical code of conduct allows the authorities to come to a wise decision about how to maintain social peace in the community.

#### 4. Need of Criminal Justice Ethics

The Criminal justice system has its completely different system of values also known as *subculture*. Subculture contains completely unique yet organized set of rules, regulations, code of conduct, procedure and standard. The idea of ethics is useful in curtailing down the retribution as a mode of punishment. Ethics influences the mental health of the people and the offender shall be dealt with criminal justice ethics only.

Ethics not only is a written code of conduct, it regulates the behavior of the society. By incorporating ethics in law, the criminal justice system can prevent mis-happenings such as abortion. Without the moral guidelines, the Criminal justice system cannot function properly. It shall keep in mind the needs of the society especially of the victim. The institution shall compensate the victim for the loss caused by providing financial assistance (if the same can be adequately compensated monetarily) or by incarcerating the offender (if money is not an adequate relief) so as to give the victim the feeling of crime free society. Ethics is considered as an asset in the criminal justice system as it is applicable both in the cases of the victim and the offender for the better application of the justice.

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<sup>12</sup> 2009 (160) DLT 277

<sup>13</sup> 2018 SCC Online SC 1676

### *Value of ethics to maintain civility*

The needs of the individual are different from the needs of a group or culture. By setting up the ethical code of conduct the authorities receives the feedback of the society. It leads them to know which rules are acceptable by the society and which are discarded by the society. Apart from the victim and the offender, civilians also play a major role in the criminal justice system. Ethical values are determined by the personal behavior of the variety of the people in a society as to what is moral or immoral. Ethical behavior rationalizes the conflicting interest of the people by putting forward a particular set of values and acceptable norms to be followed in the case of contingency.<sup>14</sup>

#### **4.1 Consequences of system free of Ethics**

It is already discussed in detail that ethics plays a major role in the criminal justice system. It builds up the morale of the people by assuring them the balance of interest up to a possible extent. If any criminal justice system does not have ethical code of conduct, then it goes through many consequences such as:

##### **1) Coercive**

The Criminal Justice System with no ethical code of conduct becomes coercive in nature. It is coercive in the sense that the authorities only aims to apprehend the offender and punish him for his wrongdoings. They do not look after what would be the outcomes of such an apprehension. The accused after serving his sentence in the jail or Prison may get indulged in the recidivism which ultimately increases the crime rate in the society.

##### **2) Judgmental**

When an accused is punished, the whole system condemns him and stigmatizes him for his wrongful act. The society and even the system become judgmental. This disturbs

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<sup>14</sup> Johnstone, P. (2020). *Ethics in the Criminal Justice System*. Kendall Hunt Publishing Company.



the reintegration process of the offender. In the absence of Criminal Justice ethics, an offender becomes the negligent member of the society who only deserves punishment and not rehabilitation.<sup>15</sup>

### 3) *Preemptive*

In an Ethical Criminal Justice System only the government is the legitimate punisher. But, in an ethic less system there is no prescribed standard as to who shall punish the offender. This may lead to civilians indulging in the process and attacking the offender as a mode of punishing him for his wrongful act such as in the case of rape, murder etc.

That is why there is need of ethics in the Criminal Justice System because ethics helps in laying down the foundation of the criminal justice system.

## 5. Criminal Justice Ethics in various Countries: A Comparative Analysis

Various international professional bodies such as United Nations developed several international standards and norms related to Criminal Justice Ethics. Some of them are:

- The ***Law Enforcement*** Code of Ethics prepared by the International Association of Chiefs of Police.
- The Code of Ethical Conduct prepared by the ***International Corrections and Prisons*** Association.
- The Code of ***Judicial*** Ethics of the International Criminal Court.

The comparison between different countries can be made by distinguishing the type of criminal justice system they belong to. There are two types of Criminal Justice System such as adversarial and inquisitorial Criminal Justice System. It is the presumption of the law that an accused is innocent until proven guilty. The difference between the two systems is that, in adversarial system the judge acts as an umpire. The truth has to be ascertained by him by

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<sup>15</sup> Lee, Y. (2013). What is Philosophy of Criminal Law? *Criminal Law and Philosophy*, 8(3), 671–685. <https://doi.org/10.1007/s11572-013-9222-0>

scrutinizing the prosecution and the defence evidences. While in inquisitorial system, the judge plays an active role in order to ascertain the truth.

Countries like India, United States of America and United Kingdom has adversarial Criminal Justice System and the civil law countries like France, Italy, Newzealand, Germany and Austria follows the inquisitorial Criminal Justice System.

