

*AN ANALYTICAL STUDY ON REVAMPING THE CRIMINAL LAWS WITH  
RESPECT TO CHANGING SOCIETAL STRUCTURE*

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**INTRODUCTION**

**“An unjust law in itself a species of violence”.**

**-Mahatma Gandhi “Non violence in peace and war”**

The primary aim of criminal law is to protect the rights of individuals from being transgressed by another and to maintain peace, law and order in a society. To regulate the code of conduct in a society sanctions are provided through preventive and punitive mechanisation of law. In the words of James Madison “ if men were angels no govt. would be necessary”. Therefore it cannot be defied that very first duty of the state towards its citizen is to provide safeguarding shield against lawlessness, violent acts and mala-fide deeds of others as it is barely possible for a society to access the freedom without the protection of its rights. The problem of the extent to which criminal law is to be used for regulating behaviour at a vast scale required for social change in the modern societies emphasizing social justice is a raging contemporary controversy in the whole of the common law world (KUMAR P. ).

A contemporary society is multitude of diversities and ongoing changes in the need, greed and tolerance of the society affect the uniformity and efficiency of criminal justice system. In some ways or the other crime has a strong linkage with culture and society. However in the last few decades attention of the international community and the western liberal democracies has increasingly focused on the relationship between crime, culture and society (RIGONI, 2018).

UNESCO defined culture as “the complete whole which includes knowledge, belief, arts, morals, laws customs and any other capabilities and habits acquired by a human as a member of society”.

Every nation has majorly 3 components of criminal justice system:

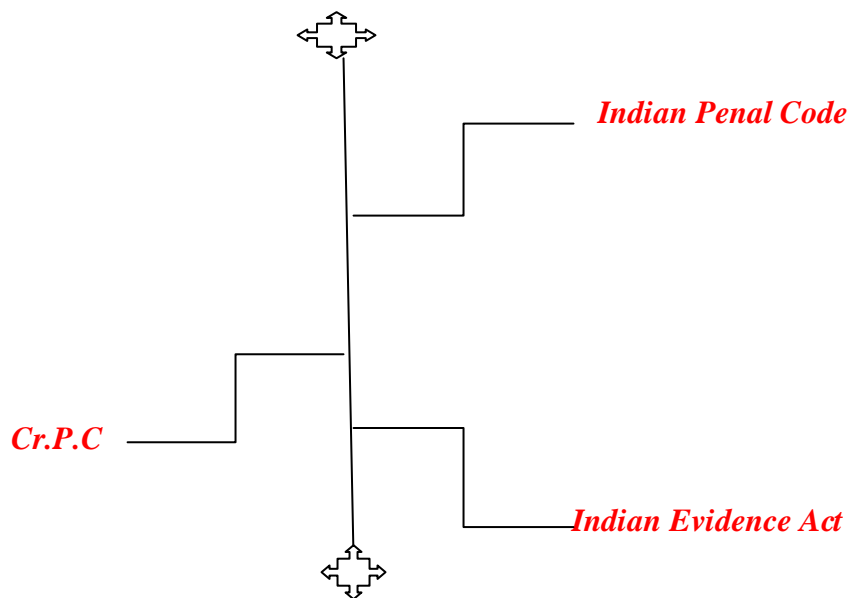
- Police
- Courts
- Correctional measures

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Which are encircled by number of institutions and agencies along with procedure established by law and government to curb the crime. Crime prevention laws are made with the objectives such as to prevent the occurrence of crime, to punish or to rehabilitate the criminal, to provide compensation to victims and to maintain law and order with such deterrence to reclude the offenders from repeating the crime. Criminal laws in India originated long before the British era. Since then our criminal laws has gone through some gruelling changes. Presently overhaul of major criminal laws has been the subject matter of interest for the government as well. It is evident that fountain of Indian criminal laws consisted of IPC and Cr.PC prominently was much ahead of its time when it came into force but the other side of the fact is they have been faltered in keeping the pace with changing requirement of the society and crime trends.

### Fountain of Criminal law



These pieces of legislation such as IPC, CrPC, IEA surely were good laws in their times for colonial rulers and elite members of the society, but have outlived their relevance and scope with respect to some provisions, in changed times and circumstances. When one of the fountains of major criminal laws i.e IPC was taking shape in dab hands of Thomas Babington Maculay, it turned out to be a prestine, coherent and extremely comprehensive contribution in the series of penal laws and replaced many religious and criminal laws. But Maculay's Indian Penal Code languished in the bureaucracy of East India Company and Board of Control for over two decades before being finally enacted in 1860 and in the following decades the colonial government modified it to serve the interest of those ruling over Indians. Sedition, Blasphemy and criminal conspiracy came to be criminalised and till now they exist in the same manner as they used to be in our statute books (PAI, 2019).

