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DEVELOPMENT OF CRIMINAL LAW IN INDIA

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I.INTRODUCTION

There is no clear reference to the existence of judicial organization in the Vedic period .It appears village elders acted as the judges and punishment was awarded according to the nature of the offence, in accordance with local usages and customs. In Ancient India the administration of justice was centralized and it always remain separate from the executive and generally dependent in form and ever Independent in spirit The sultans implemented shariat or the Islamic law of crime and punishment the main sources of which were the Quran, the Hadis and Ijma. The ecclesiastical cases were separated from the criminal and civil suits

The Muslim administration of justice in Medieval India suffered from many defects. It was defective as there was no separation between the executive and judiciary

II.JUDICIARY IN ANCIENT INDIA

In the Vedic period when the social and state information was yet to be completed Dharma was the main source or sole source of Law. Sacred law (Dharma), evidence (Vyavahára), history (Charitra), and edicts of kings (Rájasásana) are the four legs of Law

Before the conquest of India by the Muslims, the penal law prevailing in India was the Hindu criminal law. It is now well established that in ancient India there existed a systematic and well defined criminal law.[1] Ancient smriti writers were also fully aware of various purposes served by punishing the criminals. [2] Manu, [3] Yajnavalka, [4] and Brihaspati [5] state that there were four methods of punishment namely, by gentle admonition, by severe re proof, by fine and by corporal punishment and declared that these punishments shall be inflicted separately or together according to the nature of the offence. The punishment served four main purposes, to meet the urge of the person suffered, for revenge or retaliation, as deterrent and preventive measures and for reformation or redemption of the evil doers. [6].

III.CRIMINAL JUSTICE IN ANCEINT INDIA

The development of both Criminal and civil Legal systems in India date back to the ancient period to a land that was ruled by various kings of India right from 3000 B.C.E to 1001 C.E and beyond. This country had a similar system of law for well over 4000 years. No other country in the world can claim such a credit and even though this land was divided into hundreds of small political kingdoms the law of the land called Neethi and Dharma given by the great Hindu law giver Manu were common or similar in nature

The Dharamsutras and the Kautilya's Arthashastra, however, present a more detailed and well developed system of criminal adjudication prevailing in their time. The Niti shastra mentions King as the fountain of justice and it

was his sacred duty to punish the wrong-doers and if he flinched from discharging this duty, he was bound to go to hell.

In early society the victim had himself (as there was no State or other authority) to punish the offender through retaliatory and revengeful methods; this was, naturally, governed by chance and personal passion. Even in the advanced Rig-Vedic period there is a mention that punishment of a thief rested with the very person wronged. Group life necessitated consensus on ideals and the formulation of rules of behavior to be followed by its members. These rules defined the appropriate behavior and the action that was to be taken when members did not obey the rules.

This code of conduct, which governed the affairs of the people, came to be known as Dharma or law. In course of progress man felt that it was more convenient to live in society rather than in small groups. Organizations based upon the principle of blood relationship yielded, to some extent, to larger associations the societies. In the very early period of the Indian civilization great importance was attached to Dharma. Everyone was acting according to Dharma and there was no necessity of any authority to compel obedience to the law.

IV. CRITICS OF ANCEINT CRIMINAL LAW

Henry Maine described the legal system of ancient India "as an apparatus of cruel absurdities". An Anglo-Indian jurist made the following remark about what he called "the oriental habits of life" of the Indians before the British turned up in India: "It (British rule in India) is a record of experiments made by foreign rulers to govern alien races in a strange land, to adapt European institutions to Oriental habits of life, and to make definite laws supreme amongst peoples who had always associated government with arbitrary and uncontrolled authority." Alan Gledhill, a retired member of the Indian Civil Service, wrote that when the British seized power in India, "there was a dearth of legal principles." For Bernard Cohn, the ancient constitution rendered Indian history as antique, static and theocratic.

V.CRIMINAL JUSTICE IN THE SULTANATE PERIOD

The sultans implemented shariat or the Islamic law of crime and punishment the main sources of which were the Quran, the Hadis and Ijma. The ecclesiastical cases were separated from the criminal and civil suits.

