Hi Friends!

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Today we are going to learn about the History of Criminal Laws in India. This lecture is for the students of B.A. IInd year IIIrd Semester. Under this lecture we are going to discuss the following modules.

Module I – Introduction
Module II- Origin of Criminal Law
Module III – Criminal Law in Ancient India
Module IV- Criminal Law in Modern India
Module V-Conclusion

I. Introduction

Let us start with introduction. The present criminal justice system was not sudden creation, it has some historical background. In this lecture we will discuss how criminal law developed in India? From Ancient Hindu Criminal Law to Muslim Criminal Law and reforms made by British Government and lastly First Law Commission, Indian Penal Code, Criminal Procedure Code and Indian Evidence Act which regulated the criminal justice system in India.
It is generally presumed that the earlier form of punishment for crime was private revenge and those who were powerful could take revenge and others do not. In the uncivilized society revenge for an injury was the personal affair of the victims or their surviving kin and the community did not usually interfere in the personal matters. Private revenge often led to blood quarrel between families, clans or tribes. The resulting loss of life and property sometimes became so danger that people stopped taking private revenge, and started approaching community for fair trials against offender. However, powerful families of different communities still continued to follow their old pattern of taking revenge.

Now, in a civilized society it is believe that man is under the law and God and he is supposed to follow that law. A crime is an offence against the state and human body. Moreover, the violation of law is an offence and the person who is guilty of that offence is punishable by law. The importance of criminal law has deterrent effect on human psychology. For example, if a man found traffic signal is red and there is no traffic police, he would try to violate law. Whereas, if there is CCTV camera fixed at traffic signal he will not try to break traffic rules because he knows that he will be held liable for penalty. Therefore, criminal law is required for changing human guilty mind.

Indian legal history started from Vedic period to the Indus Valley civilization. In India law was a matter of religious prescriptions and philosophical discourse. Which originate from Vedas, the Unpanishads and other religious texts and it was practiced by different religions like Jains and Buddhist. The concept of secular law in India was varied from ruler to ruler and the court systems for civil and criminal matters were main features of ruling dynasties in ancient India. It is believe that excellent secular court system existed under the Mouryas Empire and the Mughals which later gave way to current common laws system in India. Therefore, in short one can say that the criminal law in India has three main periods i.e. Hindu Criminal Law, the Muslim Criminal law and the English Criminal Law.
II. Origin of Criminal Law

Under chapter II we are going to discuss origin of criminal law but we start with various theories of criminal law we should know **what is criminal law?** Criminal law means a system of law concerned with the punishment of offenders. Criminal law is the body of law that relates to crime. Indian Criminal laws are mainly covers three legislations i.e. Indian Penal Code, Code of Criminal Procedure and Indian Evidence Act, etc.

Broadly speaking there are four theories of criminal law i.e. civil wrong, social wrong, moral wrong, and group conflict theory.

The civil wrong theory considers criminal law as originating in torts, or wrongs to individuals. According to this theory, all wrongs produced for self-redress of the injured parties and were therefore treated as injurious to particular individuals. And later, wrongs came to be regarded as harmful to the society at large. Consequently, the society took over charge of the treatment of civil wrong in its own hand. Though, some crimes did originate in torts, namely nuisance, defamation etc., are best examples of tort, for which compensation was secured from the wrongdoer.

However, this theory is inadequate as a universal explanation of criminal law, as it assumes priority of the individual over the group which is not true in all cases. There are wrongs like treason, sedition, etc. that has been regarded as direct wrongs to the group.

The social wrong theory postulates that criminal law originated as a rational process of unified society. Thus, when wrongs occur, society makes regulations in order to prevent the repetition of such wrongs. This theory is again only partially true. It certainly covers serious offences like murder, rapes, robbery, dacoity, etc. and explains how laws are made, but fails to explain how criminals has developed in the course of time.

The moral wrong theory says that the criminal law originated in crystallization of society, like in traditions, customs, after persisting for a long time, achieved an ethical foundation. Violations of such customs produced aggressive reactions of the groups that were expressed in the form of criminal law with penal sanctions. This is true in
respect of conventional crimes, such as offences against person, property, reputation and the like. However, it does not explain many social and economic crimes and the offences relating to evasion of taxes, licensing, hoarding and black-marketing of essential commodities and food adulteration, etc.