Almost four years ago in 2016 our then president Pranab Mukherjee highlighted the need of updating the 19<sup>th</sup> century laws which are almost 100 years old, to make it more relevant for 21<sup>st</sup> century's advanced society. The IPC was intended by T.B. Macaulay to be regularly revised by legislative amendment. This did not happen, with the result that the courts had to undertake this task upon themselves. The result was not very satisfactory as judges relied on common law, which the code had intended to replace. Most amendments have been ad hoc and merely reactive, and have not kept in view the underlying drafting principles of the original code. (MUSTAFA, 2016)

In one of the reports of **THE HINDU** recently Home minister of India asked the BPR&D to walk ahead in the field of reformation with respect to Indian penal code and criminal procedure code respectively. The continuous ranting about revamping the back bone of criminal laws i.e IPC and Cr.PC author wants to make a catch here that, with some substantial changes, obsolete provisions must banish their way out of the statute books in order to make our laws more comprehensive, strengthened and consistent with the new ideals of morality for our dynamic society.

#### ***WHY REVAMPING IS NECESSARY?***

The analysis of current scenario depicts that revamping the major criminal laws shall not be an easy journey and may prove to be outlandish. The real danger can be presumed as in the era of rehabilitation and restorative justice system, we may add some more regression and retribution along with deterrence. Higher probability is that crime shall get more spotlight and criminals shall be knot-tingly shadowed.

Another perspective in the analysis shows that changes in the existing out gone provisions, securing the place in statute books may bring the coherence, lucidity and consistency. In the words of Faizan Mustafa a laureate personality holding the post of vice chancellor in NALSAR, Hyderabad "The recent instances of award of death penalties were just for conspiracy on the basis of indirect and circumstantial evidence and not actual participation in terror crimes, and thus the test of 'rarest of rare' was not met except in the case of Kasab. Similarly, liability under 'common object' under the principle of constructive liability has been pushed to unduly harsh lengths as mere membership of the unlawful assembly without any participation in the actual crime has been made punishable. (MUSTAFA, 2016)The re-examination of the law of sedition, inserted in the IPC in 1898, too is necessary in spite of emotional difficulties due to the intense debate on nationalism. It is legitimate to ask whether we need a law of sedition, which we ourselves condemned during the British regime. Sedition is now used as a ground for restricting freedom of speech under Article 19. However, the Supreme Court had held that mere anti-national slogans, if not accompanied by violence, is not sedition. Sexual offences show patriarchal values and Victorian morality. Similarly, the penal code attaches undue importance to the protection of property.

More than 100 sections deal with property and give even the right to kill not only to protect one's property but also to safeguard the property of others. Moreover, the code goes out of the way to protect just 'possession' and does not care for 'ownership'. Also, in respect of the old notion of insanity represented in the IPC, the science of psychiatry has completely altered the old notions. (MUSTAFA, 2016)

### ***PROVISIONS IN THE NEED OF CHANGES***

Rightly said **“for common man justice and truth are synonymous so when truth fails, justice fails automatically”**. Commemorating the major criminal laws with the agenda to serve the community and its perpetrators and interpreters like judges, justice system, agencies like prison administration, police etc. will make it a model picture for overhauling of such laws be it bringing the changes in punishment provision mentioned under IPC to trial and investigation process mentioned under Cr.PC, from producing evidences according to the process mentioned under Indian Evidence Act to inherent powers of high court mentioned under criminal procedure code. In the words of Malimath Committee report inherent powers given under section 482 needs to be revised which talks about residuary power to do justice. Such power in the hands of High Court leads to delayed justice and burden on litigation. There is no prudent reason to deny the inherent power in the hands of subordinate courts.

