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Fundamentals of Criminal Law in India: An Overview

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ABSTRACT

Criminal law forms the backbone of any society which regulates the behaviours of human beings in any particular society. It is the body of law that implies to crimes for which punishments are recognized. The primary objective of criminal law is to penalize criminals and maintain law and order in the society. This paper seeks to introduce the background of fundamentals of criminal laws prevailing in India, keeping in mind, the layman who might not be having the legal knowledge about the subject. It covers the meaning, objective, and the basic principle the criminal law. It also includes the basic principles of the substantive and procedural criminal law which helps even the layman to have an idea about the subject. An attempt has also been made to examine some of the theoretic concepts regarding the subject of criminal law. To keep up with current proceedings, a brief analysis regarding the recent introduction of three new criminal law bills is given in the end of this paper.

Keywords: Criminal Law, Society, Crime, Punishments, Indian Penal Code, Code of Criminal Procedure, Indian Evidence Act.

I. INTRODUCTION

Long ago, Aristotle, the famous Greek philosopher, in his book series 'Politics' once said, "man is essentially a social animal by nature". By this he meant to say that a man's nature is such that he cannot afford to live in isolation. He needs a society for his leaving, working, development of his personality as well as enjoying life. Now here comes the question that what is society? A group of persons together forms a society, and that way society consists of different kinds of human behaviours. Thus, to regulate such different human behaviours there are set of established rules widely known as law. In the law, the branch of law that closely controls a man in his everyday life is criminal law. In simple words, criminal law is an area of the law that concerns crimes and laws applied to those who commit them. It sets behaviour observed as harmful, or otherwise threatening to the person's body, property, safety, etc. In India, the Indian Penal Code, 1860 is the fundamental substantive criminal law that applies to whole of a country. It includes a number of offences, whether against the person, property, or the state etc., and provides punishments for the same. The punishment for any crime varies with the kind of

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crime committed, where it the crime is committed, how accused is involved with the crime committed, and whether the accused is the habitual or the first time offender, etc. Therefore, criminal law forms the backbone of any society which regulates the behaviours of human being that are considered harmful to the well-being of other beings and the society as a whole.

II. DIFFERENCE BETWEEN CIVIL AND CRIMINAL LAW

For better understanding of the fundamentals of criminal law, hereunder is given the key differences between civil and criminal laws-

Pointers	CIVIL LAW	CRIMINAL LAW
Meaning	Civil law is a general law that solves disputes between two individuals or organisations.	Criminal law provides details about the crimes that are committed against the society, and it also defines associated punishments.
Objective	The main objective of the civil law is to pay the person for the injury he has suffered.	The objective of criminal law is to punish the criminals and maintain law and order in the society.
Punishments	Civil law resolves the disputes between two persons or organisations by way of compensation. Moreover, no severe punishments like that of criminal law being provided for any matters that are of civil nature.	Criminal law establishes a range of punishments for different crimes, including fines, imprisonment, and, in some cases, the death penalty. The severity of punishment often depends on the nature and seriousness of the offense.
Examples	Civil law mostly concerns about contract, property, family, and related matters, etc.	Criminal law mostly deals with crimes like theft, murder, rape, etc.

After the understanding of the key differences between civil and criminal laws, in the following parts the fundamentals of criminal law have been discussed.

III. MEANING OF CRIMINAL LAW AND ITS OBJECTIVE

As we stated in the beginning, criminal law is the body of law that refers to crimes for which

penalties are established. The objective of criminal law is to punish the criminals and maintain law and order in the society. To achieve this objective, the criminal law tries to create a threat in the minds of potential offenders with punishments. The presumption behind this objective of the criminal law is that persons would be hesitant to commit a crime or might not even commit a crime bearing in mind the severity of the punishments thus imposed upon the commission of such an act.

IV. HISTORY OF CRIMINAL LAW IN INDIA

In early times, there was no criminal law existing in India. The people of the society were completely barbaric or cruel in nature. Life or the property of the people of the society was not at all safe during that point of time. The earliest known use of the phrase ‘a tooth for a tooth, an eye for an eye and a limb for a limb’ comes from the Code of Hammurabi which was the set of laws from ancient Mesopotamia. This phrase expresses the principle of exact reciprocity which was used to indicate the idea that retribution in kind is the appropriate way to contend with a crime. This principle of exact reciprocal justice was aimed to give out revenge in kind, to make a person suffer as he has made another person suffer, for instance, if he hurt someone, he should be hurt equally badly in return or if someone caused the murder of someone else, then that murderer would be put to death. Therefore, people just used to accept that idea that a person who committed a crime should be punished by having the same thing done to him.

