

Preface

The chief concern of criminal law is to protect and preserve certain fundamental social values and institutions. Charged with this motto, it prescribes a set of norms of human behavior and forbids the human conduct that inexcusably exhibits disrespect or inflicts or threatens substantial harm to individual, public interest, fundamental social values, or institutions. With a view to ensuring human conduct in consonance with the behavior stipulated therein, criminal law also prescribes 'penal sanction', a formal expression of the 'societal reaction' to the perilous 'outlawed' human conduct.

The kind of conduct to be 'forbidden' and the formal penal 'sanction' considered as best calculated to prevent the 'outlawed conduct', obviously, depend upon the prevailing 'social setting' and 'socio-moral-ethos' of a community. Nature and contents of criminal law and forms of the societal (penal) reaction, therefore, vary with changes in the socio-politico-moral 'settings' and 'ethos'. Penal law of a country, therefore, needs to be appreciated and understood in the backdrop of its prevailing socio-ethical-cultural values and political ideologies.

The Indian Penal Code, 1860 (IPC), prepared in the mid-19th Century by Lord Thomas Babington Macaulay and his colleague Law Commissioners,¹ like any other criminal law, gives a catalogue of human conduct, positive and/or negative, that is perceived as 'wrong' against, or perilous to, an individual, fundamental social value, or institution, and prescribes 'punishment' therefor.

Most of the notions and concepts pertaining to 'crime' and 'criminal liability' and basic principles relating thereto, and premises thereof, incorporated in the IPC, therefore, have their roots in the then prevailing philosophical as well as theological values and precepts in the United Kingdom.³ These notions and principles, in spite of their 'foreign' or 'alien' attributes, are still perceived in India as 'core' normative 'parameters' and 'principles' for judging 'socially (un)acceptable' individual as well as social behavior and measuring the consequential 'punitive measure(s)' for the 'unacceptable' or 'anti-social' behavior.

The IPC has witnessed very minimal changes during the last about one and fifty years of its operation. It indeed exhibits 'deep understanding' of social ethos of the Indian society and 'vision' of its authors. It has stood the test of almost one and a half century and will, for many more years to come, continue to occupy, as a model penal code, a prominent place in the statute book of our country.

PSA Pillai's Criminal Law, which was first published in 1956, is primarily concerned with the substantive offences incorporated in the Indian Penal Code. It, in the light of, and supported by, judicial dicta, offered textual and in-depth analysis of all the offences embodied in the IPC. Its successive nine editions kept the style and form of the original work intact.

During the last more than fifty years, the book, as evinced by the number of editions it has undergone through, has established itself as a classic work on the Indian Penal Code.

The present tenth edition of *PSA Pillai's Criminal Law* offers an indepth

analysis, supported with apt rich judicial and juristic authorities, of all the specific offences contained in the IPC. Its approach and scheme is essentially similar to that of its previous editions. It emulates and preserves the structural outlay and style of the original work as well as its subsequent updated versions. Nevertheless, it, with in-depth analysis, takes note of all the important developments-legislative, judicial and juristic-that have occurred since the last edition. It also takes into account all of the considerable amount of judicial pronouncements of the Supreme Court of India and of the State High Courts that have reconfirmed with renewed judicial reasoning or added new dimensions to the offences included in the book.

The aim of the current edition is to produce an authentic, analytical, thoroughly revised, and updated version of the substantive penal law of India that, like its earlier editions, could stand on its own as a classic work on the Penal Code.

With this zeal and quest, all the chapters are thoroughly revised in the light of judicial pronouncements and juristic writings/opinions. A few of the chapters are extensively revised, rather rewritten. Most of the chapters are substantially revamped. With a view to furnishing sound theoretical, philosophical and historical background to the Penal Code and to putting theme of the subsequent chapters in the right perspective, the first, the third, and the fifth chapters, dealing respectively with Nature of Crime, Penal Law in India, and *Mens Rea*, are almost rewritten. Similarly, the chapters dealing with some of the basic precepts of criminal law, like mistake of fact and of law,⁴ attempt,⁵ criminal conspiracy,⁶ joint liability,⁷ and punishment,⁸ are substantially revamped. While the chapters dealing with offences relating to documents,⁹ and sexual offences¹⁰ are reviewed in the light of emerging trends and reflections.

