

A CRITICAL ANALYSIS OF THE CHANGES IN CRIMINAL JUSTICE SYSTEM (LAW AND JUDICIARY) FROM VEDIC PERIOD TO POST - INDEPENDENCE INDIA

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Abstract

“History of Criminal Justice System in India begins with the Vedic Period in around 3500 years ago. Vedic texts speak about various types of crimes and punishments prescribed for them. Muslims who entered Indian soil in around 1000 A.D. brought with them the legal system and practices of Arab, Turkey, Syria and Persia. Until the coming of British Rule, the Muslim system of administration of criminal justice continued. Charter of 1726 tried to streamline Criminal Justice System in British occupied Presidency Towns whereby the Governor and five Senior Councilors were invested with Criminal jurisdiction in each Presidency Town. Each of them individually acted as Justices of Peace and enjoyed the same power as their counterparts in England. After the Battle of Buxar in 1764, Adalat System was introduced to provide justice in British occupied Mofussil areas of Bengal, Bihar and Orissa. Adalat System worked efficiently under Governor Generalship of Warren Hastings. Many reforms in the system were introduced later by Lord Cornwallis and Lord William Bentinck. Indian High Courts Act of 1861 and Federal Court of India established under Government of India Act, 1935 provided for appellate jurisdiction in civil and criminal matters. In Post- Independence India major change in Criminal Procedure was introduced in the year 1973 which provided a base on which the edifice of Criminal Justice System rested intact for years. Alike this, changes in IPC introduced in the years 1949, 1972, 1983, 1993, 2000, 2006, 2013 and 2018 tried to remove lacunae in Penal Code. Present paper tries to critically analyse the changes made and in our present Criminal Justice System.

Keywords: *History of Law, Criminal Law in British India, CrPC, IPC, Changes in law, Vedic Period, Muslim Rule*

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INTRODUCTION

We are living in the world where ‘Rule of Law’ is the guiding principle of governance. History of Law goes back to the period even when there was no State. It is a pre- political process which was reflected in early human societies in form of customs and practices. Committing crime is a nature of man as reflected in the ‘state of nature’ description by Hobbes. The distinction of bad and good or right and wrong consolidated the idea of Law as a regulatory force to mould individual’s behavior. The basic need for which the State came into being was the protection of life and property of the individuals. Therefore in the development of Legal System, Criminal Justice System perhaps got prominence over the civil laws as administration of Criminal Justice was required even for the existence of human race.

There was no clear cut distinction between administration of justice in regard to criminal offences or civil disputes in the beginning of civilization in Indian sub- continent though in the close of Christian era we find different courts for criminal and civil matters. This was later exhaustively distinguished during the British period. .

CRIMINAL JUSTICE SYSTEM IN ANCIENT INDIA

At the outset of Indian civilization the very purpose of State was protection of life and property of the people. Vedic literature speaks about the institution of State in form of Jana. Rajan or the king was the authority to regulate individual’s behavior. King gradually organized a system to enforce Law and punish those who violated it. Vedas can be considered as the oldest literature speaking about code of conduct for individuals and duties of the king to punish the offenders. King was known as Gopa Janasya or protector of people. It means he was mainly charged with maintenance of Law and Order. Village Headman, known as Mahattar or Grama Vriddha, along with the Panchayat (Village Council) was responsible for maintaining Law and Order at village level. They were also responsible for delivery of justice to the aggrieved persons in petty offences. This task was assigned to the Nagaraka in later developed urban settlements. Two assemblies are mentioned in Vedic period, named Sabha and Samiti. Out of these, Sabha in later Vedic period acted as the Privy Council of the king and advised him in legal matters.

Dharmasutra and Manu’s Code speak about regular system of state judicial administration for the first time. Megasthenes’s Indica which narrates about the Mauryan society, speaks about the penalties for various offences. Pillar Edict of Ashoka also refers to the practice of death

penalty even after Ashoka's conversion to Buddhism. Mahadandnayaka and Dandnayaka like officials refer to the existence of proper Criminal Justice System during Kushan's period. Kautilya mentions two types of Courts namely, Dharmasthiya and Kantakshodhana for criminal and civil matters respectively. This for the first time provides for separate Judicial System for Civil and Criminal cases. Manu also speaks about separate courts for criminal matters. Kautilya prescribes small size Courts for criminal matters. Following are the matters to be taken up in the criminal court- a. Protection of artisans, merchants etc, b. Suppression of the undesirables, c. Detecting criminals by means of spies, d. Arresting the suspicious and real culprits, e. Post Mortem examinations, f. Discipline in various State Departments, g. Punishment for mutilation, h. Capital Punishments, i. Ravishment of immature girls, j. Examination by word and action, k. Miscellaneous offences.