### **A. India**

Ethics assumes its source in Indian Criminal Justice System via Indian Constitution. There are many provisions that emphasizes on using ethical code of conduct in the administration of justice such as Article 14, 17, 19, 22, 23, 32, 38, 39, 226 etc. Ethics is an important criterion in all the sectors of the criminal justice such as *Law Enforcement, Courts, and Corrections*.

A law made by the legislature is enforced by the administrative authorities majorly by police. Police brutality has not been concealed from anyone throughout the globe. The unscrupulous behavior by the police calls the criminal justice system in question. To deal with such an issue, an ethical code of conduct was drafted by the Indian Legislature named as *The Police Act, 1861*.

When any witness is produced before the court, it is ethical to not to pronounce judgment on his sole testimony and to give the defense the right of cross examination to check the veracity of the witness. The right of cross- examination is guaranteed by *The Indian Evidence Act, 1872*.

There are many cases of indecent behavior by the employees of correctional facilities such as sexual assault, brutality, physical and mental torture, experimental procedures etc. This affects the mental health of the inmate. To deal with such disputes and to prohibit the authorities from indulging in such activities, the code of ethics was formulated. *The Probation of Offenders Act, 1958* not only specifies the Probational guidelines for the offenders but also the code of conduct for the Probational officers.

Rehabilitation programs shall be setup for the offenders and the needs of victim shall be justified. Indian adversarial system was more tilted towards accused ignoring the rights of the victim and that is why criminal system was reformed on the recommendation of the Malimath

Committee in 2008. *The Code of Criminal Procedure, 1973* also provides for victim compensation scheme<sup>16</sup>.

Ethics plays a vital role in the court process too. Justice S.H. Kapadia said: “When we talk of ethics, the judges normally comment upon ethics among politicians, students, professors & others. But, I would say that for a judge too, ethics, not only constitutional morality but even ethical morality, should be the base”. Court ethics specifies that the court shall at each time maintain its integrity. It shall not be impartial and honesty shall be the key to any decision. The judges shall always use fair and just means while delivering any judgment.

## **B. United States**

The United States adopted various ethical codes in its Criminal Justice system. For Law Enforcement, USA has enacted ***Law Enforcement Code of Ethics***<sup>17</sup> under which there are various canons are adopted by the nation for its peace providing officers. Such canons includes: *upholding the Constitution of the United States, knowledge and proper use of Ethical Behavior, balance between personal and professional life, maintaining the integrity of the Law Enforcement profession etc.*

For Correctional institutions, the USA has enacted ***American Correctional Association (ACA)*** in the year 1870 for its employees to refrain them from committing any unscrupulous behavior with the inmates and the staff, to safeguard the rights of the inmates, to act with no intent of personal gain, to look after the interest of the public etc.<sup>18</sup>

For the Court Ethics, USA has enacted ***American Bar Association (ABA)*** for the attorneys. The ABA provides module rules for professional conduct for the members of the association by providing ethical guidelines for the criminal justice personals. And for the judges, the USA has adopted ***Code of Judicial Conduct for United States Judges*** in 1973 according to which a Judge shall maintain the integrity and the independence of Judiciary, to act with impartiality and with due diligence, to not engage in any sort of misconduct etc.

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<sup>16</sup> Section 357A of The Code of Criminal Procedure, 1973

<sup>17</sup> American Bar Association. (1953). *Canons of professional ethics : [and] Canons of judicial ethics*. The Association.

<sup>18</sup> ACA Code of Ethics, 1994

### C. United Kingdom

For the Law Enforcement, the United Kingdom has *Code of Ethics*<sup>19</sup> formulated by the 'College of Policing'. The Code of Ethics drafted 9 *Policing Principles* emerged from the 'Principles of Public Life' and 10 standards of Professional behavior originated from 'The Police (Conduct) Regulations, 2012' and from 'The Police Staff Council Joint Circular 54'.

The 9 policing principles are *accountability, integrity, fairness, objectivity, honesty, openness, self-respect, leadership* and *selflessness*. The 10 standards of professional behavior are *conduct, orders and instructions, authority & courtesy, honesty & integrity, use of force, equality & diversity, duties & responsibilities, confidentiality, challenging improper conduct* and *fitness for work*.

The **Courts and tribunals Judiciary** in its *Guide to Judicial Conduct, 2020* laid down guidelines for the conduct of sitting judges, retired judges and other professional bodies to deal with the Criminal Justice System. However, every judicial system has the common tenets such as impartiality, integrity, maintain peace etc.