Gradually, the time was shifted, and the humans set law as per their religion and cultures. The best example for that is the Manusmriti, known as the first leading Code on penal law. It was set of codified laws which spoke about everything including the criminal law. Law was classified under different 18 titles. The crimes such as cheating, theft, robbery, criminal breach of trust, murder and rape were recognised as crime. What could be noticed here is that the existing criminal law in India i.e., the Indian Penal Code, 1860 (IPC) has also given prominence to all of such crimes. Moreover, the provision for the exemption from criminal liability under Manusmriti was also much on the lines of the Chapter 4 (General Exceptions) of the IPC (for instance, where the crime had happened without any criminal intention or by mistake of fact or by consent or was a result of accident, etc.).

But then one of the problems that was later felt was that the provisions given under Manusmriti were very strict. The punishments given were just disproportionate to its gravity of the crime that had happened. Even though the doctrines of law given under Manusmriti were great. However, the doctrines it was based upon was not free from bias. According to the Manusmriti, the gravity of crimes varies with the caste and creed of the criminal and so does the sentence.

The protection given to the brahmins caste was on the top and they were placed above all others. Such biased regulations were considered against the principles of natural justice. Also, no certain distinction between the private and public wrongs was made under the Manusmriti. For instance, murders and other homicides were categorised as private wrongs only instead being crime against public.

During the 7th Century there was the advent of Islam in India. Muslim law was accepted in India since it was a bit lenient in comparison to Hindu law. That was the time when the Hindu-Muslim community started living in harmony together. Then conflicts among Hindu-Muslim person started coming up due to diverse religion or culture. Now at that point of time there was no specific law to deal with them in common.

There was a time when in 1600 BC Britishers came to India when they came to know the importance of having a common uniform legal system for the country. Then under the Charter Act of 1833 it was suggested to have a uniform legal system and consequently the first Law Commission of India was appointed with Lord Macaulay being the head of it and the discussion was carried on the types of crimes to be brought under the uniform penal system based on the gravity of the specific crime types. That was all discussed through the report of the 1st Law Commission of India and finally the Criminal Law in India (i.e., the IPC, 1860) comes into existence.

V. FUNDAMENTAL CRIMINAL LAWS IN INDIA

Criminal laws in India consists of three fundamental laws namely, the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872. In its simple form, the Indian Penal Code, 1860 is a introductory legal code that defines a wide range of crimes, their elements, and the associated penalties. It categorizes crimes under various chapters, for example, offenses against the human body, property, state, and marriage, etc. Thus, it is a substantive law that defines rights and duties of a person, etc. Apart from the IPC, India also has various other special and local laws that focus on specific types of crimes, for instance, the Narcotic Drugs and Psychotropic Substances Act, the Prevention of Corruption Act, and the Protection of Children from Sexual Offences Act.

Now, Substantive criminal law i.e., the IPC or other local and special laws just defines the type of acts that are considered as crimes, its essentials as well as related punishments. Nevertheless, it never says about the procedure to be followed to punish the person who commits any of such act that are against the law. Consequently, for that we need to refer to the procedural law. The procedures regarding the application of the substantive laws are given under the Code of

Criminal Procedure, 1973 (CrPC). The CrPC describes the procedure which needs to be taken up when any crime is committed. It includes procedure starting from the investigation to inquiry to trial to bail related issues. Accordingly, that comes under the procedural part of our criminal law. Last but not the least, as far as the rules relating to evidence are concerned, there's the Indian Evidence Act, 1872 (IEA). It consists of a set of rules and associated concerns regulating the admissibility of evidence before the courts of law in India.

VI. BASIC PRINCIPLE OF CRIMINAL LAW

There is a well-known Latin maxim, “Actus Non Facit Reum Nisi Mens Sit Rea” which means that the act itself does not consist of guilt unless it is committed with a guilty mind. This maxim becomes the basic principle of the whole criminal law. In other words, the guilty mind and guilty act together constitute a crime.

(A) Concept of Crime

Many attempts have been made to define the word ‘crime’, but they all fail to categorise which type of act amounts to crime. Maybe, this is due to the changing concepts about crime from time to time and place to place. Nevertheless, the word ‘crime’ can be defined as an act or a series of act that is considered to be against the law. Hence, the person who committed the crime is known as the criminal in eyes of law.

In a nutshell, crime is relative term, therefore, an act or a series of act, which was not a crime today may become a crime tomorrow or vice versa if the government so decides. For instance, the culture of polygamy, dowry, untouchability, satipratha, devdasi system are now considered as crimes that were not so a few years before.

(B) Durkheim Theory of Crime- Crime is A Normal Aspect of Society

There is a famous quote given by famous Sociologist named Emile Durkheim which states that- “There is no society known where a more or less developed criminality is not found under different forms. No people exist whose morality is not daily infringed upon. We must therefore call crime necessary and declare that it cannot be non-existent, that the fundamental conditions of social organization, as they are understood, logically imply it.”

