

# **CHAPTER 1**

## **INTRODUCTION**



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### 1.1 Genesis of the project

A research into, and a study of the question of, decriminalisation appear to be the need to the day, in view of a variety of factors, some of which will be mentioned later in due course. This may appear to be a novel project for research. However, its legal and social importance cannot be denied particularly at the present day, when not merely the legal community, but also the public in general, are anxious to improve the system of judicial administration in all its aspects. That apart, the employment of the sanctions of the criminal law against the citizens of the country, for conduct which is labelled as "criminal", must remain a matter of deep and abiding interest in any civilised country. Labelling a conduct as "criminal" has serious social, moral, psychological and legal implications. The legislative and other measures adopted by society in this sphere do require a review from time to time.

### 1.2 Various facets of the concept

The move towards decriminalisation began probably with the feeling that, for certain types of conduct which are labelled as criminal in a particular legal system, the use of criminal sanctions is not really appropriate. This feeling itself might have been based on a variety of considerations. In the first place, the eternal debate as to the proper scope of the criminal law and the limitations of the criminal law in enforcing morality, could be a factor taken as justifying a second look at the penal system. Secondly, there is the growing awareness that the institutional framework concerned with judicial business is so over-worked, that it would be proper to take steps to reduce the load on that system, wherever practicable. Thirdly, particular types of conduct, against which criminal sanctions have been applied may, in course of time, come to be regarded as not appropriate for the use of such sanctions. Such a view may be entertained, for example, on the basis that conduct that is worth moral condemnation or disapprobation, is not necessarily to be made the subject matter of criminal sanctions.

When one is concerned with the aspect of the matter last mentioned, one is necessarily called upon to go into the line of demarcation between (i) conduct which is sinful (but not necessarily immoral), (ii) conduct which is immoral (but not necessarily deserving of being regarded as illegal), (iii) conduct which deserves to be considered illegal (but not necessarily deserving of criminal sanctions), and (iv) conduct which is so grossly vicious or anti-social, that it must be subjected to punishment in accordance with the provisions of the criminal law.

### 1.3 The role of punishment

It will be seen that the topic discussed in the preceding paragraph has an essential connection with the difficult subject of the proper function of, and the various objectives of, punishment. There is a basic reason for this. Criminal law and punishment go together. The legal definition of the word 'offence' is an act or omission punishable by law. When a legal provision lays down punishment for a certain act or omission, that act or omission inevitably becomes an 'offence', according to legal concepts. On the other hand, if an act or omission is not punishable under the law for the time being in force, then it is not an 'offence'. At the first sight, this proposition may appear to be elementary. However, for the present purpose, it is the most relevant aspect that needs to be taken into account. Labelling certain conduct as "criminal", inevitably brings in the element of punishment. In fact, punishment is the immediate objective of bringing a certain conduct within the ambit of the criminal law of the country. If, for that conduct, punishment is considered appropriate, then only one would be logically justified in treating that conduct as an 'offence'. Therefore, when the question is raised whether certain conduct should be made an offence, or (if it is already an offence), whether it should continue to be regarded as an offence, there must also arise the connected question whether that conduct deserves punishment. These questions are relevant, because a discussion of 'decriminalisation' means a discussion of the linked question whether the conduct sought to be decriminalised is, or is not, really deserving of punishment.

### 1.4 Scheme of discussion

These are a few introductory remarks intended to draw attention to the social significance, as well as the legal dimensions, of the subject under consideration. In the course of this study, it will be necessary to discuss, in some detail, the concept of decriminalisation and some of its analogues, to examine the need for decriminalisation in a general and also to devote some attention to specific offences under the Indian Penal Code and selected special laws. It is considered that such an approach would be an appropriate method of facilitating a sound examination of the present position and also of paving the way for future proposals on the subject.