So far as the punishment provisions are concerned, different punishments are the need of current era in order to meet the ground level realities of the dynamic society. It is evident that India has adopted conventional practice for punishing offenders which is mentioned under section 53 of Indian Penal Code. Apart from custodial punishments, supervision orders along with sentence and fine should be introduced but it does not imply that author wants to refuse the fact of deterrence, it is just that rigorous punishments should be saved for the heinous offences like rape, murder etc as such heinous offences leave the harsh impact on the society at large. It is the time of advancement of science, medicine and human psychology so we should try to find out the etiology of crime in our country and bring about legislation which introduces a whole range of new and innovative punishments. (Dr. Justice VS Malimath Committee Report, 2003)

### ***ANALYSIS ON THE BASIS OF REVIEW***

First and foremost element to keep any law alive and relevant adhering to societal changes is that reforms and revision on periodical basis should subside the unsighted laws to get headway with it. Last decades gives the apparent evidences that brazening steps are being taken by nation's government with the help of most laureate experts of the field. First amongst all was report by Justice VS Malimath. In the year 2000 Malimath committee was formed to bring the reforms in criminal justice system with the object of examining the principles of criminal laws and to resume with the confidence of people in it.

To cater the growth of unproductive, outdated criminal and procedural laws, to put an end to inefficiency of judiciary and to prevent the criminals to let go off the hook.

Indian criminal justice system consists of both deterrent and reformatory poles of justice. Thus in the year 2003, Malimath committee submitted its report with more than hundred recommendations such as incorporating special division of criminal courts with the judges specialized in criminal law, summoning power of court should be extended, courts should be given freedom to ask questions to draw any information and inference when accused refuses to reply and establishment of national/state security commission and so on. But the aftermath of this report were more like bitter pill to swallow as the implementation of the recommendation were not translucent.

Another attempt to bring reforms and to fulfil the lacunae of Malimath committee report, committee was formed in the chairmanship of Justice Madhav Menon in the year 2007, focusing upon the criminal justice reforms. Highlights of this committee were as follows:

- Revamp the complete criminal procedure and laws related with it.
- A paradigm shift was made from being criminal centric to victim centric by providing the idea of victim compensation fund.
- Establishing the authority to deal with the organisational crimes providing threat to national security of India.

The goals accomplished by such attempts give the mixed results in response to the requirement as government further brought the recommendations in the action by bringing amendments like Criminal Law Amendment Act 2013 followed by 2018 which was the result of heinous crimes committed in India such as Nibhaya rape case, Kathua and Unnav case. In the year 2013 Criminal law Amendment Act introduced the changes by ingratiating legislature in the domain of sexual offences by amending existing provision and inserting new ones but deterrence added in by this amendment could not fulfil the object in the realm of heinous offence committed after Nirbhaya case. Hence another amendment i.e Criminal Law Amendment Act 2018 was introduced to increase the sanction for the offenders of Rape and inserting new provisions like section 376AB, 376DA, 376DB of IPC. It was not only limited to penal code but also amended the provisions of Criminal Procedure Code, 1974 by inserting subsection to section 374 Cr.P.C. for speedy justice, amending the provision regarding anticipatory bail mentioned under section 438 of Cr.P.C. and reduced the period of investigation from 3 to 2 months in case of the offences like rape, which clearly shows the positive steps to make criminal laws more efficient to curb the crime .

It is only after criminal law amendment Act 2018, section 53A and 146 and 114A of the IEA were extended. These provisions have included rape and gang rape of minor girls below 12 years of age and below 16 years of age along with the presumption of consent and their previous sexual experiences.

But backwash of such amendments seem to be full of otiosity albeit parliament intended to brought positive transformations yet certain areas were left untouched as mentioned by the author in the beginning of the study. It is said that best qualities of criminal laws are that they must be consistent to the culture and society and must be absent from all the ambiguities, it should not be catastrophic to individual's freedom and fundamental rights. Faltered criminal laws loose the confidence of the people and calls for the precision and eloquence.

According to the economic survey of the year 2018-2019 more than 3 crore cases are pending in lower courts creating burden on the judiciary as well as system (G.S BAJPAI, 2019). The root cause seems to be the ailing procedural laws as apx. **68 %** of India's prison population consist of under trial prisoners as per NCRB prison statistics.

India has recorded **1.3 percent** increase of crime rate in the year 2018 as compared to 2017, reported by National Crime Record Bureau. The increasing graph of crime rate depicts dismaying appeal to get overhaul of criminal laws.

In the words of former **DG Prakash Singh( Border Security Force)**, “ there is no problem in overhauling of major criminal laws because there are some sections which have gone outdated requiring whole lot of internal and external reforms such as attitude of police towards complainants, quick registration of FIRs moreover great autonomy in the matters of investigation is required”. (Krishnan, 2019)

According to **S.R. Darapuri who is a retired IPS officer**, “There are many offences covered under the IPC, like sedition, that are not relevant today. The sedition law is often misused today and needs to be scrapped. Moreover, there are other crimes that are not recognised under the IPC, such as economic crimes, hate crimes like mob lynching. Reforms must be introduced to uphold democratic values, and human rights must be given top priority. Both the IPC and the CrPC must be in tune with the Constitution. In order to do that, provisions like preventive detention under the CrPC that are in blatant violation of Article 21 (right to life and personal liberty) must be scrapped”. (Krishnan, 2019).

