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Evolution of Criminal Law in India

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Abstract

The scope of this research study is restricted to the criminal law as documented under the “Code of Criminal Procedure of 1973”. The research involved in this paper focuses on the critical analysis of “The Scheme of Criminal Law in India” and understanding the application of it in a diverse country like India. The research also encompasses the vast domain of criminal justice delivery system and its administration particularly in India. The study also traces various drawbacks as well as issues prevailing in the application and administration of criminal law. The growing gap between the codified criminal law and the application of it while delivering justice has also been discussed in reference to the Indian subcontinent.

Since, the ambit of criminal law is extremely wide, the researcher intends to understand the development of codified criminal laws from a historical as well as an analytical perspective. The researcher has expanded the scope of the study by incorporating the judicial precedents and landmark cases which facilitated the criminal justice system as a whole. The research study conducted for this paper also intends to highlight the form/scheme of criminal justice delivery system and its growth in the Indian context.

Introduction

A society is regarded as a group of people living together and their basic need is to maintain peace, security and well-being of all. Due to the co-existence of a large number of people, there is presence of competition and the need to progress faster than others, as a result conflicts as well as crimes exist in the society. Therefore, the need for a conflict resolution mechanism exists, both for civil and criminal acts or omissions. There are numerous branches of law and

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one of the main and most essential branch is that of criminal law which regulates the day-to-day affairs of the existing community. Since time immemorial, many attempts have been made to define crime due to its changing nature and concept.²

The system of criminal justice in India incorporates a number of governmental agencies that enforce law, correct the criminal conduct of society and also adjudicate upon certain crimes.³ In generic terms *“The criminal justice system can be essentially considered as an instrument of social control”* as some of the acts and behaviours are considered to be “dangerous and disruptive” for the maintenance of peace in the society and therefore the presence of “criminal justice system” has become a necessity for the contemporary society. The Indian subcontinent has a very long history of justice in the criminal aspect and since the ancient times, various systems of justice have evolved under different rulers. The system of justice delivery also changed with varying geographical regions. *The codification of criminal law took place under the British rule and the said law is still intact in essence its original form in this evolved and developed subcontinent.*

India in order to provide justice under criminal law has two established codes, namely “Indian Penal Code of 1860” and the “Code of Criminal Procedure of 1973”. In order to understand various hurdles in the justice delivery system under the criminal law it is essential to interpret the laws given under the two codes. Broadly criminal justice can be divided into two categories- “Adversarial” and “Inquisitorial” Criminal Justice System. However, in India the “Adversarial Criminal Justice System” is followed and it has been inherited from the common law system as established under the Colonial rule. Under this form of justice delivery, the accused is presumed to be innocent and the burden is upon the prosecution to prove the guilt of the accused beyond reasonable doubt. The accused is also guaranteed certain rights under the Constitution of India that are fundamental in nature.⁴ The accused has the right to silence and cannot be

² K.D. Gaur, “Criminal Law: Cases and Material”, pg. 33-34, (Butterworths Wadhwa Nagpur), (2009).

³ “A Road Map for Criminal Justice System”, The Hindu, October 22nd, 2019.

⁴ Constitution of India, Article 20(3).

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compelled to provide any evidence against themselves. This right has also been recognised by the “*International Convention on Civil and Political Rights*” under Article 14; “*Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.*”⁵

Origin of Criminal Law in India

The “Code of Criminal Procedure” is the basic and one of the most important procedural law in the Indian sub-continent. There are certain other statutes that deal with criminal law in India, such as- “Indian Evidence Act” and “Indian Penal Code”. Under the said statutes there are various provisions that deal with the procedural aspect of criminal offences and the punishments thereof.

Since the advent of the British rule in India, “adversarial” form of justice has been followed. Under this form of justice the said accused has the right to be presumed innocent until proven guilty, the burden of proving the guilt of the accused is on the prosecution. The said right has also been guaranteed to every individual by the Part III of Indian Constitution, as a fundamental right.⁶

In the ancient time, major importance was attributed to the concept of “*Dharma*”. Each and every individual preferred to act according to the principles of Dharma and the society was not in the need of any form of authority in order to regulate it.⁷ The verse written under also indicates towards the existence of a kind of an ideal society:

⁵ UN General Assembly, “International Covenant on Civil and Political Rights”, Vol. 999, p. 171. (United Nations, 16th December, 1966). <https://www.refworld.org/docid/3ae6b3aa0.html>. [Accessed 1 August 2020].