Kantakshodhana was in the nature of the 'Doctrine of Police power'. In fact, the conception of the administration of Criminal Justice went hand in hand with the Police jurisdiction and one completed the other and was completed by the other. For criminals who were cruel in their offences, Kautilya envisages torture to illicit confession. Indeed he devotes a whole chapter to detail this dismal and woeful aspect of Law.

The Smritikaras have discussed at length the classification of crimes and the punishments to be given. The Criminal Code in Arthashastra is rather severe and it has been characterized as 'an eye for an eye and a tooth for a tooth'. Manu prescribes admonition, reproof, a fine, corporal punishment and banishment. A severe type of imprisonment prescribed by Kautilya is forced labour in state mines and other state concerns. Caste and Verna considerations seem to influence type and quantum of punishment. In the above discourse, it can be easily concluded that, though administration of justice was in sedimentary stage during ancient India but distinctive features of civil and criminal jurisdictions were well defined ^[4].

ADMINISTRATION OF CRIMINAL JUSTICE DURING MUSLIM RULE

With the intrusion of Muslims in the beginning of second millennium of Christian era a new jurisprudence was introduced in Indian subcontinent particularly with regard to Criminal Justice system. System of administration of justice was not well organized in the beginning of Muslim rule when Sultans ruled over major part of the country. The Mughals tried to streamline the system particularly during the reign of Aurangzeb who enthusiastically tried to enforce Islamic laws for the offences. Fatwa-i-Alamgiri is the legal digest produced during

his reign only. The Farmans (royal orders) issued by him on Criminal Laws supplemented the theoretical Muslim Criminal Law prescribed in Quran and Hadis.

Under Islamic jurisprudence, three kinds of offences are recognized- offences against God, offences against the State and offences against the individuals. There is no other punishment but death for the offences against God which includes apostasy. The Law of Islam compounded offences against the State and private individuals. Even punishment for murder could be compensated with money if deceased men's relatives did not insist on retaliation. Discrimination in punishment with regard to Muslims and non-Muslims was practiced in favor of Muslims.

Judicial organization was well defined particularly during later years of Mughal Rule. Quazis' Courts decided criminal offences, which in special circumstances reached to the Quazi-ul-Quazzat (Chief Quazi) and King's Court. Emperor was regarded the fountain head of judiciary and the final tribunal of appeal. He was assisted in dispensation of justice by Chief Sudra and Chief Quazi. The Chief Quazi stood next to Sultan in judiciary and under him there were a number of Quazi's deployed in provincial capitals and headquarters of District and Pargana (sub division). Subehdar (Provincial Governor), Fauzdar (Head of Sarkar or District) and Shiqdar (Head of Shiq or Pargana) also enjoyed magisterial power in regard to offences committed in their respective areas. Jagirdars and local Zamindars also took cognizance of petty offences committed in their respective jurisdiction. Kotwal was the Police Head responsible for not only maintenance of Law and Order but also sorted out some criminal cases. Overall, the system was fragmented particularly in far flung areas though in urban centres it worked efficiently.

FOUNDATION OF MODERN SYSTEM OF CRIMINAL JUSTICE DURING THE BRITISH RULE

Three early settlements of British Company in 17th century were Madras, Bombay and Calcutta which were given status of Presidency Towns and developed as centers of trade and became nucleus of British administrative machinery in India. The Company's main concern was to evolve a system of judicial administration for its servants particularly the Englishmen. Indians in these regions were left with their own system of judicial administration with regard to their civil disputes and petty offences. For example, in Black Town area of Madras, Adigar or the Village Headman presided over the Choultry Court which was authorized to decide

civil disputes and petty offences. In later period, these native Courts also came under the British supervision. Agent along with the Council (later Governor-in Council) was the dispute deciding machinery in the White town of Madras. It was also empowered to decide criminal and other matters despite being deficient in legal training. Serious cases were sent to England which was cumbersome and time taking. The system of Jury trial had been adopted to decide matters in these Presidency towns. Governor and his Council acted as High Court of Judicature for all civil and criminal matters in the Presidency towns. This Court also heard appeals against the decisions of Choultry Court in Madras. Admiralty Court in Madras opened in 1686 A.D. It dispensed justice in all civil, criminal and maritime cases. In criminal cases the court was assisted by the Jury. Judges of the Court were not expert of Law but the civil servants of the Company judged the matters on the principles of equity, justice and good conscience. Another Court, known as Mayor's Court, also took up all types of cases and tried criminal cases with the help of Jury. This Court comprised of the Mayor and Aldermen of the Municipal Corporation.

A uniform judicial pattern was ensured in Presidency Towns through the Charter of 1726 A.D., which continued working of Mayor's Court from where the appeal reached to Governor- in- Council, who were actually the executive head. Native Courts still worked outside the Presidencies. Thus we do not find clear distinction between the judicial machineries meant for civil and criminal cases during this period.

