

CODIFICATION AND COLONIAL DIFFERENCE: A CRIMINAL PROCEDURE IN BRITISH INDIA AFTER 1857 REVOLT

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ABSTRACT

This article tracks the rise and fall of criminal jury in British India through authority and non-official civil arguments, dialogs and intercessions. The discourse on criminal juries in the British framework has regularly centered around the division of lawful work amongst judge and jury. In British India, this regular distinction amongst 'law' and 'fact' were molded by ideas of having a place with an alternate race, religion and dialect. These were much of the time verbalized as the tale of the 'questionable' legal hearer or the 'religious' local who dreaded endless perdition. From the legal hearers who were supposedly ineffective by the reputation over the notorious Nanavati trial to women members of the jury who guaranteed to be taken after in transit home from court, to the religious Brahmin attendant who might not make a solemn vow, the narrative of the criminal jury is inhabited with nerves over unwanted types of impact, that encroach on legitimate unprejudiced nature, utilizing the criminal jury as a focal point.

KEYWORDS: Colonialism, Criminal procedure, British India, Codification, Judiciary

INTRODUCTION

The essential reason for the Criminal Procedure Code, in addition to other things, is to guarantee a reasonable trial where none of the privileges of the denounced are imperiled nor are they outlandishly supported. Besides, to guarantee that the judge concerned hears all gatherings

who are applicable to the trial, their quality at the trial is clearly imperative. That is the reason a whole section of the Code worries about the way toward guaranteeing the participation of any individual worried about the case, including a blamed or an observer, through different measures, viz. summons, warrant, announcement and connection of property. The last two are utilized when the previous don't yield agreeable outcomes.

Regardless of the vow of fairness, enactment and the acts of white judges, juries and police put most Europeans exempt from the rules that everyone else follows, actually enabling them to escape with kill. The inability to control these raucous whites uncovered how the heaviness of race and the goals of order imbalanced the sizes of pioneer equity ¹(Elizabeth Kolsky, 2011). Following the birthplaces of the present criminal argument to late nineteenth and mid twentieth-century discusses about law change, it contends that the frameworks of individual law in task in India today are the result recently frontier endeavors by Hindu and Muslim male reformers to adjust their lawful frameworks in ways that served their own particular advantages (Eleanor Newbiggin, 2013).

The British Reform abolished the Hindu and Muslim Law Officers in the various Courts of India. The Codification of Law and consolidation of the Court System was further intensified in the quarter century after the takeover of India by the British Crown. While the law applied in the courts before 1860 was extremely varied, by 1882, "there was virtually complete codification of all fields of commercial, criminal and procedural law", accepting the Personal Laws of Hindus and Muslims ²(Bernard Cohn, 1997). The East India Company had directed a majority of lawful sources, including provincial controls, Acts of Parliament, Hindu and Muslim personal law, Islamic criminal law, and the broadly translated Roman standard of "justice, equity and good conscience ." It was Macaulay's mean to convey request to this clumsy and befuddling framework. Around a similar time that Macaulay set his hand to classify the Indian law, the Royal Commission on the Criminal Law likewise started its survey of the English penal law ³(Elizabeth Kolsky, 2013). The aim of this paper to analyze and know about the criminal

¹ Kolsky, Elizabeth, Colonial justice in British India, Cambridge university, Vol 17, 2011

² Cohn, Bernard, British Law and Judiciary, IBDI Journals, Vol 13(2), 1997.

³ Kolsky, Elizabeth, Procedure in the Criminal courts of British India, Cambridge university, vol 4(2), 2013.

procedure in British India (after 1857) as it is the base for the present criminal procedure.

OBJECTIVES

The objective of this paper is to study about the procedure of criminal law in British India after the 1857 revolt.

HYPOTHESIS

Null hypothesis: India does not follow the criminal procedure passed by British parliament during pre-independence era.

Alternate hypothesis: India follows the criminal procedure passed by British parliament during pre-independence era.

MATERIALS AND METHODS

The materials are collected from various journals, articles, books and websites which gives importance to the topic of criminal procedure in British India after 1857 revolt. The method followed in this research paper is a doctrinal method.

CRIMINAL PROCEDURE CODE AFTER 1857 REVOLT IN INDIA

The present criminal procedure of India was not a sudden creation. It has been developed as the consequence of moderate and continuous process and bears the engraving of the diverse time of Indian history.

Under the steady gaze of the Muslim law created in India, the correctional law winning in India was the Hindu Criminal Law, which was orderly and very much characterized. Old Smriti authors propounded four techniques for discipline, to be specific, by delicate exhortation, by extreme criticism, by fine and by beating and proclaim announced that these disciplines might be incurred independently as per the idea of the offense. These disciplines fill four primary needs in particular, to meet the inclination of the individual influenced, for reprisal or striking back, as obstruction and preventive measures and for renewal or reclamation of the shrewdness doer. Certain classes of individuals were exempted from discipline under the antiquated criminal law.

The following stage saw the rise in Mohammedan Criminal Law after some time, which impacted and realized measures that shaped the base of criminal framework in India. The Mohammedan Criminal Law depended on the Quran, which is accepted to be of awesome cause and was the main wellspring of Muslim Law. Subsequently, the guidelines of direct (called Sunna) were found from the oral statutes, activities and choices of the Prophet, which shaped the optional source. Simultaneousness of the associates of Mohammed and the guide of similarity constituted separately the third and fourth wellspring of Muslim Law². Hidayat (set down general principles) and Fatawa-I-Alamgiri (gathering of case laws) clarified criminal law.