⁶ Article 22(3), The Constitution of India, 1950: “*Nothing in clauses (1) and (2) shall apply (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention.*”

⁷ Justice M. Rama Jois, “Legal and Constitutional History of India” p. 575 – 576 (Universal Law Publications Co., New Delhi, 2010).

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*“There was neither the kingdom nor the king;
neither punishment nor the guilty who shall be punished.
People used to act according to the principles of dharma;
and thereby used to protect each other.”⁸*

Under the “adversarial” form of justice delivery system the parties to the case are bound to use “cross – examination” as a form of trial system in order to ensure free and fair justice delivery. In order to ensure high “degree of freedom of proof” the judge is required to apply the principle of “*audi alteram partem*”, which literally means- both the sides shall be heard.

Under the “Code of Criminal Procedure Code” the civil liberties of all individuals are endured and provided with. The said provisions under the code have evolved over time and further have been amended in order to be compatible with the contemporary world. Illustrating with an example, under the “Criminal Procedure Code” there is a requirement to present the accused to the nearest magistrate within 24 hours of arrest.⁹

The Evolution of Criminal Law in India

While the principles of Dharma ruled the society efficiently, this idea did not last long and a need arose for an authority. There was belief in god and the ultimate authority, but the society could no longer be governed by dharma alone.

⁸ Ibid.

⁹ § 57, The Code of Criminal Procedure: “*Person arrested not to be detained more than twenty- four hours. No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court.*”

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While dharma was considered to be of great importance, the actual state of criminal affairs deteriorated. The situation worsened when the people with money and high status started to misuse their powers, exploit the weaker sections of the society and further commit criminal offences against them.¹⁰ This led to tyranny of the strong over the weak ones. Therefore, the need arose for a king in order to regulate a society along with established laws and principles.

A king had the duty of protecting the rights of each and every individual present in the society and thus the misuse of power by the elite class was restricted. The said king also had the duty of protecting property rights of all the individuals and hence, this whole system in a later stage was called the “*Criminal Justice System*”.¹¹ Although according to the Indus Valley Civilisation and the record found thereof, the criminal form of justice system existed since the time of its establishment. During the pre – vedic era itself there are mentions of criminal law and one of the oldest literature available in order to explain the whole concept of criminal law are the “*vedas*”.

Hence, when the concept of criminal justice is discussed it is mentioned that after the onset of the vedic period, the period was divided into three categories namely:

- i. Ancient India (1000 B.C. to A.D.)
- ii. Medieval India (A.D. 1000 to 1757)
- iii. Modern India (A.D. 1757 to 1947)

Under the “Hindu Law System” the deeply embedded system of dharma was propounded by various religious texts such as “Vedas, Puranas, Smritis” and many other such texts. The verses such as “*Those who destroy dharma get destroyed. Dharma protects those who protect it.*”

¹⁰ Dr. Rahul Tripathi, “Evolution of Criminal Justice System in Ancient India”, vol. 5 (IJMRD (International Journal of Multidisciplinary Research and Development, 2018) p. 153-157.

¹¹ Ibid.

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Therefore, dharma should not be destroyed” are evidence for it.¹² Further, the introduction of law was considered as an essential to regulate the whole society as well.

A plan was introduced by Warren Hasting in order to administer justice particularly in the provinces of Orissa and Bengal.¹³ As there was a majority of dacoity cases in Orissa and Bengal, the British laws were stringent for this offence. The Britishers stated that the dacoits of India were not like the robbers of Britain and hence, a greater degree of punishment was required in order to provide justice. In the eighteenth century certain modifications were proposed by him that were to be introduced in the existing criminal law prevalent in the country. Warren Hastings considered the Indian society to be very barbarous and therefore wanted application of more stringent laws.¹⁴ In the year 1790, Sir Lord Cornwallis made the very first attempt in the direction of modifying the Muslim law that were in the relation of criminal law. Further in 1791, the government that was ruling over Indian subcontinent abolished the laws which were related to punishment by the way of mutilation or any form of hard labour.¹⁵

According to the words of Rankin *“If taken as a whole the law was very complicated and uncertain. A close scrutiny of some other salient feature of the said Muslim Law under criminal law especially those which are pertaining to certain kind of murder will also prove the validity of the said observations.”*¹⁶

In the year 1833, a commission was appointed namely “Indian Law Commission” in order to define jurisdiction of the courts as well as reforming the existing laws according to the need of the society. One of the most important criminal law developments were made under the light of recommendations suggested by the said reports submitted by the Law Commission of

¹² Dr. Rahul Tripathi, “Evolution of Criminal Justice System in Ancient India”, vol. 5 (IJMRD (International Journal of Multidisciplinary Research and Development, 2018) p. 153-157.

