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## **INTRODUCTION**

The Indian Penal Code is a colonial legislation which was retained as the main penal law of the country even after India became independent in 1947. The Indian Penal Code, 1860 is the substantive law of crimes. In India, the base of the crime and punitive provision has been laid down in Indian Penal Code, 1860. With the proliferation in juristic persons and a growth in their activities which increasingly touch daily lives of ordinary people and criminal law has evolved to bring such persons within its ambit. Section 11 defines 'person'. It includes any Company or Association or body of persons, whether incorporated or not. In all jurisdictions across the world governed by the rule of law, companies can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offences.

Crime is a social phenomenon. It is a wrong committed by an individual in a society. It arises first when a state is organized, people set up rules, the breaking of which is an act called crime. Law regulates the social interest, arbitrates conflicting claims and demands. The security of persons and property which is essential function for State is achieved through the instrumentality of criminal law. Crime being a relative conception is an act defined by State as a crime. The concept of crime changes from time to time and as per the society. For determination of crime there is no fixed rule. Crime is what the law says it is. The difference between a criminal offence and a civil wrong is that while the former is considered a wrong against the society because of their grave nature, a civil wrong is a wrong done to an individual. It is believed that serious crimes threaten the very existence of an orderly society, and therefore, if such a crime is committed, it is committed against the whole society.

It should be kept in mind that what is criminal, illegal or unlawful may still be a socially acceptable practice. It is also likely that all that a society considers as reprehensible is not criminal in the eyes of law. The divergence of criminal law, however, with the moral and cultural standards of society cannot be too great because governments in framing and amending criminal laws cannot be ignorant of the societal standards.

In India, the base of the crime and punitive provision has been laid down in Indian Penal Code, 1860. In this Code the definition of crime has not been attempted or defined but according to its section 40 the word "Offence" denotes a thing made punishable by the Code.

## **HISTORICAL BACKGROUND OF THE INDIAN PENAL CODE**

The first draft of the Indian Penal Code was prepared by the First Law Commission, chaired by Thomas Babington Macaulay. The first final draft of the IPC was submitted before then the Governor-General of India in Council in 1837, but the draft was revised subsequently. The drafting was completed in the year 1850 and was presented to the Legislative Council in the year 1856. It was only in 1860 when the draft became law and came into operation on January 1, 1862. It came into force in British India during the early British Raj period in 1862. The IPC in its various sections defines specific crimes and provides punishment for

them. It is sub-divided into 23 chapters that comprise of 511 sections. The code came into force in Jammu and Kashmir on 31 October 2019, by virtue of the Jammu and Kashmir Reorganisation Act, 2019, and replaced the state's Ranbir Penal Code.

## **OBJECTIVES OF THE INDIAN PENAL CODE**

The primary objectives of criminal law are to maintain law and order in the society, protect the life and liberty of people and punish the offender. Substantive law determines rights and liabilities of parties whereas procedural or adjective law prescribes practice, procedure and machinery for the enforcement of those rights and liabilities. Procedural law is thus an adjunct or an accessory to substantive law. The Indian Penal Code, 1860 is the substantive law of crimes. It defines acts which constitute an offence and lays down punishment for the same. It lays down certain principles of criminal law. The main objective of the Indian Penal Code is to provide a general penal code for India. It deals with offense related to religion, offences against property and it has an important section for offences for marriage, cruelty from husband or relatives, defamation and so on so forth. This was a general over view of the structure of Indian Penal Code.

## **EXTEND AND APPLICABILITY OF INDIAN PENAL CODE**

The Chapter 1 from Sections 1 to 5 of the Indian Penal Code deals with the extent and operation. According to Section 1 of the Code the Name of the Code shall be Indian Penal Code and the same shall be applicable to whole of India including the state of Jammu and Kashmir as article 370 of Indian constitution was deleted by parliament on 31 October 2019. Every person shall be liable to punishment under this code for every act or omission contrary to the Act and not otherwise.

**Section 2** of the Act deals with the Intra Territorial Jurisdiction, i.e. offence committed in India and punished under the Code. This section asserts liability on the basis of locality and place of commission of offence. In order to invoke the code it must be proven that the offence was committed within the Indian Territory. The term “Indian Territory” has been defined to include land, water (inland water including the river, canals etc.) and the portions of sea. “Every Person” includes Citizen, non citizen and even Foreigners visiting India. Although the same excludes judicial person (companies etc.), though the same shall be liable for the actions of their directors because of the principle of Vicarious Liability.

### ***In the case of State of Maharashtra vs. M.H. George (AIR 1965 SC 722),***

It was held that the foreigner who enters India by accepting the allegiance of Indian laws is also liable for punishment in case an offence is committed under the code and that he cannot take a plea of “ignorance of law”.

