

PART IV

REFORM

REFORM

Before the year 1862, the criminal judicial administration was fairly confused and unscientific. In the Presidency towns of Bombay, Calcutta and Madras, English criminal law, pure and simple, was being administered and in the mofussil, Mohammedan Law was being applied. Lord Macaulay's Commission (the first Law Commission) did the marvellous job of devising a Penal Code for India, which was to a considerable extent inspired by the English criminal law. That was natural, because the Commission consisted entirely of Englishmen. But the Commission did take into consideration the peculiar conditions in India then prevailing.¹ It also kept in view the criminal codes of other countries like the Code Napoleon and the Louisiana Code. The Indian Penal Code has been rightly called a piece of masterly legislation. But a century has elapsed since its enactment and criminology and penology have made much progress since then. Though amendments have been made in the Indian Penal Code by modification of some of its sections and addition of certain other sections,² substantially the Code has remained unaltered during these one hundred years. Like all major legislation, the Indian Penal Code required amendment almost immediately after it became law and the first set of amendments came in the year 1870.³ In other cases amendments became necessary for administrative reasons.⁴ In some other cases the Code had to be amended to bring the law in accord with international requirements, and conventions.⁵ But, all that the State wants cannot be put into one piece of legislation by modifications and amendments, hence a large number of additional penal laws have been enacted since 1862. Some of them are special laws relating to particular matters but having all India application. Others are local laws applicable only to a particular territory of India. The Government by these special and local laws provided supplementary penal provisions which, it felt, were not provided for by the Indian Penal Code. It is not possible in this

1. Sections 306, 310 and 391 I.P.C.

2. Sections 52A, 53A, 55A, 108A, 120A, 120B, 121A, 124A, 153A, 165A, 171A to 171 I, 216A, 205A, 205B, 263A, 264A, 295A, 304A, 366A, 366B, 477A and 489A to 489E.

3. Act 27 of 1870.

4. Section 124A.

5. Section 366A.

work to examine the various and very many local laws, having local application or having been enacted by the State Legislatures. It would be worthwhile for the Government to have these local laws examined carefully. The statistics show that a large number of convictions in criminal offences are under the local and special laws like the Excise Acts, Municipal Acts and the Control laws, the Trade Employees' Acts, the Commodities Control Laws, Revenue and Tenancy Laws etc.⁶ The States are competent to enact laws over subjects mentioned in List II of the Seventh Schedule to the Constitution. Furthermore the notions of criminal jurisprudence as contained in the Indian Penal Code originally drafted are not the same as the notions of today.

The Criminal Law⁷ has been called, and has been rightly called, one of the most faithful mirrors of a given civilization reflecting the fundamental values on which the law rests. Much has happened in India since the enactment of the Indian Penal Code. Revolutionary changes have taken place in the economic, social and political fields. More specially, the last War followed by the independence of the country, has materially affected the state of affairs in India. Black-marketing and profiteering which were almost unknown before the last War became rampant during the War. But that in itself was neither surprising, nor alarming, as these are the evils of War. Such evils had also crept up in other countries during the war time. The Government of India rose to the occasion by enacting the Defence of India Act and the Rules thereunder which provided severe penalties for blackmarketing, profiteering etc. Whereas some other countries quickly came back to normal life on the termination of hostilities, in India some of the bad habits learnt during the war were retained and continued even in peace time. Thus profiteering and blackmarketing have now become a common practice and a class of unscrupulous businessmen have come to stay and have, to a certain extent, flourished. It is true that the Government has not been sleeping over this state of affairs and it has tried to check these malpractices by enacting laws like the Essential Supplies Act. But the time has come to thoroughly examine the substantive criminal laws and to streamline the laws which have become obsolete and to enact new laws to suit the changed conditions.

As Dr. Mannheim⁸ has rightly pointed out "It would seem imperative that each successive generation should realise its duties to work out

6. Report on Police Administration in the Punjab year ending 1955 pp. 60, 61 and 66; 1954 pp. 51 and 54; 1953 pp. 50 and 54.

7. Mannheim, *Criminal Justice and Social Reconstruction*, (1946).

8. Mannheim, *Criminal Justice and Social Reconstruction*, (1946) p. 4.

afresh its views on the problem of crime and turn these views into the small coin of legislation instead of retaining unchanged, as a matter of course, the law inherited from its predecessors."