The group conflict theory holds that criminal law developed in the conflict of rival groups in order to protect each other’s interests. Thus, through criminal law, the powerful group forces can be prohibited by the State, when they feel it may endanger their position. This theory may explain offences relating to property interests, but fails to explain other categories namely offences against the State and public tranquility etc.

III. Criminal Law in Ancient India: Hindu Period

Under Chapter III we will discuss criminal law in ancient India i.e. Hindu Period. Arthasastra, Manu Smriti and Yajnavalkya Smrti are the main three leading law codes of ancient India. However, it is Manu Smriti or the Code of Manu, which has made a lasting impact on human behavior in India. It contains ordinances relating to law. And also the concept of criminal jurisprudence came into existence in India during the time of Manu. He gave a comprehensive code which contains not only the ordinances relating to law, but is a complete digest of the then prevailing religion, philosophy and customs practiced by the people. Manu has recognized assault, theft, robbery, false evidence, slander, libel, criminal breach of trust, adultery, gambling and homicide as crimes. These are the principal offences against person and property that occupy a prominent place in the Indian Penal Code. The King used to either dispense justice himself with the help of counselors or appoint judges and assessors for the administration of criminal justice. However, the criminal jurisprudence of Manu is not free from bias. According to him, the gravity of the offence varies with the caste and creed of the criminal and punishment as per their caste and status in the society. The protection given to the Brahmmins was paramount and they were placed at the top of Varna system and certain classes of persons were exempted from punishments even
they had committed a crime. The “Dandaviveka” quotes a verse in which considerations were given to caste while awarding punishments. Therefore such discriminatory provisions were against the principles of natural justice. During this period there were no clear distinctions between private and public wrongs. Murders and other homicides were regarded as private wrongs. The right to claim compensation was the rule of the day. A distinction was, however, drawn between casual offenders and hardened criminals. However, during the Buddhist period, caste did not have any importance while awarding punishment and compensation. Because, Buddhism was in favour concept of the equality of all. During the Buddhist Period most of the kingdoms influenced by Buddhist philosophy and they started ruling their kingdoms as per the Buddhist philosophy.

Mohammadan Criminal Law

Manus code was continued in India till the Mohammadan rules were established. And then the people were forced to the criminal jurisprudence of Muslims. The Muslim legal system had its origin in the Quran, Which is said to have been revealed by God to the Prophet Mohammad. The development of the criminal justice system under the Mughals can be divided into three periods:

i. the period preceding the regime of Akbar;
ii. the period comprising the regime of Akbar (1556 to 1606); and
iii. thereafter until the advent of the British rule.

Generally, the Muslim law of the Shariat was considered supreme over all persons and causes. Islamic jurisprudence is derived mainly from the Quran and the Sunnah (the practice and traditions of the Prophet). But as strict Islamic law was found to be inadequate for the needs of the expanding and mixed society of India, consensus of opinion or universal consent were added as additional sources of law. Prior to Akbar’s supremacy traditional Muslim law was applied even in matters of judicial procedure. Various difficulties arose in the implementation of this method. However, real change came during the period of Akbar when he substantially repealed discriminatory laws
against non-muslims and established one uniform system of justice for all. However, strict Islamic law came to an end in the eighteenth century, after the arrival of the British in India.

In Muslim Law, the concept of sin, crime, religion, moral and social obligation is blended in the concept of duty, which varied according to the relative importance of the subject matter. The administration of criminal justice was entrusted in the hands of Kazis. The punishments varied according to the nature of crime. Broadly speaking, the punishment was fourfold, namely, Kisa or retaliation; or Diyut or blood money; Hadd or fixed punishment; and Tazir or Syasa, discretionary or exemplary punishment. However, the notions of Kazis about crime were not fixed and different according to the purse and power of the culprits. As a result, there was no uniformity in the administration of criminal justice during the Muslim rule in India and it was in a most chaotic state.

IV. Criminal law in Modern India

Now, under chapter IV we are going to discuss criminal law in Modern India. At the time, when the British came to India, the criminal law in existence was Mohammedan Law. This law, which had replaced the Hindu Law, continued to be the basic law in the Mofussil until the enactment of the Indian Penal Code 1860, but it had, in the meanwhile, been modified very extensively by successive Regulations and Acts of the Presidency Court, namely., Calcutta, Bombay and Madras and the Central Governments.

