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THEORIZING ‘LAW OF CONFIDENCE’ IN THE CRIMINAL JUSTICE DELIVERY SYSTEM THROUGH THE UTILIZATION OF HEURISTICS

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I. ABSTRACT

Functioning of the criminal justice system with law of confidence toward each other in fact is to provide the natural justice and justified with reciprocal confidence among the citizen. Crime controlling by the crime is now an obsolete in the civilized society. Heuristic is a mental in thumb process to solve the problem that may or may not work in certain situation. Criminal justice system has to take evidence-based intervention action which more realistic and built confidence in the system. Effective action in delivery of justice is compulsion for democratic government in acute crisis situation. For which, there is a need of heuristic measuring tool for intervention and response in time for outcome performance. Heuristic tool of evidence based criminal justice intervention model will be a road map for direction, action, prevention and reduction in crime and criminal justice process with confidence.

Keywords: Law, Confidence, Criminal Justice, Heuristic, Procedure

II. INTRODUCTION

Confidence can be understood in different way in different context. Trust is the key of confidence. One can trust on other which comes with result in confidence of another (Trusting

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others resulted of trust in oneself).The ability and capacity to perform brings in confidence permanently. There is also ability and performance capacity in permanent confidence. The permanent confidence comes from formal procedural documents in controlling the actions of the citizen. When we talk about the confidence, Georg Simmel's contribution in describing the confidence as 'one of the most important synthetic forces within society' that can lead towards understanding of the criminal justice procedure in practical conduct for controlling the behavior of the society or planning for controlling the future action (Simmel 1906). So, confidence is the basic foundation of action in administration of criminal justice system. Power of knowledge is no more depends on confidence of actors but highly demanded in choosing the direction as the direction move from secret nature and action result in public with mixed knowledge. It is obvious to remember that heuristic can reduce the effort but heuristic approach in delivery of justice must be unbiased. But, due to unclear objectives of knowledge, heuristic approach is not sure of biasless justice. The complete reapproachment of confidence is also create more difficult in changing role of criminal justice structures.

For instance, in Indian context, Intelligence Bureau (IB) under the Ministry of Home Affairs plays a very important role in internal security and also the Chief of the organization considered highest confidential post and communication is secret between the government and chief of the Bureau. The information only can be unfolded if Prime Minister of India or Intelligence Bureau Chief will disclose. No other person has the rights to interfere between them. Here, a mutual confidence of law generates which lead to the development of 'law of confidence' without any documentation in India's internal security matter.

III. DEVELOPING THE LAW OF CONFIDENCE AND PHILOSOPHICAL UNDERSTANDING

In criminal justice process, the confidentiality is essential either in institutional process that concerns criminal activity. This confidentiality considered criminal justice ethics (John Lowman and Ted Palys 2001). There is a guarantee of confidence in criminal justice at all stages such as action, modification, judgement, prosecution as well as policing and their operation and activities under the rule of law. From the victim's point of view, there is no interest in reporting of crime because of lack of confidence in the criminal justice system (Pranjape 2005).

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To understand the viewpoint of confidence within the criminal justice systems; one try and visualize the following.

An individual is appointed in a police department and must suddenly intervene in an emergency crisis which requires an immediate response. Then the heuristic approach motivates the actor/police personnel to take an immediate decision whether it is correct or not. The same viewpoint of decision through heuristic approach and same condition is equally applicable to all criminal justice actors from bottom to top.

It means from above narrative that the action by the criminal justice agencies will be assessed as good if it was conducted on the basis of solid information, of their understanding about the situation, and whether their action resulted in any victimhood. A report has published in United Kingdom by BSC Policing Network on 'decision making theory and its implications for policing' by Lee Curley (Lee 2017). It applied in Indian policing system. The police can take any single or mixed decision in detection, investigation, interrogation and persuasive interview to weigh the information and take an appropriate decision through using heuristic method.

