

LEGALFOXES LAW TIMES

WAYS TO IMPROVE INDIAN PENAL LAWS IN CONSIDERATION WITH BRITISH AND AMERICAN LEGISLATION

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ABSTRACT

The purpose of the Indian Penal Law is to discharge a proper social denunciation of forbidden conduct supported and strengthened by sanction deliberated to stop it. The Indian Penal Laws¹ were introduced in India drafted by Macaulay. It is the first Code prepared by English authors and is praised everywhere in the high society owing to its greatness in arranging the provisions, defining the offenses, division of offenses into chapters, and simple words utilized in provisions. The United States of America and The United Kingdom are part of some of the several nations who have the privilege of strengthened and well formulated Penal Laws, by keeping in sight, the issue of social change for influential control of Law and Order. With an economical and reasonable degree of certainty, every citizen must acknowledge the prospective Penal outcomes of any act he/she can be guilty of. Sociological jurisprudence or Social Engineering often helps in conserving the Law and Order, as propounded in 'An Introduction to the Philosophy of Law' by Roscoe Pound.² The target and philosophy used in the Penal Law is similar to that of sociological jurisprudence. In the course of lack of a definite sentencing phase, it often becomes ill-fated and therefore, the recognition of the sentencing process which enables and hampers the

¹*BangaDarshan*, Pous, 1279 B.S., cited, *supra*.

² An Introduction to the Philosophy of Law, 1921, revised edition, 1953, Chap.2, pp. 24-47.

expansion of a mature jurisprudence. Welfare can be established in any society with ease, by maintaining Law and Order.

INTRODUCTION

In India, the rate of felony has been considerably escalating from year to year, hence lowering the rate of conviction. The courts are awarding very meagre punishments irrespective of their wide discretionary powers. There are more chances of awarding lenient punishments to already proven offenders as a consequence of the unsecured framework of the legislature in arranging and finalizing the punishment for several offences enclosed by the Code. It's documented that The Indian Criminal Justice System is operating on the motto of "hundred criminals can be escaped, but one innocent should be punished". There are various reformative steps which may be taken to curb different crimes which are increasing rampantly. It became a growing societal menace and it's a continuing threat to every day's peaceful existence. It's endemic altogether to governments and there's hardly any society which is completely free from the menace of crime or have totally controlled the rate, but it's become rampant in India and reached disconcerting levels particularly after Independence. The sole method to regulate the crimes and to diminish its allied bad effects on society is imposing proper punishment on the responsible persons and implementing them with no delay.

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From 1813 onwards, the rising legislative powers of numerous Provincial Governments³ as enacted by the Regulations of various provinces were legally responsible for the diversification of both substantive and procedural heterogeneous system of laws. The conflict of laws, the pattern of which can be hereinafter seen, created abnormalities within the superintendence of the country as an entire. A member of the Council of Governor-General was appointed as a conclusion.⁴

³Preamble and Section 44 of the Indian Councils Act, 1861.

⁴Section 40 of the Charter Act of 1833.

After several amendments, the altered and prepared Penal Laws were introduced by Barnes P. Peacock⁵, Sir James William Colvile, J.P. Grant, D. Elliott and Sir Arthur Buller. The initial reading of the Code was done on 28th December, 1856⁶. It was read for the second time and was mentioned by a get committee, who were to report after on 21st April, 1857⁷. Eventually, the Bill got passed and came into force. In course of a century, the Central Legislature enacted several numbers of acts affecting and supplementing the Penal Law of India⁸. A variety of Acts have been passed as a result of decentralization of power by the Provincial and State Legislatures, authorizing substantive provisions of Legal Code and amending the provisions of the Code of Criminal Procedure⁹.



⁵National Archives of India; Legislative Dept. 1861, A. Proceedings, February, 1861, No. 9.

⁶National Archives of India, Legislative Dept. of 1860 No. XLV - Part II.

⁷Supplement to the Calcutta Gazette, dated 28th January, 1857.

⁸See The Indian Penal Code (45 of 1860), Government of India, Ministry of Law, 1961. List of Amending Acts and Adaptation Orders.