### D. Australia

The *Australia Federal Police* (AFP) laid down professional standards for its law enforcement authorities. These standards include acting with due care and diligence, avoiding conflict of interest, to act with honesty and in an appropriate manner etc. The rules for judicial conduct have been laid down by the Australian govt. in the **Guide to Judicial Conduct**<sup>20</sup> to maintain the integrity of the criminal justice system and to achieve the independence of judiciary. The five major pillars of the Australian Criminal Justice Ethics are: *Duty, Respect, Integrity, Accountability* and *Accountability*.

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<sup>19</sup> Office, H. (2014, July 15). *Code of Ethics launched*. GOV.UK.

<sup>20</sup> Australasian Institute Of Judicial Administration, & Australian Institute Of Judicial Administration. (2017). *Guide to judicial conduct*. Carlton, Vic. Australasian Institute Of Judicial Administration.

## 6. Case Study

### 1. Police Brutality in New Orleans<sup>21</sup>

In March 1990, an African American named Adolph Archie got severely injured in an incident where police claimed that he shot a white police officer. While taking Archie to the hospital, those who were accompanying him to the hospital, heard about the death threats to the Archie because of the deceased police officer. They thought that taking Archie to the hospital may cause lynching, so they took him to the police officer where the deceased officer used to work. The police officer didn't bother about Archie and called it a 'scuffle'. The sergeant at the police station didn't ask about the bloodstains rather simply ordered them to be cleaned.

When Archie got medical treatment, it was very evident that he was severely beaten up. But, his X-rays of injuries got disappeared and the hospital authorities could not record the personal details and background of the Archie. Archie died under suspicious circumstances. He was treated with iodine to which he was allergic allegedly. The then Police Superintendent Warren Woodfork cleared all officials involved in the incident. The officer who arrested Archie was castigated by the other fellow officers as he didn't kill Archie on the spot.

Later, in May 1993, a report by the Advisory Committee on Human Relations concluded that Archie was severely brutalized by the police personnel's and that the department had failed to hold them accountable for the incident.

Another case of police Brutality was noted a week after **Hurricane Katrina struck New Orleans**<sup>22</sup>, where the police shot six civilians for crossing the Danziger Bridge. The officers then faced possible life sentences in Prison.

### 2. Death Row Inmate Set Free<sup>23</sup>

Derrick Jamison was convicted and sentenced to death in 1985 for the death of a bartender named Gary Mitchell. Gary was murdered on August 1, 1984 in Cincinnati. On February 28, 2005 and Ohio Judge dismissed all the charges against the Jamison and the prosecutor had

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<sup>21</sup> Human Rights Watch, 1998

<sup>22</sup> "A Bad Shoot" 2010

<sup>23</sup> Death Penalty Information Center 2007

elected to not to retry him in the case. On the day of murder, an impression of shoeprint was found on the top of the bar which was of the Jamison. An accomplice Charles Howell was also arrested months after the arrest of Jamison. Her own sentence got reduced for testifying against the Jamison.

The prosecution denied the existence of exculpatory evidence though the testimony of accomplice and shoeprint of the Jamison was enough evidence to charge him. Charles identifies Jamison at the trial but the police offence report indicated that she could not make such identification. It was clear that there was tempering of evidences and destruction of records.

## 7. Conclusion

From all the theoretical perspectives and the case studies discussed in this paper justifies the need of Criminal justice ethics in the system. The Criminal Justice System shall stand upon the pillars of Ethics and Morality. However, it is inappropriate to say that the Criminal Justice System shall entirely be modeled on Ethics only. The system shall seek to maintain balance between the public good and the private good and if there arises any conflicting ethical issue then utilitarianism approach shall be followed. The public good shall be kept over the private good.

*“societies disintegrate from within more frequently than they are broken up by external pressures. There is disintegration when no common morality is observed and history shows that the loosening of moral bonds is often the first stage of disintegration, so that society is justified in taking the same steps to preserve its moral code as it does to preserve its government...the suppression of vice is as much the law’s business as the suppression of subversive activities.”*

-Devlin<sup>24</sup>

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<sup>24</sup> Devlin, P. (2009). *The enforcement of morals*. Liberty Fund

## 7.1 Suggestions & Recommendations

Some suggestions for the better functioning of Criminal Justice Ethics are:

- Organized set of standards for Criminal Justice administrators.
- Routine check on the activities of the officials and the offenders.
- Adaptation of changes in the system as the moment requires.
- Introduction of reformation programs and ethical policies.
- Friendly behavior with the staff and the inmates.