Moreover the independence gained by India, soon after the War, has given rise to new legal problems. It is a noticeable feature that crimes of a different nature have increased within the last 15 years. Whereas formerly crimes of a violent type and ordinary cases of theft figured on the cause list of the magistrates' courts, new types of crimes have now sprung up. Such crimes have been called "white collar crimes" by Prof. Sutherland and "economic crimes" by Dr. Mannheim. The public conscience in India has been aroused against such crimes and good deal of indignation is voiced in the press and from the public platform from time to time. Clever as these anti-social elements are, they are always devising means and methods to circumvent the law. And the question that is often asked is—Are criminal laws modern enough to prevent such evil practices? When we talk of prevention of crime, we include punishment as a method of prevention,

The following news items will amply explain the position :

"New Delhi,⁹ October 6, the Delhi Administration is considering a proposal to provide for deterrent punishment for those selling cinema tickets in blackmarket.

In a bid to root out blackmarketing in cinema tickets in the Capital, the Sales and Entertainment Tax Department has sent various recommendations to the Administration to make the existing Law more stringent and to remove loopholes.

It is proposed to make the offence of selling cinema tickets in blackmarket a non-bailable offence and provide for severe punishment including jail term and a fine.

According to the authorities, the present law has failed to properly handle the goonda gangs which indulge in this social evil."

Similarly in another news item it was stated :¹⁰ "Counterfeit greetings to be banned.

From our Special Representative, New Delhi, Thursday: What can best be described as a bill to outlaw counterfeit greetings is likely to be introduced and passed in the winter session of the Parliament.

Lately, the Central Government has received representations from several States that some people are in the habit of printing greeting forms which closely resemble currency notes, and that these greetings are even passed on to the unwary villagers as legal tender.

9. Indian Express dated 7-10-1961.

10. The Statesman dated 3-11-1961.

Under the proposed law, which will amend the relevant sections of the Indian Penal Code, the printing and publishing of any document resembling the country's currency will be made an offence."¹¹ Our laws must change with a change in the thinking of the community. As Prof. Friedman has observed :¹²

"What kind of conduct an organised community considers, at a given time, sufficiently condemnable to impose official sanctions, impairing the life, liberty or property of the offender, is a barometer, of the moral and social thinking of a community. Hence the criminal law is peculiarly sensitive to changes in social structures and social thinking."

Professor Friedman, further goes on to say :¹³

"Social changes affect criminal law in many ways; through development in science; specially in biology and medicine; through changes in the moral and social philosophy; through changes in the structure of the society specially in its transition from a rural, self-contained and relatively sparsely populated, to a highly urbanised and industrialised pattern."

Similarly Prof. Wechsler observed :¹⁴

"The purpose of the penal law is to express a formal social condemnation of forbidden conduct buttressed by sanctions calculated to prevent it....."

There are two developments in India which require special notice. One is the alarming growth of population and the other is the rapidly increasing industrialisation of the country. Many more mouths have to be fed, more bodies have to be clad and more heads have to be provided with a shelter than was the case a century ago. Therefore, hoarding of essential commodities or their wastage has to be severely checked, if need be, by providing criminal penalties. Moreover in an industrialised society regulatory legislation has to be provided to meet the new situation.

Professor Friedman, explains this matter in the following words :¹⁵

"Where the national philosophy is the development of national economy to the general benefit by the planned use of resources, the intentional or careless waste of national assets

11. See Sec. 489E Penal Code.

12. Friedman, *Law in a Changing Society*, (1959) p. 165.

13. *Ibid*, p. 166.

14. "The Criterion of Criminal Responsibility" 22 *Un. of Chicago L. Rev.* at p. 374.

15. Friedman, *Law in a Changing Society*, (1959) 188,

acquires basic importance....If, as many demographers and ecologists believe, the growth of the world's population will increasingly outstrip the available resources, the conservation of agricultural, mineral and other natural assets will become of increasingly vital social and legal value, fortified by harsh criminal sanctions”.

At a time when government departments and many independent corporations, directly or indirectly controlled by the Government, assume an increasing variety of functions and responsibilities in the social and economic life of the nations, the exemption of either Government or Government corporations from criminal liability generally is neither morally nor technically justified.

