

History & evolution of Criminal Law in India

History of Criminal Law

Man has always had a sense of morality, even if it wasn't called that, the conscience of a man was the rudder that was used to decipher between right and wrong. Society did not just turn up and decide what was right, for some they would state it as God-given; others would state it as what society had pondered, debated and decided & only that would consist of right and wrong. As history speaks for itself, there was always a sense of a need for punishment or reward depending upon the act. 'An eye for an eye, a tooth for a tooth' was the rule that was applied to criminals since time immemorial. Whether we turn to any religious text, the Mosaic laws, the Sharia law, or the Vedic texts, letting wrong go unpunished was never upheld in any of them. Justice was and has been a virtue that is central to human life and society.

The early civilizations did not distinguish between civil law and criminal law. It is alleged that the first written codes of law were by the Sumerians circa 2100-2050 BC. The first signs of a distinction between civil and criminal came to be during the Norman Invasion of England. The idea of State dispensing Justice, in a court setting, emerged only in the 18th Century. Europe began to employ the Police system, systems were thus set up and mechanisms enforced for delivery justice.

To understand the history and the evolutions of Criminal Law in India, we first need to understand Ancient India, filled with all its beliefs, customs, and traditions. Vedic texts dictate the need to purge evil yet there is no judicial system that seems to be set in place. The head of the community, who would be the village elders, would decide on how one should be punished according to the measure of the evil done. The Smritis, Shruti's even the Manu Smriti have clear indications of the importance of punishing the wrongdoer. Further, with the Mughal rule in India, there was a need to produce the criminal in front of the King who was the author of all decisions and his word was considered final. Islamic law was used to decide what punishment would be pronounced on the criminal.

Codification of Criminal Law in India

Under the colonial rule of the British everything changed, in 1833 the British government appointed the 'Indian Law Commission' that would study the existing laws in India, jurisdictions of the courts present at the time & the basis and principles of the current laws. This commission was to give a report and suggest necessary changes and reforms that would be required to codify laws in India. One of the most important contributions of the Indian Law commission was the formation of the Indian Penal Code; this was submitted by Lord Macaulay in 1837 which became law in the year 1860 after almost thirty years of heavy deliberations. At the same time, they also wrote the Code of Criminal Procedure, 1861. Most procedural laws came after this code.

These legislations were criticized at the time, but when we study history and look back these laws became the basis on which our justice system functions, the principles of justice, equity and good conscience form the basis of the laws that are detailed in these Acts. There was a deliberate need to understand the people that this law was being written for, right from punishments for Sati, bride burning, abolishing untouchables or infringing on human rights, these laws thus uplifted the underprivileged and provided a chance of justice for those who were trampled upon. Owing to the Indian Penal Code, other legislations punishing crimes mentioned above were also brought into force.

Post Colonial Changes

The Indian Penal Code and the Code of Criminal Procedures have been through regular changes through the ages to make them relevant to the current time and culture. Jurists and philosophers have developed various theories of criminal law. Professor KD Gaur propounds that there are four theories under which criminal law has emerged; the civil wrong theory, the social wrong theory, the moral wrong theory & the group confliction theory. According to the famous philosopher, Henry Maine, he states that '*penal law of ancient society was not the law of crime but the law of wrong*'. In the beginning, there was no distinction drawn between laws, there was no division such as civil law or criminal law, any law broken was treated in the same manner. Whether you steal a piece of ornament or if you steal a

domestic animal belonging to your neighbour, you had to make good the wrong done, whether by compensation or other prevalent forms of punishment. There was a price set on the life of a man, all societies did not follow the principle of an eye for an eye, some set a monetary value on the life of each person, and that would have to be repaid.

On studying Criminology one learns that even the life of an animal had monetary value. As society advanced with time, the hunger to purge evil and let justice prevail was not being fulfilled with money or property, man preceded to find satisfaction only with another's life taken. As the famous words go, one who takes the life of another forfeits his own. In the wake of this, it was important for there to be a justice system, a system that did not let the victim face injustice and neither did a wrongfully accused person get punished.

Conclusion

The Indian Penal Code in all its glory is a document that was made suited for India, by the British. Today we still follow the same rules and laws; with different amendments as time and culture changes, but this text has been the backbone for delivering justice to those violated. Criminal law in India aims to punish the guilty and build a society that is free from the clutches of evil, getting rid of them one by one. Even though today's society does not practice retributive justice, justice today is not only for the victim but for society at large.

It is extremely important to understand humans and the need for criminal law, the need for any law, to bring order to chaos that exists in this world. Dostoyevsky the author of Crime & Punishment beautifully writes *"Man is a mystery. It needs to be unravelled, and if you spend your whole life unravelling it, don't say that you've wasted time. I am studying that mystery because I want to be a human being."* Owing to this today we maintain order, fight for justice and punish the criminal based on the history and evolution of Criminal Law.

Frequently Asked Questions-

How many types of Criminal Law are there in India?

Legislations on Criminal Law are divided into three parts in India; the Indian Penal Code, 1860; The Code of Criminal Procedure, 1973; The Indian Evidence Act, 1872. Apart from these major Acts, there are some special minor Acts as well.

Who drafted the IPC?

The code was drafted in 1860 on the recommendations of first law commission of India established in 1834 under the Charter Act of 1833 under the Chairmanship of Lord Thomas Babington Macaulay. It came into force in British India during the early British Raj period in 1862.

What are the most recent amendments to the IPC?

The Criminal Law (Amendment) Bill, 2018 is the latest attempt to amend the IPC, one of the key features of this bill is to increase the minimum years of imprisonment for rape from 7 to 10 years