***In the case of Mobark Ali vs. State of Bombay (AIR 1957 SC 857),*** Pakistani citizen made a false representation while in Karachi. The complainant in Bombay through letters, phone calls and telegrams which induced the complainant to part with an amount of around

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Rs. 5 lacs to the agent of the accused in Bombay so that rice could be shipped from Karachi to Bombay. NO rice was supplied. The accused was caught in England and brought to Bombay where he was prosecuted and convicted under Section 420 for cheating. The Supreme Court upheld the conviction even though the person was physically present in Bombay.

**Section 3** deals with extra territorial jurisdiction. The application of the Act depends upon the place where the offence is committed and not on the nationality or place of residence of the offender. So, a person physically present outside India can commit an offence within India and shall be Punishable under the code. Thus, the code shall be Extra Territorially applicable in the following cases:

- any citizen of India in any place without or beyond India;
- any person on a ship or aircraft registered in India;
- any person in any place beyond India wherein the target of the offence being a computer resource located in India.

**Section 4** of the IPC extends the application of the code to an offence committed outside India by an Indian citizen and offence committed on a ship or aircraft registered in India. The rationale behind this extension of criminal jurisdiction of the courts is based on the contention that every sovereign state can regulate the conduct of its citizen, where they might be for the time being. Clause 2 of section 4 gives Admiralty jurisdiction to the Indian Courts and the power to try offences committed on any ship or aircraft registered in India. A ship is considered to be a floating island belonging to the country whose flag it is bearing. Thus all the vessels are considered as the part of the territory of the country whose flag they fly. The Act is not applicable to soldiers, sailors or airmen 'in the service of the Government of India' because there are different laws for punishing such personnel.

## **IMPORTANT AMENDMENTS TO THE INDIAN PENAL CODE, 1860:**

### **CRIMINAL AMENDMENT ACT, 2018:**

The Criminal Law Amendment Act, 2018 is additionally a result of such primitive occurrences which shook the conscience and inner voice of the whole country. The demand for making stringent to rape laws more stringent had begun creating because of different youngster assault episodes. The notorious Kathua rape case and the Unnao rape case set off this demand and this brought forth the change of 2018.

After the amendment or the revision, Section 376 deals with three classifications of punishment as:-

**Section 376(1)-** Punishment for the rape of a lady to be a minimum of ten years of rigorous imprisonment which may reach out to imprisonment forever. Therefore, the quantum of punishment has expanded from at least seven years to at least ten years.

**Section 376 (3)-** Punishment for rape on a girl under sixteen years old has been included by the revision. Punishment in such cases must be a rigorous imprisonment of a minimum twenty years which may stretch out to life imprisonment.

**Section 376AB-** Punishment for rape on a lady under twelve years old has likewise been included by the change. The punishment in such cases is characterized as a minimum twenty years rigorous imprisonment which may stretch out to imprisonment forever. The guilty party in such cases can likewise be rebuffed with capital punishment.

Along these lines, for the first time, capital punishment has been presented for the offense of assault thinking about the gravity of the offences. Besides, Section 376DA and 376DB have been included by the revision which manages or deals with punishment for rape on a girl less than sixteen years and twelve years individually. The punishment in such cases must be constantly imprisonment for life. For rape on a girl under twelve years old capital punishment can likewise be granted. Provision (i) of Section 376(2) has been precluded.

## **THE CRIMINAL LAW (AMENDMENT) BILL, 2013 (ANTI-RAPE BILL):**

The widespread outrage due to the barbarous gang rape incident intern, “Nirbhaya” which took place on 16th December 2012 forced the legislature to act against the crimes that affect the rights of women and children. This led to the enactment of the Criminal Law Amendment Act of 2013 amending the Indian Penal Code and the Criminal Procedure code, the Indian Evidence Act and the Protection of Children from the Sexual Offences Act. The main provocation for passing of this act was provided by the Delhi gang-rape incident which led to the setting up of the Justice Verma committee based on whose report and recommendations the Criminal Law (Amendment) Ordinance was passed by the then President of India, Pranab Mukherjee on 3rd February 2013. Changes to the Indian penal code, 1860 as per this amendment are as follows:-

**SECTION 100:** The offence of acid attack was added to section 100 of the code so as to use the right of private defence of the body so as to cause death.

**SECTION 166A:** Section 166 A was inserted by this act so as to punish the public servants who disobey the direction given by law. They shall be punished with rigorous imprisonment for a term of 6 months which may extend to one year and may include fine.

**SECTION 166 B:** Section 166 B was inserted to provide punishment for non- treatment of