Good many laws have been enacted by the legislators in India in the twentieth century to meet the above requirements. A mass of legislation has grown round the Indian Penal Code in the shape of local and special laws. It is not possible in this work to give a list of the large number of local laws either passed by the Central legislature or passed by the former Provincial and the present State legislatures. But it would be useful to examine the special laws passed by the Central legislature from time to time. It may also be noticed that with the advent of British rule in India, there was a complete codification of substantive criminal laws. There is no such thing as the common law in Indian criminal jurisprudence. This state of affairs has its advantages as well as disadvantages. The advantages are certainty and precision. The disadvantages are that unless the legislature itself changes the provisions, the court is bound by the rigidity of the law.

Though attempts have been made by the government to introduce new legislation from time to time to cope with the rapidly changing conditions in India and to penalize the new types of offences, the wrongdoer seems to have stolen a march over the custodians of law. Moreover criminal legislation has become diverse and somewhat unscientific. It needs consolidation. There are many Acts which an average citizen may not have even heard of and, in sheer ignorance, he may be transgressing the limits of law. It is true that “ignorance of law is no excuse”, but it is desirable that laws should, as far as possible, be consolidated, so that it may be within the reach of an average layman.

Moreover, as far as possible, the same act or omission should not be made punishable ordinarily under two or more provisions of law specially when different punishments are provided. The objection often taken is that such a diversity gives a discretion to the prosecutor

to discriminate in prosecuting the accused-person under one or other provisions of law.

The tendency of the legislature has been to provide severer punishments in special laws than the punishments provided for similar offences under the Indian Penal Code. This would be clear from a comparative statement given in the Appendix. Perhaps the intention of the legislature was to take a more serious view of some offences committed under special circumstances. Simply because an act or omission constitutes an offence under a local or special law and under the Indian Penal Code, it would not mean that the offender would be liable to be punished twice for the same offence. But the offender would still be liable to be prosecuted and punished under either one or other of those enactments.¹⁶

CONSOLIDATION

Perhaps the time has come to transfer some offences from the special laws to the Indian Penal Code in order to avoid duplication. As has been mentioned earlier, in some cases the same act has been made punishable in the Indian Penal Code and also in a Special Act. It is true that a person cannot be convicted twice for the same act. But where two separate punishments are provided, it is left to the arbitrary decision of the prosecuting agency to prosecute the accused under one Act or the other.

The new Canadian Criminal Code¹⁷ which came into force on April 1, 1955, inter alia, contains the following offences:—

- “Section 58(1) False statement to procure passport.
- Section 59(1) Fraudulent use of citizenship papers.
- Section 82 Possession of fire-arms and offensive weapons.
- Section 150(1)(b) Crime comics.
- Section 150(2)(d) Advertising cures for venereal diseases.
- Section 151(i) Publishing indecent details of divorce proceedings.
- Section 175 Gaming and betting.
- Section 179(i)(a) Lottery and guessing contests.
- Section 180(i) Gambling in public conveyance.
- Section 201(i) Automobile and traffic offences etc.
- Section 308(b) Fortune telling.
- Section 325 Stock Exchange frauds.
- Section 328(i) Real estate frauds.

16. See Section 26, General Clauses Act, X of 1897.

17. Snows' Criminal Code of Canada VIth Edition (Popple).

Section 336(i) Fares, tolls and ticket frauds.

Section 340(i) Falsification of accounts, returns etc.

Section 343 False prospectuses and company statements etc.

Section 345(i) Trader failing to keep accounts.

Section 412(i)(a)(b) and (c) Discrimination in trade-lowering prices in particular areas and lessening prices to eliminate competitors.”

Almost all the offences mentioned above, do not find place in the Indian Penal Code though some of them have been put down as specific offences in special Acts in India.¹⁸ If such offences can find a place in the Canadian Criminal Code, there is no reason why a place cannot be given to them in the Indian Penal Code.

In the new Korean Penal Code,¹⁹ which came into force on October 3, 1953, the following provisions have been made :—

Chapter XVII Crimes concerning opium.

Articles 198-206 Manufacture of opium, opium smoking equipment and possession of opium.

Chapter XXIII Crimes concerning gaming and lotteries.

Articles 246-249 Habitual gambling, opening gambling places and selling lottery tickets.

Chapter XXXIV Crimes against credit, business and auction.

Articles 313-315 Injuring credit, interference with business and interference with auction or billing.