In the beginning, the British engrafted the Muslims system of administration, but were faced with much difficulty. As a result, the Mofussils as well as Presidency Courts gradually began to turn to the English law for guidance and help. Thus, the criminal law administered in the Presidency towns, came to be in practice. In Bombay, Portuguese law first replaced the Mohammedan law. Then followed the British Company’s law of 1670, and from that time the English criminal law was applied, until, under a Charter of 24th September, 1726, the Mayors court was set up and the criminal law of England was authoritatively administered in that presidency.
In Madras and Calcutta, criminal jurisdiction was originally exercised over the Indian inhabitants through the courts of the East India Company in its capacity as Zamindar. Apparently, English Criminal law was applied more and more extensively in these courts as time went on, though in those towns there was no definite substitution of that law for the Mohammedan Criminal law. In 1726, Mayors Courts were established in Madras and Calcutta under the same charter as that which set up the similar court in Bombay. However, in adopting the British system each of the Presidency courts namely, Bombay, Madras and Calcutta followed an independent course of its own.

The first major attempt to reform the criminal justice was made after passing of the Regulating Act,1773, under which new courts were set up. In each district, a criminal court, i.e. Foujdaree Adalat was set up. The Regulating Act,1773 authorized the Crown to establish a Supreme Court at Calcutta, consisting of a Chief Justice and three other Judges. The court was to have power to hear and determine all complaints against any British subjects residing in Bengal, Bihar and Orissa for any crimes, misdemeanors or oppression committed by them. Supreme Courts similar in all respects to the Supreme Court of Calcutta were established in Madras in 1800 and in Bombay in 1823. However, this reform in the administration of criminal justice leads to a problem. The British on these courts began gradually to refer and to rely upon English law of crimes, while the criminal courts in the Presidency towns were obliged to follow their own system of law. Such a practice, obviously, resulted into a non-uniform law of crimes.

The result was a disordered and contradictory decisions on similar points. The regulations passed by different Presidencies differed widely in their scope and contained in different provisions. For instance, in the Bengal Presidency, serious forgeries were punishable with imprisonment for a term double the term fixed for perjury; whereas in the Bombay Presidency, perjury was punishable with imprisonment for a term double the term fixed for the most aggravated forgeries. Likewise, in the Madras Presidency, the two offences were exactly on the same footing. There was utter disorder and confusion in the administration of criminal justice.

Therefore, to regularized the legal system in the then British India the Governor-General of India in Council by virtue of the authority vested in him under section 53 of the
Government of India Act, 1833 appointed ‘the Indian Law Commissioners’ in 1834 to inquire into the then existing state of the law and to suggest a comprehensive penal code for India. Thus in 1834 the First Law Commission of India was constituted with Lord Macauley as its President and Macleod, Anderson and Millet as Commissioners to prepare the penal code for India. The Commission submitted a draft Code on October 14, 1837 which circulated for ascertaining views of judges and law advisors. In 1845 the Second Law Commission was constituted, as the term of the first Commission expired, with the same members, which submitted report in two parts - on in 1846 and the other in 1847. The Draft Code again underwent a detailed revision by other experts. Finally passed and received assent of the Governor-General in Council on October 6, 1860 and the Indian Penal Code came into force on January 1, 1862.

Apart from India Penal Code, 1860, there are other legislations enacted by the government of India to control various kinds of crimes, mainly offences against women and children, cyber crimes, offences against state, economic offences and terrorist activities etc. In India, Criminal Procedure Code 1973 is the mechanism available which provides procedure of criminal justice system. This code came into force on April 1, 1974. This contains various provisions to expedite the judicial process, misuse of power and provides legal aid to the poor.

V. Conclusion

Lastly under Chapter V we came to the conclusion that the Criminal law in India has developed through various stages from ancient Hindu period to Modern Indian legislations. Despite of their self interest the role of British government in making Indian legislations is unforgettable. Because, they enacted best statutes like Indian Penal Code, 1860, Indian Evidence Act, 1872 which has still importance in criminal justice system. The history of criminal law shows importance of law for any civilized society. To control human behavior criminal law is required. And to maintain law and order is the primary duty of state to apply criminal law. It means to run a good administration there should be good criminal law. In the history of criminal law apart from our traditional laws,
customs the role of British Government has paramount importance. The total scenario of Indian criminal justice system has been changed from age old laws to egalitarian criminal justice system. Because in the present system every criminal has an opportunity to say his words and in criminal law it is said that unless the person found guilty he is presumed to be innocent. Therefore, the three major legislations i.e. Indian Penal Code, Criminal Procedure Code and Indian Evidence Act, has changed the history of criminal law and ultimately the criminal justice system in India.