The durbar of the sultan constituted the highest civil and criminal court of justice which took original as well as appellate cases. Below the sultan there was the court of qazi-i-quzat or the chief justice of the empire. Muhtasib the censor of public morals acted as police cum judge in the observance of the canon law by the Muslims. The village panchayats enjoyed the sanction of the state to administer justice according to the local tradition, customs and the personal law of the populace. The penal code was severe, physical torture and capital punishment constituted an essential part of it.

VI.CRIMINAL JUSTICE IN MUGHAL INDIA

During the Mughal rule in India, Muslim criminal law was the law of the land for the administration of criminal justice. When the Company assumed the responsibility for administering Bengal, Bihar and Orissa, the Muslim criminal law was very well entrenched in that territory. The law, however, had a number of glaring defects.

Many of its principles were not in accord with the British notion of justice, common sense and good government .[7] The law was designed to sub serve the needs of a society profoundly different from the one which was in the process of revolving in Bengal after the advent of the British in the latter half of the 18th century. The British administrators were therefore gradually led to effect modifications in the Muslim criminal law by using their power to make regulations [8]. They thus adapted the Muslim criminal law to the needs of the society in Bengal and also according to their own concept of justice, policy and social behaviour.

The Muslim criminal law formally remained in operation in the mofussil of Bengal, Bihar and Orissa for over 100 years after the company had taken over the administration. Nevertheless, it underwent so many changes during this period when in 1860 the Indian Penal code was enacted [9] the law prevailing at the time could hardly be characterized as the Muslim criminal law. It had become transformed by then into anglo-muslim law of crimes; it had been detached from its base in Muslim Jurisprudence.[10]

VII.SALIENT FEATURES OF MUSLIM LAW OF CRIME

The traditional Muslim criminal law broadly classified crimes under three heads:(i) crimes against Gods (ii) crimes against sovereigns and(iii) crime against private individuals. The first category included such crimes as apostacy, drinking intoxicating .liquors adultery etc. The third category included such crimes as theft, highway robbery and robbery with murder etc., i.e. offences against the human body. Accordingly, the Muslim criminal law arranged punishments for various offences into four categories, viz., Hadd, Tazeer, Kisa, which was commutable into Diya Hidaya and Fatawa-i-Alamgiri4 expounded the Criminal Law .The former laid down the general rules and principles while the latter was the collection of case Law.

Hadd etymologically meant boundary or limit. In criminal law it meant specific penalties for specific offences. The underlying idea was to prescribe, define and fix the nature, quantity and quality of punishments for certain particular offences which the society regarded as anti-social or anti-religious. These offences were characterized as being ‘against God’ or in other words, against ‘public justice’

Tazeer discretionary punishments**.** These punishments were inflicted at the discretion of the judges as they were no fixed rules to prescribe such punishments. Usually, these punishments consisted of imprisonment, exile, corporal punishments, boxing on the ear or any other humiliating treatment .Tazeer punishments were thus inflicted for meeting the end of public as well as private justice .Even for cases falling under Hadd or Kisa this punishment could be inflicted in certain situations

An English observer describes the doctrine of tazeer as a supplementary document which is well known and admitted in the practice of the courts in Bengal .First the law was very uncertain and on many points there were differences of opinion among the Muslim jurists that gave relaxation to the Kazi to interpret the law. A corrupt Kazi always twist the law and misapply the same according to his own wish

According to Rankin [11] “If taken as a whole the law was very complicated and uncertain. A close scrutiny of some other salient features of Muslim law of crime especially those pertaining to murder will prove the validity of these observations.