Chapter 35 Crimes of violation of secrecy.

Articles 316-318 Disclosures of secrets confided by virtue of occupation.

Some of the above-mentioned offences are also to be found in India in the Special Acts.²⁰

In the process of consolidation and simplification of the substantive criminal law of India the following matters need attention :—

- (i) One method of consolidation which can be suggested is that the scope of the Indian Penal Code should be so enlarged as to include all offences. In other words, the Indian Penal Code should be the only substantive criminal law and

18. *e.g.*, Arms Act, 54 of 1959, Motor Vehicles Act, 4 of 1939, Companies Act, 1 of 1956, Banking Companies Act, 10 of 1949.

19. Korea—The American Series of Foreign Penal Codes.

20. Opium Act, 1 of 1878, Official Secrets Act, XIX of 1923, Atomic Energy Act of 1948 and Collection of Statistics Act, XXXII of 1953.

to this extent the penalty portions of the special laws should be deleted and the offences contained therein should be transferred to the Indian Penal Code. But the difficulty with this process is that this kind of consolidation would enlarge the Indian Penal Code beyond a reasonable bulk. Already there are 511 sections in the Indian Penal Code and scores of more sections will have to be added if this method of consolidation is resorted to. Besides, there are many offences provided in the various special laws which have a meaning and significance with reference to context only²¹ and torn from the context the offences will become meaningless. Furthermore there are many offences in special laws which are committed by the breach of rules made under those laws.²² It would be a highly complicated matter to transfer such offences to the Indian Penal Code.

- (ii) The time has come to carefully examine the Indian Penal Code and to make substantial changes at certain places. No law can be static. Many countries have made radical changes in their Penal Codes. The Soviet Penal Code was thoroughly revised in 1923, 1926 and 1958. The Yugoslav Criminal Code was revised in 1929 and 1951. The new Italian Penal Code was enacted in 1930. The New Polish Penal Code came into force in 1932 and the Swiss Federal Criminal Code in 1937. In 1950, Czechoslovakia and in 1951, Greece enacted new Criminal Codes. A new Louisiana Code came into force in 1942. The new Penal Code of Canada was enacted in 1955. The new French Penal Code came into force in 1959. A new draft German Criminal Code has been finalized in 1960, and the American Law Institute has recently prepared a draft Model Penal Code.

Is the time not ripe to examine the Indian Penal Code also ?

Within the last one hundred years, there have been piece-meal amendments of the Indian Penal Code on more than fifty occasions, but these have been mostly patch-work jobs. Some amendments were of formal character (Adaptation Laws), some introduced new offences into the Code (Sections 124A, 153A, 295A, 304A, 489A to E), some

21. *e.g.*, Arms Act, 54 of 1959, Motor Vehicles Act 4 of 1939 and Banking Companies Act, 10 of 1949.

22. *e.g.*, Indian Aircraft Act XXII of 1934, Employees Provident Fund Act, XIX of 1952, Boilers Act, 5 of 1923, Employees Insurance Act, XXXIV of 1948.

deleted the existing provisions (Sections 490 and 492 and offences relating to Trade Marks), some amendments were necessitated by changes in social outlook and by international requirements (age of minors in ss. 361 and 372, age of consent in ss. 375, 363A, 366A & B), some sought to rectify anomalies pointed out by courts (ss. 108A and 165A). The latest amendment is of S. 153A.

The Indian Penal Code can be radically modified in the following manner :—

(a) *Pruning* : Those offences which have now become obsolete, should be deleted. There were certain activities and practices prevalent at the time of the original enactment of the Indian Penal Code which the drafters of the day felt should be curbed by the sanctions of the Penal law.²³ These practices have now disappeared and therefore the offences relating to them have also become superfluous.

(b) *Re-arrangement of sections* : Some sets of offences can be re-arranged. Instead of the same kind of offences being spread over many sections, the numerical strength of the sections can be reduced in the Indian Penal Code. For instance, several sets of sections²⁴ can be regrouped into one section per set.