Territories of Bengal, Bihar and Orissa which came under British Company after the Battle of Buxar of 1764, were known as Mofussil areas. These territories were different from Presidency Towns as the responsibility of the whole region was vested with the Company now. Judicial administration thus provided to this region was known as Adalat system where we see clear cut division of Civil and Criminal Courts known as Diwani Adalat and Nizamat Adalat respectively. This system later on extended to the Mofussils of Bombay and Madras also.

Warren Hastings, Lord Cornwallis and Lord William Bentinck brought various reforms in existing Adalat system. Mofussil Fauzdari Adalat established in each district was presided over by an Indian Officers of the Company with the help of Quazi, Mufti or Maulvi. Muslim Law was followed in respect of criminal cases. Sadar Nizamat Adalat headed by Deputy Nazim was the Court of Appeal for criminal matters in the region. Some Magisterial power was given to Collector with regard to petty offences including corporal punishment. Lord

Cornwallis replaced District Fauzdari Adalats with four Circuit Courts. Lord William Bentinck who was the Governor General of India from 1828 A.D. to 1835 A.D. is known for his reforms in criminal judiciary. He gave power to government to invest the judges of District Diwani Adalat the duties of the Session i.e. the administration of Criminal Justice. The Session Judges tried cases committed to them by Magistrates. While not in Session, they sat as District Judges and disposed the civil matters. This led to the emergence of District and Session Judges doing civil and criminal justice side by side. He also replaced Persian with the vernacular language in Lower Court while English emerged as a language in Higher Courts. Supreme Court established in Calcutta in 1774, A. D. was the ultimate Court of Appeal in criminal matters as well. But it remained only for the British citizens or the servants of the company. Such Supreme Courts were also opened in Madras and Bombay in the years 1801 and 1824 respectively.

In order to bring uniformity in judicial set up, First Law Commission headed by Lord Macaulay prepared the Criminal Code which became an Act after revision by Second Law Commission in 1860 A.D., named as Indian Penal Code. Second Law Commission also prepared a draft on Criminal Procedure which was passed in the year 1861 A.D. Both the Acts became operative from January 1, 1862 A.D. Another major development was the Act of 1861 which provided for establishment of three High Courts in Presidency Towns. These High Courts were given supervisory power over the Subordinate Courts falling under it. Supreme Courts and Sadar Adalats were abolished and their power and functions were taken over by the respective High Courts. Three High Courts came into being in Calcutta, Madras and Bombay in the year 1862. Another High Court was inaugurated in Allahabad in 1866 A.D. to cater the judicial needs of North Western Provinces. The hierarchy of Indian courts was formally organized after coming of Federal Court of India through The Government of India Act, 1935. The Court had original, Appellate and Advisory Jurisdictions. It also had supervisory powers over all other Subordinate Courts. Privy Council situated in England heard Appeals against decisions of Federal Court and High Courts. Jurisdiction of Privy Council and Federal Court was inherited by Supreme Court of India after independence.

CHANGES IN POST-INDEPENDENCE ERA

The major change in Criminal Procedure was introduced in the year 1973 with the enactment of a comprehensive Code of Criminal Procedure to be operative in almost whole of Indian territories which was being governed by the Constitution of India 1950 after the departure of

the British. Section 6 of Code of Criminal Procedure, 1973 states- “ Besides High Courts and the courts constituted under any law, other than this Code there shall be, in every State, the following classes of criminal courts, namely-

1. Courts of Session;
2. Judicial Magistrate of the First Class and; in any Metropolitan Magistrates;
3. Judicial Magistrates of the Second Class; and
4. Executive Magistrates

Special Tribunals have also been established ‘to regulate activities of trade, commerce, industry and the like and for effecting socio- economic reforms’ and to decide disputes arising out of legislative enactments.

Indian Constitution placed Criminal Law and Criminal Procedure in the Concurrent List authorizing Union and State Legislatures to make Laws in relation with these subjects. Consequently, a lot of changes have been introduced in the Criminal Justice System from time to time. Major changes were introduced in the Penal Code in the years 1949, 1972, 1983, 1993, 2000, 2006, 2013 and 2018 in order to remove lacunae in the said Code.

CONCLUSION

We have seen in the preceding pages, how have Law and judiciary changed in long course of Indian history since the very beginning. The system of enactment of law may not be well organized in ancient and medieval period but Indians were well aware of the basic tenets of Criminal Justice System and, therefore, laid a system based on their religious texts, perhaps also because of the God fearing nature of the people who accepted prevention of crimes as their religious and moral duties. Various levels of judicial set up fulfilled the need of adjudication efficiently for thousands of years. A new era of Law and Justice based on the western ideas of justice, rights and equity were introduced by the British which was further elaborated in free India where the principles of Criminal Justice System are well understood and implemented.