If the heirs of a murdered man pardoned, or did not complain against the murderer, the sovereign could not compel them to demand Kisa. Warren Hasting characterized this as a law of barbarous construction and contrary to the principle of civil society [12]

This may be illustrated by reference to few typical cases which are found scattered in the Bengal revenue consultation prior to 1790.[13]

VIII.DEFECTS OF MUSLIM LAW

The Muslim administration of justice in Medieval India suffered from many defects. It was defective as there was no separation between the executive and judiciary .In many cases Muslim criminal law was not certain and uniform in practice and it was there that the law which laid down in Fatwa-i-Alamgiri was more conflicting .There were difference of opinions among Muslim jurists which gave the Qazi a freedom to interpret the law and apply it. Thus we can say that in each case the Qazi interpret according to their own will instead of the correct interpretation .In many cases the murderer escaped simply by paying money to the defendants of the murdered person .The law of evidence under muslim law was very defective unsatisfactory and of primitive nature because no muslim could be given capital punishment on the evidence of an infidel .In case of evidence of one muslim was regarded as being equivalent to those of two Hindus.

Changes in Criminal Law 1772

When Warren Wastings introduced his judicial plan for administration of justice in Bengal Bihar and Orissa[14].In justification of the severe punishment proposed to be inflicted it was pointed out that dacoits of Bengal were not like the robbers in England , they are robbers by profession and even by birth[15]

In 1773 he formulated certain proposal for its modification Hastings suggested abolition of the privilege granted by the Muslim law to the son or nearest the kin to pardon there murderers of their parents.

According to Warren Hasting it was a law of Barbarus construction and contrary to the principle of civil society. Inspite of Warren Hastings strong advocacy and pleading in favour of proposed changes the matter was not proceeded to any conclusion for the rest of his tenure as the governor general [16]

Changes in Criminal law 1790-93

The first attempt to modify the Muslim law of crime was initiated by Cornwallis in 1790.[17] Lord Cornwallis divested the Nizam of any authority over the Nizamat. He abrogated crucial Muslim laws formulated by Abu Hanifa that illogically maintained that a murdered was not liable for punishment if the crime was committed by strangling, drowning, poisoning, or with a weapon which was not made of iron. It was also declared that the kin of the deceased didn't have any right to remit the sentences of the offender. The government in 1791 also abolished the punishment of mutilation and imprisonment and hard labour were substituted in its place .Cornwallis desired abolition of the rule under which a murderer was not held liable to Capital punishment if he committed by drowning poisoning etc . The Muslim law did not permit a Hindu to testify against Muslim accused this law was now abolished.[18]

Changes in 1797

As some confusion existed on certain points in the law of homicide the law was restated in 1797 through regulation for the purpose of regulation was to do away finally with all operations of the will of the heirs. In case of murder it was laid down that a prisoner convicted of willful murder was to be punished without any reference to the heirs of the person killed. Another innovation made at that time was to substitute imprisonment for blood money, In cases where under the Muslim law, a person convicted of homicide was liable to pay blood money the court of circuit was to commute the fine to imprisonment for such period as its considered adequate for the offence .

Regulation XIV of 1791 was an important measure which was inspired by humanitarian and benevolent sprit as it granted relief to the person already in prison on account of their inability to pay blood money. Regulation 17 of 1797 severe punishment was prescribed with view to the offence

Reforms of 1799-1802

A number of changes was made to the criminal law 1799-1802 by the government of Lord Wellesley. According to Regulation of 1799 no longer was any murder to be justifiable and in all cases of murder the offenders were to be punished by death. The regulation 18 of 1801 laid that a person convicted of having deliberately and maliciously intended to murder an individual and accidentally killed another individual was to be liable to suffer death. Regulation 16 of 1802 abolished the criminal and inhuman practice of sacrificing children and declared infanticide punishable as willful murder liable to a sentence of death.