If such regrouping is done, in some cases the punishment prescribed may have to be re-examined and one punishment may have to be laid down for that group of offences. For example S. 427 provides the punishment of two years imprisonment of either description, or fine or both, for mischief causing loss or damage to the amount of Rs. 50/-. Section 428 provides the punishment of imprisonment of either description of two years or fine or both for mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, while S. 429 prescribes the punishment up to five years' imprisonment of either description, or fine, or both, for the offence of mischief by killing, poisoning, maiming or rendering useless, an elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of Rs. 50/- or upwards. Then S. 430 prescribes the punishment of five years' imprisonment of either description, or fine, or both, for mischief by

23. Sections 310, 370 and 371 I.P.C.

24. (1) Ss. 131 to 135. (2) Ss. 221 and 222. (3) Ss. 224, 225 and 225 (b); (4) Ss. 231 and 232. (5) Ss. 233 and 234. (6) Ss. 237 and 238. (7) Ss. 239, 240 and 241. (8) Ss. 242, 243 and 244. (9) Ss. 246 and 247. (10) Ss. 248 and 249.

doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human-beings or for animals which are property or for cleanliness or for carrying on any manufacture. Similarly S. 431 prescribes imprisonment of either description for a term which may extend to five years, or fine, or both for mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property. S. 432 prescribes the punishment for the mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage. S. 433 prescribes seven years' imprisonment of either description, or fine, or both for mischief by destroying or moving any light house or other light used as a sea-mark, or any sea-mark or buoy or other things placed as a guide for navigators, or by any act which renders any such light house, sea-mark, buoy or other such things as aforesaid less useful as a guide for navigators. S. 434 prescribes one year's imprisonment of either description or fine or both for mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such. Then S. 435 prescribes seven years' imprisonment of either description and also fine, for mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards or where the property is agricultural produce ten rupees or upwards. Then in S. 436, life imprisonment or imprisonment of either description up to ten years and fine is prescribed for mischief by fire or any explosive substance, intending to cause or knowing it to be likely that he will thereby cause the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property. S. 437 prescribes ten years' imprisonment of either description and fine for mischief to any decked vessel or any

(11) Sections 250 and 251. (12) Sections 252 and 253. (13) Section 255 and 263A. (14) Ss. 264 to 267. (15) 284 to 289. (16) Ss. 292 to 293. (17) Ss. 312 and 313. (18) Ss. 324, 327, 328, 330, 332, 334 and 337. (19) Ss. 325, 329, 326, 331, 333, 335 and 338. (20) Ss. 343 to 348. (21) Ss. 352 to 358. (22) Ss. 359 to 361. (23) Ss. 364, 365, 366, 367 and 369. (24) Ss. 380 to 382. (25) Ss. 385 to 389. (26) Ss. 403 and 404. (27) Ss. 406 to 409. (28) Ss. 411 to 414. (29) Ss. 426 to 437 and S. 440. (30) Ss. 442 to S. 460. (31) Ss. 464 to 471. (32) Ss. 472 and 473. (33) Ss. 475 and 476. (34) Ss. 478 to 483, S. 485, S. 486 and S. 489.

vessel of a burden of 20 tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel. Then finally, S. 440 prescribes five years' imprisonment of either description and fine for mischief, having made preparation for causing to any person death, or hurt or wrongful restraint.

The legislature can either provide one maximum punishment for all the above-mentioned kinds of mischief into one section, provide two or more punishments, depending upon the gravity of the offence.

(c) *Additions to the Indian Penal Code* : As has already²⁵ been stated, there are, literally, hundreds of local and special laws creating offences, which have been put on the Statute Book. Perhaps the time has come to consolidate those laws. Some of the local laws need no longer remain local, but may be given an All India²⁶ status. Moreover, some portions of special laws, creating offences may be deleted after those offences have been transferred to the Indian Penal Code. If that is done suitable modification will have to be made to the Indian Penal Code. For instance, in the Indian Penal Code there exist offences like obstructing a public servant in the discharge of his duties (S. 186), the offence of furnishing false information to a public servant (S. 177), omission to produce a document before a public servant by a person legally bound to produce it (S. 175), the omission to give notice or information to a public servant by a person legally bound to give it (S. 176) and the offence of mischief (S. 425). These offences, with slight verbal alterations, frequently occur in many special²⁷ Acts. Unless a special Act so particularly demands, it would be worthwhile consolidating the above mentioned offences in one place, namely, the Indian Penal Code and, consequently, deleting them from the Special Acts.

25. *Supra* p. 171.

26. *e.g.*, Excise laws, Municipal laws, Usurious laws

27. See Appendix 4.