



Reform in Criminal Law- the need and way forward

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REFORM IN CRIMINAL LAW – THE NEED AND WAY FORWARD

- Aim of Criminal Laws
- Challenge of Balancing the Twin Tasks;
- Inheritance of the Colonial Criminal Law Legacy;
- Guiding principles for reforms;
- The Models of Reforms in the Criminal Laws;
- Constitution Oriented Criminal Procedure Reforms;
- Reforms through Judicial Process:

Aim of Criminal Laws

- Striking balance between the prerogative of the state and liberties of an individual.
- Twin tasks- The 'control' task of preventing the criminal acts and the task of ensuring that a 'just and fair' procedure is adopted by the state in its actions.
- Control task is identification of the human behaviour that constitute deviance/crime and the appropriate sanctions that are deemed appropriate for serving the 'control' function.
- The 'just and fair' procedure task has witnessed movement from 'Trial by ordeal' and 'Trial by Battle' to the most sophisticated fair criminal trial procedures which reflects shift from punitive control to preventive control.

Challenge of Balancing the Twin Tasks:

- The 'control' and the 'fair' and 'just' procedure tasks are often in conflict with each other due to their inherent conflicting interests.
- Owing to this, the criminal justice system remain perpetually busy in balancing the one against the other.
- 'Principle of Legality' and 'Presumption of Innocence' are some indicators of 'fair' and 'just' procedure. However, the emergence of 'crime control' consideration and 'efficiency' rather than 'credibility' produced tangible outcomes like larger number of arrests and better conviction rates, making the crime control model more suitable to advance the state's interest.
- Police as an agency is seen with an increasing role in the criminal justice administration in the 'control' task and the task of achieving 'fair' and 'just' procedure is left in the hands of the judiciary.

INHERITANCE OF THE COLONIAL CRIMINAL LAW LEGACY:

The evolution of Indian criminal law can be traced back to the time of British rulers establishing effective colonial governance in India in mid-19th century.

Article 372 of the Constitution of India- “all the laws in force in the territory of India immediately before the commencement of the constitution shall continue in force therein until altered or repealed or amended by a competent Legislative or other competent authority”.

The British colonial model of criminal laws had become acceptable and credible as it because it epitomised the best principles of the adversarial system of criminal justice.

The colonial legacy of criminal laws is constituted primarily by the Indian Penal Code, 1860,(60 sections were amended) the Criminal Procedure Code, 1861 (1882 and 1898) (7 times), the Police Act, 1861 and the Indian Evidence Act, 1872 (2 times). The colonial criminal laws were enacted mainly to enforce and strengthen the administration in India.

Although enormous gains were made by inheriting a ready-made system of criminal laws, the responsibilities for making the criminal laws appropriate for the changed times falls squarely on alert criminal law reform institutions.

Guiding principles for reforms:

- Any reforms introduced must also conform to principles of constitutionalism, human rights and the fundamental rights of dignity, privacy, bodily autonomy and integrity.
- Over the years, for instance, law reform task has gained new insights and a credible touch stone with the coming into force of the Constitution of India and the enactment of Protection of Human Rights Act, 1993 that have set new criminal law reform goals and directions.
- Criminal law reforms should aim at fine tuning the criminal justice in a principled, effective and efficient manner to ensure safety and security of the individual and the community and the nation; that prioritises the constitutional values of justice, dignity and the inherent worth of the individual.

The Models of Reforms in the Criminal Laws

- The reforms in the Criminal Laws have been constantly underway. Even during the colonial times several reforms were made in the post 1860 period in the Penal Code (1870, 1891, 1913, 1923, 1925, etc.) and Criminal Procedure Code.
- The process of criminal law making in the post-independent India can be broadly categorized into three models namely – ‘Piecemeal’, ‘Episodic’ and ‘Comprehensive’.(Most resorted method)
 - Piecemeal model- by adding, modifying or repealing certain provisions.(60 amendments to IPC)
 - Episodic model- amendments in response to a particular crime that triggered nation-wide unrest and dissatisfaction with the criminal justice system.Tukaram – Mathura Rape case, 1979, SC Rape laws, 1983, TADA, 1985, Nirbhaya gang rape in Delhi, 2012.
 - Comprehensive model- measures for revamping criminal justice system and also recommended setting up bodies for periodic review of criminal laws. Malimath Committee, 2003, CRCL, 2020(22)
- Additionally, over the years, reforms were also introduced through several landmark decisions

Constitution Oriented Criminal Procedure Reforms

- Securing personal liberty of under-trials by putting an end to inordinate long custody (section 436A)
- Making 'bail' as a matter of right to every indigent (section 436)
- Introducing plea bargaining in the matter of sentencing
- Providing victim justice through participation and compensation
- Rationalising arrest powers by introducing due process compliance [section 41(1)(b)]

Reforms through Judicial Process:

- The contradictory tension of colonial legacy of command and coercion, on the one hand, and adherence to the new constitutional vision of democratic compliance, on the other has posed several challenges to the Constitutional courts in interpreting the criminal laws.
- The fair criminal trial values got reinforced by the Constitution coming in to force which prescribed the normative basis and legal actionability quality which applies not only to functionaries but also to the processes of criminal justice.
- The Constitutional Courts through its various landmark decisions has fulfilled the three major considerations for enacting the Code of Criminal Procedure, 1973 – Speedy Disposal, Due Process compliance and Fair deal to poorer section of the society.
- Some of these notable decisions are- Mohd. Giasuddin v. State of AP, 1977, Moti Ram v. State of MP, 1978, Maneka Gandhi v. Union of India, 1978, Nandani Satpathy v. PL Dani, 1978, Rudal Shah v. State of Bihar, 1983, Joginder Kumar v. State of UP, 1994 & DK Basu v. State of WB, 1997.

Reforms through Judicial Process:

- Infusing accountability in the Criminal Justice Machinery
 - Lalita Kumari v. Govt of UP, 2014.
 - Arnesh Kumar v. State of Bihar, 2014.
 - Subramanian Swamy v. CBI, 2014.

- Securing Bail Justice
 - Firoz Khan v. Govt. (NCT of Delhi) (Del. HC), 2020.
 - S. Kasi v. State, 2020.
 - Shahvaz Hussain v. State of Rajasthan, 2020.

- Fair Trial Compliance
 - Anokhilal v. State of MP, 2019.
 - Mohd. Hussain v. Govt. (NCT of Delhi), 2012.

Institutional Reforms

- Police
- Prosecution
- Judiciary
- Prison
- Legal Aid
- Probation
- Forensic Science
- Sentencing / Punishments



Thank YOU

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