Changes in the Criminal Reform 1807-32

The process of modifying and adapting the Muslim law of crimes continued .Punishments for perjury and forgery were enhanced through Regulation II of 1807.Exemplary punishments were prescribed for Dacoity through Regulations VIII of 1808 as the crime has increased enormously. By Regulations XVII of 1817 the law relating to Adultery was modified. The need for four competent male witnesses was rigorously insisted upon and presumptive proof was not regarded sufficient to warrant conviction for the offence. The regulation laid down that conviction for the offence of adultery could be based on confessions, creditable testimony or circumstantial evidence. The maximum punishment to be inflicted for the offence was fixed at thirty nine stripes and imprisonment with hard labour of up to seven years. Married women were not to be prosecuted on such charges

IX.THE CODIFICATION OF THE LAWS

After 1833, an All India Legislature was created and through subsequent reforms through the years led to the enactment of the Indian Penal code in 1860. During the period from 1833-1860, changes were made in the criminal law and the important ones included that thugs came to be punished with imprisonment for life with the hard labour, the status of slavery was declared to be non-recognizable in any court of the company, dacoits came to be punished with transportation for life, or with imprisonment for any shorter term with hard labour. It may also be mentioned punishments prescribed for offences by the British Administrators were very severe at first, with a view to suppress crime. But as society stabilized, and law and order situation

improved, and incidence of crime lessened, liberalizing tendencies set in and the rigours of punishment were some what mitigated

X.THE INDIAN PENAL CODE 1860

The government in Britain in 1833 appointed a commission known as the 'Indian Law Commission' to inquire into the jurisdiction, powers and rules of existing courts and to make reports setting forth the results of the inquiries and suggesting reforms. The law commission work on the Anglo-Indian Codes from 1834 to 1879 and one of the most important contributions of the first Law Commission was the Indian Penal Code, submitted by Macaulay in 1837 and passed into law in 1860. Another important law that was codified was the code of criminal procedure. When it was first passed in 1861, the Code of Criminal Procedure fiercely guarded "privileges" or "rights" as they were alternatively described as and made the law both a symbolic and an actual marker of imperial power

The code secured the legal superiority of "European-born British subjects "by reserving to them special privileges such as the right to a jury trial with a majority of European jurors, amenability only to British judges and magistrates, and limited punishments, all this while maintaining and displaying European power and prestige. As Legislative Council Member Thomas said: "Whether the planter gets justice or not at the hand of the Native Magistrate is rather a secondary consideration; the mere fact of his having, on some trifling charge, had to appear before and be tried by a Native Magistrate, of the same caste and family, the codification of the criminal motion created a structure in the Indian Legal System and this structure continued to dominate through the years of British Rule in India.

XI.CONCLUSION

The essential object of criminal law is to protect society against criminals and law-breakers. For this purpose the law holds out threats of punishments to prospective lawbreakers as well as attempts to make the actual offenders suffer the prescribed punishments for their crimes. Therefore, criminal law, in its wider sense, consists of both the substantive criminal law and the procedural (or adjective) criminal law. Substantive criminal law defines offences and prescribes punishments for the same, while the procedural law administers the substantive law.

REFERENCES

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[2.] Jois, M. Rama., Legal and Constitutional History of India, Vol.I, pp. 575-76
[3.] Choudhuri, op. cit., p
[4.] (quoting Alfred Russel Wallace as quoted by Durant, Will: The Story of Civilization (Part I) Our Oriental Heritage, p. 27.)
[5.] Choudhuri, Dr. Mrinmaya, Languishing for Justice, p. 4.
[6.] Ibid., (quoting Keith, A. Berriedale: "The Age of the Rig Veda" in The Cambridge History of India, edited by J. Rapson, Vol. I, p. 87).

[7.] exemplary punishment imposed on habitual offenders or dangerous character

[8.] Ibid pg 363.preamble to Regulation 53 of 1803

[9.] it is a commentary upon the Bidyul-ul-Moobtadee composed by Sheikh Boorhan-ud-Din Ali ,son of Abu Bukr.

[10.] It consisted of 61 books which were composed in Arabic under the authority of Emperor Aurangzeb and was later on translated into Persian.

[11.] Rankin , OP,CIT,197

[12.] Monokitone Jones , Warren Hasting 333

[13.] This is the year when Cornwallis introduced his reforms in Criminal Justice : Supra CH. XI

[14.] Infra , Chs Supra,61

[15.] Supra 62

[16.] Background to Indian Law 169

[17.] Supra 129

[18.] letter to Bengal government , 12 April 1772