¹³ A. Berriedale Keith, “The Age of the Rig Veda”, Vol. 2 (Legal Journal of Research and Study, 1997) p. 87.

¹⁴ Ibid.

¹⁵ Dr. Reshma Umair, “Development of Criminal Law in India”, Vol. 17, ICSSR, pg. 229-236, (2017).

¹⁶ Ibid.

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India.¹⁷ Further amendments were also made in the already existing laws and policies, to adapt to the various new circumstances in the society.

Judicial Analysis – Growth of Criminal Law through Case Laws

One of the key features of criminal law in India is that it is the only procedural law that elaborately describes the procedure to be followed if any form of criminal offence is committed by the offenders. While the “Criminal Procedure Code” was being formulated there were the following considerations that were observed in the case of *Raghava Nadar Reghu v. State*¹⁸:

1. An accused person shall get an opportunity of fair trial and it should be held in accordance with the principles so established of “natural justice”;
2. Each and every effort required shall be made in order to ensure that there is no delay in investigation and such delay shall be avoided which can later be considered as harmful to certain individuals or a society as a whole; and
3. The poorer section of the society should be guaranteed fair trial to the utmost extent and their rights shall be protected at all costs.¹⁹

The territorial extent of “Code of Criminal Procedure” is to the whole region of India including some of the tribal areas.²⁰ Under the code the flexibility has also been provided to inculcate any form of local conditions and applying it to a certain situation in order to avoid any form of overlapping of laws. Therefore section 4 and section 5 of the “Code of Criminal Procedure” explicitly mention about such an inclusion. In the case of *Khatri v. State of Bihar*²¹ it was

¹⁷ R.V. Kelkar, Criminal Procedure, p. 6, (Eastern Book Company, Lucknow, ed. 6th, 2016).

¹⁸ AIR 1988 Cri LJ 1364.

¹⁹ Ibid.

²⁰ § 1, The Code of Criminal Procedure Code, 1973: “Short title extent and commencement.”

²¹ AIR 1981 2 SCC 493.

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observed that “The Code of Criminal Procedure is applicable to any offence under any form of substantive law as mentioned under the Indian Penal Code of 1860 or any other local law.”²²

Conclusion

The system of criminal justice that has been established in India, incorporates a number of governmental agencies that enforce law, correct the criminal conduct of society and also adjudicate upon certain crimes.²³ Therefore, the need for a conflict resolution mechanism exists both for civil and criminal acts/omissions. There are numerous branches of criminal law and one of the main and most essential branch is of procedural criminal law which regulates the day-to-day affairs of the existing community.

Many attempts have been made over centuries in order to define crime due to the changing nature and concept of it since time immemorial.²⁴ The Indian subcontinent has observed a very long history of justice in criminal aspect and from the ancient time period itself various systems of justice have evolved under different rulers in the sub - continent.

The system of justice delivery also changed with varying geographical regions due to the diversity of India. The codification of criminal law took place under the British rule and the said law is continues to stay intact in its original form in *essence*, in this evolved and developed subcontinent.²⁵ Under the “Code of Criminal Procedure” majority of the provisions deal with the procedural aspect of criminal offences and the punishments thereof. In India due to diversity certain other local laws are also prevalent in many regions and importance is given to such laws

²² Ibid.

²³ “A Road Map for Criminal Justice System”, The Hindu, October 22nd, 2019.

²⁴ K.D. Gaur, “Criminal Law: Cases and Material”, pg. 33-34, (Butterworths Wadhwa Nagpur), (2009).

²⁵ R.V. Kelkar, Criminal Procedure, p. 7, (Eastern Book Company, Lucknow, ed. 6th, 2016).

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under the “Code of Criminal Procedure” as well.²⁶ In the case of *Khatri v. State of Bihar*²⁷ it was held by the hon’ble court of law that “The Code of Criminal Procedure is applicable to any offence under any form of substantive law as mentioned under the Indian Penal Code of 1860 or any other local law.”²⁸

Therefore, it can be observed from the above- mentioned precedent that the code is flexible in its nature and inculcates the local laws as well. The whole process of evolution of criminal law with respect to “The Code of Criminal Procedure of 1973” is very extensive and has occurred over centuries. The evolution has taken place from Ancient India, Medieval India and now continues to exist in the contemporary world.

²⁶ § 4 and 5 of The Code of Criminal Procedure, 1973.

²⁷ AIR 1981 2 SCC 493.

²⁸ Ibid.