Unlike its previous editions, the current edition, however, at the end of each of its chapters, delves deep into, and deliberates upon, proposals for reform in the respective offences proposed by the Law Commission of India.¹¹ In this context, the changes suggested in some of the offences by the Justice Malimath Committee¹² are also referred to, and delved into, at the appropriate places.¹³ This new feature is added to the present edition with a view to acquainting its readers with the proposals for reform mooted in the respective offences and the reasons advanced or justifications offered therefor, and to thereby enabling them to appreciate propriety and feasibility of the recommended changes. The new feature is also intended to prompt readers to take a careful stock of the existing penal law of India, to assess its efficacy and to ponder upon what it should be in the years to come.

I have, thus, made every possible effort within my reach to preserve in the present edition the rich tradition of *PSA Pillai's Criminal Law* as well as to make it more useful to its readers from legal academia, Bench and Bar. Hopefully, it will cater to professional needs of its readers. Nevertheless, I leave it entirely to them to judge how far this zeal and quest of mine is reflected in the present work.

I owe a debt of gratitude to Ms Ambika Nair, former Product Manager, LexisNexis, who, for reasons known best to her, offered me the task of revising and updating *PSA Pillai's Criminal Law*, and to Ms Pankhuri Shrivastava, Publishing Manager, who has shown her unreserved faith in me and my professional competence in accomplishing the project. I am

equally indebted to Ms Sheeba Bhatanagar, Senior Legal Editor, LexisNexis, who, keeping in view my overseas stay and realizing my inability to lay my hands on voluminous judicial pronouncements delivered after the ninth edition of the book is brought out in 2000 by the Supreme Court of India and the State High Courts, has readily provided me an unrestricted access to online case law, without which it would have been difficult, rather impossible, for me to update and revise/rewrite the present classic work of Achuthan Pillai. I, with high appreciation, wish to thank both of them for their support and understanding. They also deserve my special thanks for allowing me to associate with one of the well-received and highly acclaimed classic work of PSA Pillai on the Penal Code and thereby giving me a unique privilege to re-associate with LexisNexis, publisher of international repute having global network.

I am highly indebted to Prof Upendra Baxi, former Professor of Law and Vice-Chancellor of University of Delhi, Delhi and of South Gujarat University, Surat, currently Professor of Law, Warwick University, Warwick, (UK), who, in spite of heavy pressure on his time and pressing assignments at hand, has readily agreed to write Foreword. I do indeed feel myself privileged by his kind professional gesture and his association with my work. I am also deeply indebted to Prof N L Mitra, former Director, National Law School of India University (NLSIU), Bangalore, and former Vice-Chancellor, National Law University (NLU), Jodhpur, who, during my short association with him at NLU, gave me immense professional and personal support. I indeed saw in him and Madam Mitra oasis in the desert.

Bharati, my better-half, Bunti and Pinki, my loving son and daughter, deserve a word of high appreciation for their, in spite of a lot of untold deprivations, unreserved moral support in accomplishing the present endeavor. Blessings of *Mai* and *Baba* have always been driving force for me in my professional pursuits and achievements. However, unfortunately, *Baba*, who saw me working hard on the book, is no more with us to see the final product of my input and to appreciate it. With immense grief and deep sorrow, I will not ever be able to see his immeasurable cheer and joy of my present accomplishment on his smiling face and deep eyes and to receive his blessed pat on my back. With respect and affection, I do dedicate my present contribution and professional accomplishment to him.

Addis Ababa, Ethiopia **KI VIBHUTE**
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Preface to the Ninth Edition

Whatever views one holds about the penal law, no one will question its importance to society. This is the law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy. Nowhere in the entire legal fields is more at stake for the community or for the individual.

Herbert Wechsler

*The Challenge of a Model Penal Code.*¹

What is it about the IPC that it has remained in almost the same form as it

was legislated in 1860?

It is interesting to note that not just the IPC, but most other penal laws of other nations, including the European ones, have also by and large remain unchanged from their mid-nineteenth century origins. While most other branches of law have experienced transformation, criminal law alone has shown its resilience to change.² The notions regarding crime and the concepts, principles and premises underlying much of criminal law which forms the sub-stratum of the IPC, can be traced to eighteenth century European philosophical and theological values and notions regarding acceptable social conduct, behaviour and response. Curiously, the sweeping scientific changes of the twentieth century, which changed the character of most other disciplines, seems to have had fleeting impact on the structure of penal law, especially in what is defined to be criminal conduct. One example of this is the prevailing judicial view of the law relating to adultery (s 497, IPC) or what is defined as 'unnatural offences', which in modern parlance, has come to be referred to as the law relating to sexual preferences (s 377, IPC), which remains mired in mid-nineteenth century Victorian conservative notions of acceptable or punishable social behaviour.