The process of labelling as explained in 'Outsiders' has resulted in more crime statistics (Howard Becker 1963). Lee Curley explained that when people believe true positive vs true negative or false positive vs. false negative than they are dodgy to be criminal charged phenomenon. They may be more likely to commit such a crime in the future. It is important, therefore, that the decision making processes of detective agencies are measure by heuristic. Contrary to labelling, shaming reintegration approach (Braithwaite 1989) might be better imply in heuristic for criminal justice delivery system even in absolute confidentiality maintained in order to find the place of peacemaking and peacekeeping in the society (Quenney & Pepinsky 1991).

An ideal concept of confidence can also be explained for understanding developmental stages of the mistakes reaching to the habit in behavioural aspect of the individual actor in the society. According to this ideal concept, the first mistake is by chance or accidental and thus is a true mistake. When repeated second time the mistake should not be ignored and a warning needs to go to the individual to aware about the repeated action which is not accidental but needs attention of the individual to look to oneself. A warning for the second time can help the individual to

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cognize and become aware of repeated mistake. When the repetition of the same mistake happens third time or more, it is no more a mistake. It developed into a habit which must be controlled by sanctions to change the habit.

IV. BIASNESS OF LAW AND JURISPRUDENCE

Merton 1936 in *the Unanticipated Consequences of Social Action* described action of latent vs. manifest functions. He has analyzed associated unanticipated consequences from these actions and found that both resulted in intended and unintended. He said that manifest functions are expected every moment from designated system but latent functions are unexpected that comes immediate after situation. The criminal justice institutions are manifest. So, heuristic only can help in latent functions of criminal justice system (Action). In this discourse, it can be said that the confidence of action by the justice machinery does not come when they have all the actions through manifestations. But it comes when they are ready to face immediate challenges through latent functions.

V. DECISION THROUGH COGNITIVE HEURISTIC IN JUSTICE DELIVERY

Heuristic approach in judicial process is much required for speedy justice delivery. Case studies and precedential judgments are the variables in heuristic but scaling is comparatively so important as defined law is 'fact' and decision on evidence is 'fact with confidence'. However, in purview of the function of the intelligence agencies and their intellectual practices in combating the crime, making the rule of law, protection of the common citizens etc. is very difficult to cover off all the challenges through heuristic approach. There are number of the situations emerged significantly which has the huge complexity and created ambiguity for the criminal justice functionaries in solving the criminal cases. The CJA officials can take the advantage of heuristic for appropriate action in such special cases.

We know that the heuristic have value. But in some circumstances, law enforcement officers loss its thinking process and subsequently start to act as per their traditional training for functions. They behave like traditional trained person in handling the circumstances using their own experience and ideas gained from organizational training. They belief their credible and legitimate action upon their routine activity process as of their 'law of confidence.' The decision

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of the individual actor vs. decision of the organization is seems different in reaching to the decision making in legitimate action.