As per the views expressed by **Vappala Balachandran** who is a **Former Special Secretary, Cabinet Secretariat & author of 'National Security and Intelligence Management'**, "Currently, neither the IPC (1860) nor the Police Act (1861), duly amended after the Independence, codify the legal necessity of ensuring that the police behave better with the public. This is partly because both these legislations were enacted by the British to empower the police as their coercive arm". (Krishnan, 2019)

All the reviews expressed by above mentioned chachet personalities provides an allusive exigency to bring forth acute changes in criminal laws by leveraging the platform of amendments adopting holistic approach vis-a-vis dynamic society.

### ***SUGGESTIONS/CONCLUSION***

**"Truth does not pay homage to any society be it ancient or modern. But society has to pay damage to truth or perish".**

~ Swami Vivekananda

Refurbishing the laws will not suffice if it is done without adhering to the requirement of continuously changing society. Journey of overhauling the criminal laws must be based on moral and juristic principles. Inducing prejudiced amendments without clarity for particular class of offences surely call for another change to fulfil the gap. Using proactive approach inclusive of principles of criminal jurisprudence for the creation of new category of offences with broad classification, and omission of out dated laws can lead to make our strongly drafted laws more comprehensive and coherent. According to Neeraj Kumar (former police commissioner of Delhi) "writing and overhauling of IPC or CrPC again is all fallacious. Such laws are well thought and well written. Whenever any changes were required, it has been amended to meet the challenge of the times. We need to think of other ways to improve the system rather than introducing drastic changes to the IPC or for that matter other laws in the statute book." (Krishnan, 2019) Certainly the views expressed by him differs from person to person with respect to the change in existing status. But truth should be prevailed and damaged should be repaired. Probably this is why legislature intended to test the changes within the purview of certain category of offences and amendments brought in the year 2013 followed by 2018 were the results of the same.

Crime is not a new concept. It is a result of multitudinous complicated factors. The emergence of crime can be traced through social, economic, demographic, local and organisational factors which eventually reflect societal, professional, academic and emotional stability and in return it influences the nature, pattern and volume of crime. Presently India criminal justice system not only requires revamping but also addition of new deterring measures like serving community, rehabilitation and restitution will also prove to be a prolific step towards the change. Recent steps taken by government s with the cooperation of legislature such as :

- Allowing videography of statement from the offender or witness.
- Expansion of the definition of “ Rape” mentioned under section 376 of IPC and increasing the quantum of punishment for the heinous crimes.
- Removal and decriminalising the offenses like adultery (section 497 of IPC) and unnatural offences(section 377 of IPC) creating the hindrance in the smooth justice system.

These commendable steps reignited the need that we as a nation are ready to bring the transformative changes to make our legislations more significant but without undermining the principles of justice is the *sin qua non* for the same.

But what more required is the change without ambiguities and full of precision along with coherence as to satiate the society and its faith in the criminal laws and system which will tend to give positive results curbing the crime.

Durkheim indicates that crime is found in all societies, he says "Crime is normal because a society exempt from it is utterly impossible". The fundamental conditions of social organization-logically imply it. A society exempt from it (crime) would necessitate a standardization of the moral concepts of all individuals which is neither possible nor desirable. Durkheim maintains that crime is not only normal for society but that is necessary. Without crime there could be no evolution in law (A.LUNDEN, 1958). Therefore the possible solution to cater the needs of the society with respect to dealing of the crimes is to evolve the laws accordingly with stringent measures. The provisions creating burden over criminal laws such as offences against coins and stamps, public tranquillity, trespass should be narrowed down in more precise and well articulated manner, as unnecessary burden over prison administration as well as judiciary can lead to impair our criminal justice system depicting sluggishness of procedural and ineffective nature of criminal laws seeking for reforms and refurbishment. But introducing and rewriting the laws will turn out to be futile if simultaneous wave of changes is not induced in all the pillars of criminal justice system such as judiciary, legislature and police. Thus a roadmap having the direction of making headway with the conspicuous criminal laws and issues can navigate the whole criminal justice system to be the most intrepid system adhering the volatile crime scenario of this dynamic society.