One manifestation of the persistence of nineteenth century theocratic basis of the consideration of crime is to be found in the attitude towards punishment. Modern criminological theories consider crime as a harmful, injurious behaviour that needs to be redressed in the present and prevented in the future. It also advocates the view that it is important to study crime and criminal conduct in the context of sociological, economic, cultural and political factors. To the contrary, the nineteenth century view that crime is sinful, wrongful or immoral behaviour that must be punished, continues to prevail. Thus, theological notions of 'moral guilt' and 'deserved punishment' still determine legal attitudes towards conduct considered criminal, and towards forms of punishment that have to be imposed once the guilt of a person is established. Even though the deterrent theory of punishment is talked about, much of sentencing is based on retributive notions. Thus, locking a person in a prison to serve the sentence period imposed on him is seen as the only or major form of punishment, even though latest criminological studies have clearly shown that forcible incarceration often has negative effects on persons who are imprisoned and that newer and more creative forms of imprisonment like being kept in open prisons, being kept on probation and so on help the convict to reform.

To illustrate this aspect, we need only to consider Chapter III of the IPC titled 'Of Punishments' and in particular, s 53. As discussed in detail in the relevant chapter in this book, there is little or no discretion available to the trial judge regarding the nature of sentence to be imposed once the offences charged with are proved, than to award to the prescribed punishment as provided in the IPC. Thus, imprisonment is the standard punishment, even though a large corpus of research has shown that incarceration has most often, negative impact on persons.

Ironically, the only way the penal laws have kept apace with changes in modern society is by overcriminalising many modern day actions or misconduct. The requirement of *mens rea* has been replaced by the concept of strict liability offences (see the relevant chapter on Mens Rea) leading to an exponential growth in the prosecutions all over the country.³ The conflict

posed by the rootedness in nineteenth century notion of guilt and punishment alongwith overcriminalisation of many modern day behaviour has been well described by Ezzat Fatah as follows:

The will to secularization has also had dire practical consequences. The will has led to naïve optimism about the effectiveness of punishment as a deterrent and an exaggerated confidence in the ability of the criminal code to solve social problems and to cure society's headaches. This, in turn, has resulted in an inflationary criminal policy, to a crisis of overcriminalisation and to an overextended, overburdened and overworked criminal justice system.⁴

While there is overcriminalisation of strict liability offences, there is great resistance to consider the question of a great amount of crime committed by the agents of the state, particularly the police and para-military forces. As the veteran criminal lawyer and human rights activist, Mr Kannabiran points out in the foreword to this book, while the offence is defined by law, the corresponding offender is invariably defined by the state. Thus, very often, even though it is state functionaries who abuse the law, they escape prosecution because they are not considered, in the eye of law as defined by those who operate it, as offenders. But so rampant has crime by law enforcers become that there is now growing opinion that human rights offences as penal offences should be codified.

A moot question may be asked. What does all this have to do with a textbook on criminal law meant essentially for college students? The answer is obvious. Any change can be attempted only when we first know what has to be changed. This presupposes that we have a critical understanding of the nature of existing law and the way it functions in reality, in the police stations and in the courts. This revised textbook makes a very modest beginning in this regard. Modest, because we were required to follow the broad contours of the original text, which, by and large, was a descriptive study of the IPC. We have attempted to point out in some key subjects, areas which are subjects of controversy, discussion and foci of a demand for change.

In writing this book, we integrated a style which was halfway between a commentary and a critical textbook. We have described in length the facts underlying key cases in which an important principle came to be evolved. We have endeavored to give as much factual details as possible so that the reader would get a flavour of the fact-situation underlying a case and therefore understand why a particular decision came to be taken. The emphasis on studying case law, not just by the principles evolved, but also in terms of the facts of the case, was something we learnt through hard experience. As much as one needed to know the principle evolved in a particular case, it was equally important to know under what factual circumstances the decision came to be taken. Such a basis of studying is particularly important in the study of criminal law, as irrespective of legal principle, cases are won or lost based on the mastery one has of the facts of that particular case. In a field of jurisprudence, where ultimately much depended on the way a judge reads a set of facts to come to a subjective satisfaction about a set of facts, detailed knowledge of the facts was indispensable.