⁹Criminal Law including criminal procedure from Entry 30 of Schedule, Part I - Central Subjects - to the Devolution Rules as made under section 45A of the Government of India Act where the expression "The Government of India Act" meant not a separate parliamentary enactment but a properly certified version of the Act of 1915 as subsequently amended.

**PENAL SYSTEM OF
THE U.S., THE U.K. AND INDIA - A COMPARISON**

The system of trial within The United States of America, The United Kingdom, and India is accompanied by the Adversarial System of trial, but there's a huge difference between these systems. As far as England and America are concerned, there's an existence of jury trials whereas in case of India, after the enactment of the statute, Criminal Procedure Code, 1973, the trial by jury came to an end. Even regarding the jury trial, there's a difference within the approach between the two. As regards The USA, where there's prosecutor control over the investigation, many movements are towards inquisitorial approach. As regards allegations against the President the whole investigating power is with the Special Prosecutor. The submission of no case by the accused or his counsel after the close of the evidence by the prosecution in The UK, resembles the hearing under Sec. 232 Cr.P.C. during the sessions trial in India. Such a procedure isn't there after framing of charges within the cases triable by the magistrates.

In The USA, there's a dual court system like federal and state whereas in The UK, even the Supreme Court has no jurisdiction over the criminal cases from Scotland. After the Crown Prosecution Service was implemented, there was prosecutor control over the investigation to a particular extent. Albeit, it ensures independence of the prosecuting agency from the police, it's not that much control over the investigation as within the case of The USA. Although, India is following an adversarial system of trial, recent movements in India like plea bargains may be a deviation from the traditional Indian method. The facility of the Magistrate to watch the investigation was held by the Hon'ble Supreme Court in SakiriVasu's case, the concept that the judge isn't an Umpire, the judicial activism of the facility of the judge u/s. 165 of Evidence Act etc. are approaches towards an inquisitorial system.

WAYS TO ENHANCE INDIAN PENAL LAWS

In India, a Judge or the Magistrate is meant to take a neutral place who never tends to discover the reality of a case from an equitable person's point of view despite playing a huge role. This results in an outsized number of criminals escaping convictions, also eroding confidence of individuals within the system's efficiency. Therefore, one way is to plug the escape routes and to block the possible new one's using the following ways:

1. The Revision of Laws was an endless process during the development of the country and therefore, it became the role of the Law Commission to form recommendations to the government for effecting changes within the existing statute and to enact new laws from time to time within the larger public interest. Enormous damage has been done to India by the upkeep of largely unreformed colonial institutions. Even after the recommendations of the Malimath Committee, the Legal Code has not been revised despite several decisions interpreting the provisions with modern context.¹⁰
2. There are tons of latest sorts of crimes that have manifested within the 20th and 21st centuries. False advertisements, destruction of property, preparation for rioting, disfigurement of monuments and building, false certificates by the government officials, police atrocities, knowingly engaging unsafe vehicles as public carriage, defaming an individual who indulges in assassination, kidnapping for obtaining ransom, financial transaction by blade mafia using fraud, acquiring higher rates of interest for loans, etc., should be accused with suitable punishment.
3. Companies may be subject to punishments under the Legal Code. Recidivism i.e. relapsing to criminal behavior is rampant in the country. The Legal Code should include

¹⁰Arora B L, Law of speedy Trial In India, Universal Law Publishing co.Pvt. Ltd., 2006, p.90.

a provision that enables the courts to order or pass decrees for a harsher punishment for these repeat offenders¹¹. In Indian Penal Code, Sec.75 says that strict punishment shall be given to the offenders who were already convicted under any provision of Chapter XII (Sec.230 to 263, which covers offenses concerning coins, government stamps)and Chapter XVII (Sec.378 to 462, which covers offences against property). But the repeated offences mentioned under other chapters of the code aren't covered by this section.