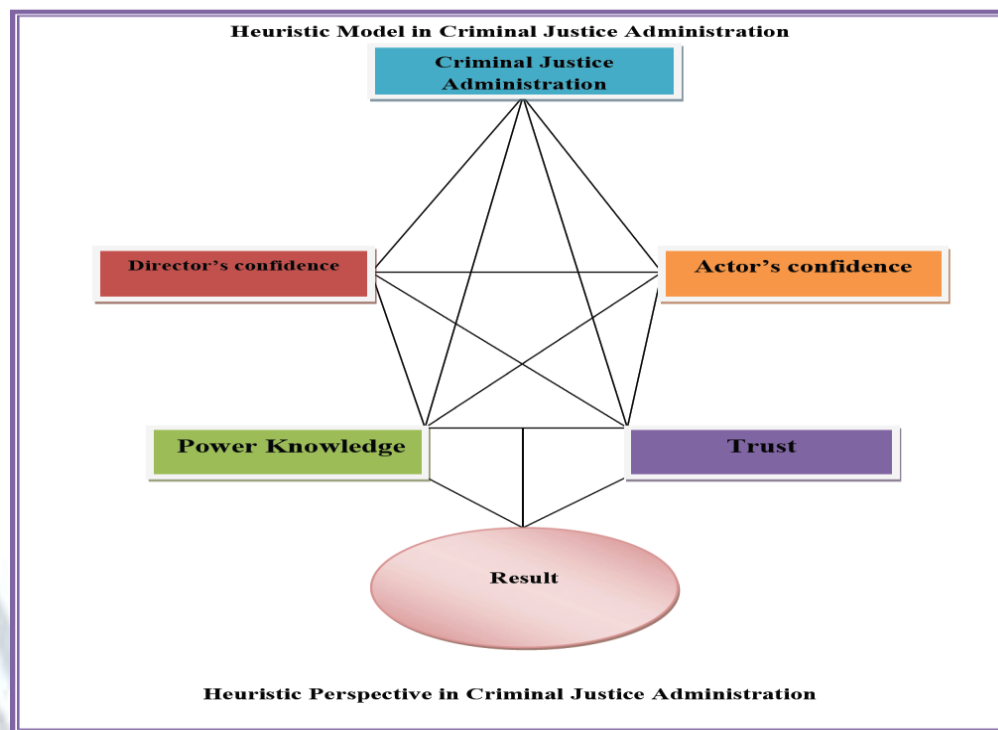
The decision taken by individual is collaborate with immediate situation, whereas, on the other hand, decision of the organization is the only direction or order for action intervening in immediate challenge. A decision for action can be taken either on heuristic bases or traditional action in such a complex situation, but cannot be neutral in order to take the action. Therefore, the intellect process of confidence of law starts herewith in direct or indirect form of actions which result for rule of law system.

Most of the criminal justice institutions, such as Courts take the decision on appropriate evidence in the process of delivering of justice on rational methods. These institutions are having the less belief in heuristic method as a non-rational method. Indian Judiciary has clear objective on the rational decision making process after getting enough evidence in justice delivery process. The value of rational action by the police is also appreciated when they act under the code and rules. Policing in particularly efficiency and effective manner has justified as a sole actor in the criminal justice system (Weber Action).

The immediate challenge produces immediate cognitive heuristic. It works on action-reaction model with this belief that law will be there after what consequences. The police can argue heuristic for immediate required non-rational action which will be useful for motivation, guide and direct to handle the situation.

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VI. POSSIBILITY OF HEURISTIC SCALE IN RESEARCHING THE LAW OF CONFIDENCE

Possible heuristic scale in reaching the law of confidence can be assessed through the action methods. In Indian Penal Code (1860) Chapter-IV (Section 76-106), crime has been classified comprehensively. The general exceptions are also established on criminal liability. explained that the quick response (self defense) from the side of future victim is important in crisis or critical criminal condition. At that critical time, decisions need through heuristic mind in thumb. Future victim is not aware about the complexity of law but crisis make enable empower to it to react in last effort. So, the form of cognitive heuristic approaches are applicable from the side of future victim both explicitly and implicitly (Hamblin and Gibbs 2003).

Similarly, to the section 303 under Indian Penal Code (IPC 1860) is herewith provisioned to death punishment for murder of life convict. The person, proved guilty will only get death penalty (strict confidence of law). In this Section, there is no other calculative decision can be taken by judicial magistrate. Thus, this section reduces the judgmental rational power of the indeterminate sentencing of Indian judicial process. However, Bittu Vs. Punjab (AIJ 1983)

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judgment overruled on Section 303. Another law, Indian Evidence Act 1872 is in its Section 32 (1) dying declaration- the report of the medical officer kept confidential with regard to the mental fitness of the dying person. These are legal confidential sections in different criminal law promotes the philosophical development towards the law of confidence in Indian Criminal Justice System.

Indian laws have a confidential vision in detective decision. The two elements i.e. heuristic and cognitive are cause lawful search for guilty confirming information process. In some cases like terrorist attack, it has proved negative strategy for detective process in criminal justice. For example false confession is considered as a negative strategy (Findley & Scott, 2006). In Indian Evidence Act, 1872, under section 25 and 26 of the Act, the confessions before the police agencies are not accepted by the Court. This legal provision of confidence among the prosecution and court helps in strengthening the judicial process in justice delivery system.