No student of criminal law can hope to understand the subject unless s/ he studies the two other major enactments, the Criminal Procedure Code (CrPC) and the Indian Evidence Act (IEA). All the three, the IPC, CrPC and the IEA ought to be studied in an integrated manner, keeping in mind the diverse and complex interconnectedness between and amongst the three

enactments. Our experience of legal education has shown us that seldom is this essential, continuous and flowing link between these three enactments explained to students of law. Very often, the three subjects are spread over different academic years and students go through the examination drill without understanding the significant linkages between these subjects. Yet another essential link which is forgotten, both in the academic world and law courts, is an understanding of the constitutional principles laid down in Part III of the Constitution. Criminal law and constitutional law are somehow perceived as watertight compartments unconnected with each other by academicians, lawyers and judges alike. Students of criminal law will be missing out on the soul of the subject if they do not understand that ultimately every law, whether substantive or procedural, has to be tested on the touchstone of arts 14 and 21 of the Constitution. After all, it is the criminal justice system which impinges upon and curtails the constitutional guarantees of life, liberty and equality in its most raw and naked form. When a person is arrested, detained or imprisoned, it affects his right to life and liberty guaranteed under art 21 of the Constitution. Right to bail, right to be treated with dignity even inside prison walls, right not to be handcuffed or tortured, and right against self-incrimination are all rights guaranteed under arts 20, 21 and 22, which have an interface with the administration of criminal justice system. Again, right to trial by procedure which is just and fair is a right guaranteed under art 14 of the Constitution, which assures to every person equality before law and equal protection of law. The scope of arts 14 and 21 are ever expanding. Courts have over the years brought fresh life and vigour to rights guaranteed under these articles. Article 21 reads thus: 'No person shall be deprived of his life or liberty except by procedure established by law'. The words procedure established by law have been interpreted by the Supreme Court in *Menaka Gandhi's* case,⁵ as not any procedure but a procedure which is just, fair and reasonable. Similarly, art 14 has been interpreted to include protection against arbitrary action. Imposing impossible conditions for executing bail has been held to be violative of both arts 14 and 21. More such instances abound.

We feel the need to emphasise the importance of criminal law students understanding the criminal justice system in the backdrop of constitutional guarantees and principles, because for some reason, the language of rights is abhorred by criminal courts, and any mention of rights is sufficient for the magistrates and district judges to say that 'rights' discourse is only for High Courts and the Supreme Court. The manifestation of this outlook is visible when a complaint is lodged with the remanding magistrate or the district sessions judge about the practice of policemen handcuffing and parading prisoners in public. The response most often is that they lack the power, when in reality, the Supreme Court has time and again reiterated that it is the remanding magistrate's duty to ensure that the rights of prisoners are not violated. So rampant is the dismissive attitude of magistrates and sessions judges, that the Supreme Court had to finally declare that any violation of the constitutional safeguards would attract the provisions of the Contempt of Courts Act.⁶

It needs to be stressed that penal law is much more than just the IPC. A wide plethora of new laws have been promulgated defining new crimes. These range from cheque bouncing offences defined in s 138, Negotiable

Instruments Act, to offences defined under the Essential Commodities Act, Environment Protection Act, Bonded Labour Abolition Act and so on. In many of these specialised enactments, specific departures from traditional principles of criminal jurisprudence have been provided. Any student of criminal law should be equally conversant with these laws. However, the basic foundation for the law of crimes is the IPC, and there is no excuse for being thorough with it!

Finally, no theoretical study of criminal law and no law school, will ever give a student of law a true understanding of the working of the criminal justice system. The logic of courts defies the logic of law. Ultimately, people are convicted or acquitted based on the predilections of individual judges. Another formidable issue confronting the criminal justice system is the all pervading corruption that has enveloped the criminal justice system encompassing investigating officers, prosecutors, defense lawyers and judges in almost all parts of the country. So rampant has this phenomenon become that in many places, it has become open and brazen. What is agonising is the unquestioning acceptance of corruption as a way of life.

The intention of our writing this is not to malign specific persons or institutions, or to discourage students. The situation has become so degenerate that we can no longer brush under the carpet the deepening crisis in the Indian legal system. If this has to be tackled, we need people of sterner stuff entering the legal profession.

Ultimately, this onerous responsibility falls on law colleges. Law curriculum has to be adapted to prepare and train students not merely in learning law, but also in imbibing a strong sense of ethics. Students should be oriented from the beginning not to simply fall in line with existing systems but to stand up for the rule of law in every aspect of its term. Today's courts need, not just lawyers, but crusaders for justice.

Working on this project has been an enriching and enjoyable experience. It has helped us immensely in adding to our knowledge of the IPC. It is hoped that readers will find the book useful.

Like it is said, all changes come from placing the first step forward. And there is no better way of continuing this process than by looking back to step forward. Our ultimate hope is that this book provides the context to understand what is so that it will help add to the debate on what the penal law should be in the future.

Chennai V SURESH and D NAGASAILA

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