This quote is taken from the theory on crime given by Emile Durkheim. He believed that “crime is a normal aspect of society and that crime itself serves a social function”. When any crime has happened, individuals begin to consider whether the societal rule that is broken is valid or not. For instance, just lately homosexual relationships could become legal in India. The Apex Court

in 2018(while deciding the case of Navtej Singh Johar v. Union of India)² has given legal recognition to the homosexual relationships via decriminalising Section 377 of the IPC to the extent that it effectively allows homosexual relations between consenting adults.

As a result of the National Legal Services Authority v. Union of India (2014)³ and the Navtej Singh Johar v. Union of India of (2018), Government passed an Act known as the ‘Transgender Persons (Protection of Rights) Act, 2019’, becoming the first ever law passed to protect the rights of homosexual persons in India. Until that point of time, being in a homosexual relationship was considered as morally wrong and against the so-called societal rules or norms or cultures in India. But afterwards realizing a larger progression in such type of relations, our society people were forced to consider it and then they eventually realized that it was not at all going against any societal rule. Hence, crime is considered to be normal aspect of our society since whenever any crime has committed in our society it’s only then we could be able to distinguish between what is good or bad human behaviour. Therefore, if we just thought or wish to live in a society free of any crime then we will never be able to point out the problems with our societal rules or norms or cultures because the moment any crime is committed only then we could be able to point out the flaws in our societal rules or norms or cultures.

(C) Elements of Crime

This maxim we discussed above namely, , “Actus Non Facit Reum Nisi Mens Sit Rea” likewise indicates the essential elements of any crime, that is: mens rea i.e., the mental element (means to say that a man's understanding about the fact that his conduct is against the law), and actus reus i.e., the physical element (actus means bodily action of an individual’s behaviour and reus means prohibited by law). To prove charge against the accused person, in criminal cases, the prosecution needs to prove beyond reasonable doubt that the accused had committed the crime combined with the required mental element at the time of committing the crime. For instance, when an accused person is charged with the crime of theft, the prosecution needs to prove beyond reasonable doubt that the accused had taken someone else's property without permission (this is the actus reus) combined with his intention or knowledge or sufficient reason to believe that he is committing the crime of theft (this is the mens rea).

(D) What is Offence?

Often, crime is regarded as a socio-legal problem. For the reason that there is no adequate

² _____, Supreme Court of India, Navtej Singh Johar vs Union of India Ministry of Law And Justice on 6 September, 2018, (Aug. 26, 2023, 08:04 PM), <https://indiankanoon.org/doc/168671544/>.

³ A. Sikri, Supreme Court of India, National Legal Services Authority vs Union Of India & Ors on 15 April, 2014, (Aug. 26, 2023, 08:04 PM), <https://indiankanoon.org/doc/193543132/>.

definition of the word ‘crime’, the IPC replaces the word ‘offence’ instead of ‘crime’. Section 40 of the IPC states that any act of human being that is made punishable by the Code is referred to as an offence.

(E) Ways to commit an offence

An offence (as per the provisions of the IPC) could be committed in either of the two ways—either by executing the act or by failing to execute it. An act, according to the IPC, is any bodily movement that is voluntary and conscious. It can be an act of commission or omission. An act of commission is an act that is done by a person intentionally, while an act of omission is the failure to perform a legal duty that is required by law. For example, if a person intentionally strikes another person with a stick, it is an act of commission. On the other hand, if any parent deliberately or knowingly fails to give food to his/her child due to which the child dies, it is an act of omission. In this case, such parent could be prosecuted legally for the offence of causing death of the child because of negligence, moreover, likewise such parent could be prosecuted legally for the offence of murder when the intention of causing death of the child could be established before the court of law.

VII. CONCLUSION

The government on 11 August 2023 bring in three bills to replace the IPC, the CrPC, and the IEA.⁴ These Bills have been introduced on the pretext that the existing criminal laws have become outdated and are not able to meet the needs of our ever-evolving society. However, the critic of the bill claims that the criminal laws of our country are sufficient to deal with all types of crimes what is just lacking is the proper implementation of the laws. It is believed that the introduction of new laws might result in conflicting implementation because of inadequate resources and infrastructure. In conclusion, what we can say is that whether these Bills will improve or reform our criminal justice system will depend upon its implementation.

⁴ Tariq Khan and Diksha Dadu, on New Criminal Reforms: Substantial Change or Linguistic Imperialism? (Aug. 27, 2023, 12:14 PM), <https://www.livelaw.in/articles/ipc-crpc-evidence-act-bharatiya-nyaya-sanhita-code-of-criminal-procedure-bharatiya-nagarik-suraksha-sanhita-mob-lynching-the-official-language-act-236183>.