VII. SCALING PARAMETERS FOR CRIMINAL JUSTICE HEURISTICS

Scaling point-1: individual is authorized to use force for the purpose of self defense. Though, this self defense governing laws are far from clarity. It appears that an attacked person can counterattack only after he has exhausted all other means of avoiding harm, including retreat, and that the counterattack may not exceed what is necessary to disable the assailant from carrying out his intent (justification for the use of force in the criminal law, Stanford Law Review, 13 (1961) 666-609).

Scaling point -2: power to proceed coercively to some specifically deputized persons against some specifically named persons. Among the agents who have such highly specific powers are doctors and prison guards. Such persons use force in carrying out court orders but they may use force only against named persons who are remanded to their custody. They only can use the force to the extent required to implement a judicial order of confinement. Of course, like everybody else, meanwhile, incarcerated can also act within the provisions governing self defense.

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Scaling point-3: *first* to legitimize the use of responsive force is to institute a police force. Police use of deadly force is limited in most jurisdictions. Though the powers of a policeman in this respect exceed those of citizens, they are limited nevertheless.

Second police man may use force only in the performance of their duties and not to advance their own personal interest or the private interests of other persons.

Third and this point too is brought up to meet possible objections, policemen may not use force maliciously or frivolously. In these three, there exist no guidelines, no specifiable range of objectives, no limitations of any kind that instruct the policeman what he may or must do. Nor do there exist any criteria that would allow the judgement whether some forceful intervention was necessary, desirable or proper.

Forth how national security laws have been developed to protect India's interest have as a side-effect provided blanket protection to its agents.

Advancing to this discourse, it is realized that fear has been associated when the decision making process starts in mind from lower level information (Nabi 2002). The lower level of confidence is against the value of natural justice. The degree or amount of law of confidence inflicted influences judgments of magnitude. It is some time possible to measure the degree of confidence in criminal justice procedure through the standard metric such as injuries, effect on larger population, time taken in scattering the illegal gathering, controlling measures of rumors, time taken to passing the order or judgement copy or harms associated with these things. We can compile these measuring points as per the Degree of strain explained by Robert Agnew (Agnew 1992).

Here, it becomes important to discuss the acceptance of media report in justice delivery system through the heuristic approach.

Recently, an encroachment drive started in New Delhi (India) by Municipal Corporation just after a communal clash between two religious communities. It was reported by the media first that there were no legal procedure adopted such as serving the notice to the encroachers residing in the particular area. When the matter was approached by the Jamiat Ulam-i-Hindi to the Hon'ble Supreme Court, the Court stayed and passed an interim order to status qua maintained to

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be there. The Court observed that the method used by enforcement agency in due belief and the insufficient evidence and breach of procedure or lack of procedure rather than rational decision were adopted in action. The stay news was publicized by the national media and information of the same circulated to the common citizen. The municipal officers had denied to any kind of the stay order by the court and continued to long two hours in to the demolition.

They were continued to destroying and demolishing the encroaching areas. It was informed again to the Hon'ble court about the continued actions of the municipal corporation. Then the court asked replied from all responsible through serving the court notice. In this case, here is appearing a lack of confidence or overconfidence which can be observed in acting agencies.

VIII. CONCLUSION

There is need of reciprocal confidence in criminal justice administration. Protective provision in protection of the trust in criminal justice must be equally shared by system. Trust and confidence become strength when the good relationship established between criminal justice system and potential victim or with general public.

The liability relationship among the criminal justice institutions is become more important for the system. It is created for the belief of the citizen. So the enforcement agency's approach should be practical in according to the sentiments of the citizens such as positive mental attitude, behavior, flexibility according to the situation, creativity of problem solving approach, unbiased etc.

Further, the police as an agency of criminal justice system needs to extend beyond biasness in decision making process. Heuristic method or decision for action allows police to make decision in a complex situation. Police would follow the detective decision in taking the decision. There might be some secret process of action and unknown to the non-actor, but evidence based action always promotes accuracy. An accurate, input based action still needs justification with intuitive process. I would like to suggest with this that the confidence of law in providing the justice should be integral part for making the peaceful society.

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