4. The Penal Laws still include the normal punishments in its list. New modes of punishment shall be accepted as new punishments under IPC. It includes, community service, forbidding holding public offices, restitution by the offender in terms of compensation, public condemnation, publication of conviction, withdrawal of driver's license, forbidding from practicing a profession for a period like in England and America.

In India, the punishment for attempts is extremely confusing and there's no clarity. The law of criminal attempt should also undergo change within the pattern of English Criminal Attempts Act, 1981. The Apex Court and even higher courts direct all the subordinate courts and trial courts to stay in mind the apathy of victims while pronouncing judgments as they're not getting proper justice. So there's a requirement to follow guidelines laid down by the appellate courts strictly by trial courts. Thus, altogether concerned criminal cases, the victim should be adequately compensated. The vulnerable victims must be specially considered. Other suggestions include the following:

1. All the Sections of Indian Penal Code which mention "punishment with fine" only, should be amended by enhancing the fine amount keeping in sight of the country's present economic position.

¹¹supra note 90, p.103.

2. Punishment must be specifically fixed to the recidivists by enhancing the punishment proportionally every time.
3. The petty offense must be punished by ordering them to try to do the general public service or community service during a selected institution rather than imposing a fine or imprisonment for short term sentences.
4. Amendments should be made to all or any of the offenses within the Indian Penal Code, which are punishable under the stance of one year imprisonment either with fine or without fine by fixing minimum punishment.
5. The offenses in which imprisonment or fine or both is fixed as a punishment, should be given wide discretion of the court to make it uniform within the entire Code through proper amendments.
6. Also, the punishments for offences which aren't touched by the legislature since 149 years should be re-strengthened by bringing changes to them, supporting the changed circumstances within the Indian society.
7. Last but not the least, expeditiously increasing industrialization of the country accompanied with the growing population are the two developments which require exceptional attention in India.

Hence, the laws of the state have got to be changed in resonance with the changing circumstances, situations, changing aspirations and attitudes of the people therein particular nation. Thus, the law shouldn't be static. The Penal Laws required amendments soon after they became a Law and therefore, the first set of amendments came within the year 1870. Obsolete provisions should be dropped in the Indian System which is the most vital and prominent substantive law in India, containing some obsolete provisions which became powerless in the course of adulthood and wished completely changed conditions in comparison with this time to the time when they came into existence. Therefore, the Criminal Justice System should be re-strengthened by giving more sharpness to the teeth of Penal statutes generally and to Indian Penal Code especially.¹²

¹²See The Indian Reform - No. 1; see also Government of India since 1834, 16.

CONCLUSION

Punishments which require to be changed through amendments to form them more appropriate and justifiable to this Indian society are a crucial requirement. Although, a number of punishments have been changed which are explained in the Indian Legal Code, yet there have been no inclusive or remarkable reforms caused. Various steps have been taken by the Government of India in order to reinvigorate the Criminal Justice System of India which is moulded by colonial brains. The Constitution of several committees like Santhanam, Malimath are a number of the recent initiatives taken by the government to strengthen the Indian Criminal Justice System. Money and mind power became waste as those recommendations went in vain without any implementation. FaliNariman, a prominent jurist while expressing his opinion in regard to the Constitution of the Malimath Committee said that, "It is that the last bus to go". Thus it's time for India to emerge the powers altogether in the fields of world and get called more often by other nations, so as to make its knowledge hub ready to bring comprehensive changes within the punishments mentioned in Indian Penal Code which are confirmed within the 1st quarter of 19th century basing on the social, economic and non-secular, political conditions which prevailed those days, a minimum of within the 1st quarter of 21st century to try to make them more adequate, reasonable and justifiable to this situations prevailed in India for maintaining the orderly society and to offer more strength to the rule of Law as enshrined by the fathers who established the Constitution.¹³

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In the last, it's observed that the punishment system in India isn't perfect. It has to be changed as early as possible through the great amendment to the Indian Legal System and to guard the Criminal Justice System which is already in peril. Any prudent person can say that there's vast variation in economic position between the people within the periods of the 19th century and thereafter the 21st century.

¹³The Report of the Fourth Indian Law Commission, dated 15th November, 1879.