Mohammedan law offenses were for the most part ordered into four principle classifications: Qisas or Retaliation: This connected to offenses against a man, e.g willful executing, grave damage and so forth.

Diya: In specific cases, where striking back wasn't permitted, the harmed party had the privilege to interest for blood cash which was called as diya.

Hadd: In instances of had, the law recommended and settled punishments for specific offenses. Disciplines under had were given in offenses like zina(illicit intercourse), drinking wine, burglary, a rip-off and so on.

Tazir: Tazir implied optional discipline. The conditions in conviction in tazir, were not all that strict concerning cases under hadd.

In spite of the fact that specific expansive principles of Mohammedan Criminal Law were set down, they were not sure and uniform in genuine practice as they were clashing, confounding and inconsistent. The acquire deformity was in its origination and characterization of wrongdoings into three classifications in particular violations against God, against the state and against under private people. There was no qualification amongst open and private law. The shortcoming of Mohammedan law was adequate to urge numerous people to submit murders. The law of diya or blood cash was very inadmissible. There was no qualification between a tort

and a wrongdoing and between a murder and manslaughter. The Mohammedan law as expressed above, experienced numerous imperfections, seeing which the English executives acquainted changes from time with time to shape, hold back and alter the Muslim Law.

Warren Hastings strikingly reprimanded this law and endeavored to present changes in different structures. To manage the hardware of equity in Bengal, Warren Hastings arranged plans and presented changes in 1772, 1774 and 17803. Master Cornwallis changes were presented on third December 1790, which included changes from multiple points of view that enhanced the criminal law framework. He presented the significance of intention in perpetrating a wrongdoing, rather than the weapon with which the wrongdoing was committed. Not just this, the choices that were chosen by the Government must be classified and distributed in Indian languages. The way toward presenting changes in Mohammedan Criminal Law proceeded till 1832, when the law was completely annulled. Direction VI of 1832 assumed a vital part in molding the future course of criminal law in India. It enabled the judges of Nizamat Adalat to overrule fatwas and furthermore gave that non Muslims who were under trial could request that they would not like to be taken a stab at as indicated by the Mohammedan Law of violations. All in all, a definitive specialist to choose cases was only given to the directing officer. After 1832, the jury framework, as it won in England, was presented in India. This framework was profoundly scrutinized as a disappointment, as the judge was halfway and selected just the individuals who concurred with him. So as to handle the current inadequate condition of enactment, the British Parliament passes the Charter Act, 1833.

A noteworthy change was that the Governor General of Bengal was made the Governor General for India, who had the ability to enact the entire of British India. The forces of administrations of Bombay and Madras to administer were canceled. The Act likewise accommodated the arrangement of a Fourth Member, as a Law Member to the chamber of Governor General. In 1934, the first Law Commission of India was encircled under the initiative of Lord Macaulay, which assumed up the liability to set up a Penal Code for India. Crafted by the Penal Code assumed control 2 years and the last report was submitted on 31st December 1837, however it was not quickly acknowledged by the administration but rather was viewed as the most huge and memorable commitment of the Commission. Government workers scrutinized

"the astuteness of ordering a law which declined to draw solely upon any one arrangement of law, picking rather either to get from a few, or to depend on conceptual hypotheses of statute". Such protests, combined with the renunciation of Macaulay in 1838 and other new arrangements in the Indian organization, represent the deferral in the code's selection. Additionally, ensuing organizations looked for and in some cases affected their own adjustments to the Code. For at the very least 22 years, the Code stayed in the state of a draft and experienced minutely watchful and expand amendment by the individuals from the Legislative Council. At long last, the Indian Penal Code was passed into law on 6 October 1860 as an Act of XLV of 1860 and was converted into all the composed dialects of India.

The Penal Code experienced consequent changes by Whitley Stokes. The case law material on the arrangements and editorials of the Penal code was duplicated. The Constitution ensured essential rights and order principles of State to the subjects. There was additionally quick development in the car business which changed the monetary and political standpoint of the general population. It is critical to take note of that from 1860 to 1980, the Indian Penal Code was altered by one means or another 58 times. With the headways in advancements in Indian conditions, it ended up basic to make partitioned and new arrangements in the Penal Code. Sentences of transportation, detainment, fine, disparity in discipline, level of wrongdoing, cancelation or maintenance of the death penalty and so forth were matters including significant choices and cautious thought by specialists.

Courtrooms attempt cases under methodology that look like the Anglo-American example. The apparatus for aversion and discipline through the criminal court framework lays on the Code of Criminal Procedure of 1973, which came into drive on April first, 1974, supplanting a code dating from 1898. The code incorporates arrangements to speed up the legal procedure, increment effectiveness, forestall manhandle, and give legitimate help to poor people. The essential structure of the criminal equity framework, in any case, was left unaltered. Other than the Indian Penal Code, 1860 numerous different statutes have been ordered to control different sorts of different wrongdoings, outstandingly desk violations, violations against ladies and youngsters, financial offenses and against national honesty, against fear mongering and digital violations.

By and by, Constitutional certifications secure the blamed, as do different arrangements epitomized in the 1973 code. Treatment of those captured under extraordinary security enactment can leave from these standards, in any case. Furthermore, for every single down to earth reason, the execution of these standards changes generally in view of the class and social foundation of the charged. Much of the time, cops need to secure a warrant from a justice before founding ventures and seizing proof. People arrested must be instructed concerning the charges brought against them, have the privilege to look for direct, and need to show up before an officer inside twenty-four hours of capture. The officer has the alternative to discharge the charged on safeguard. Amid trial a respondent is secured against self-implication, and just admissions given before a judge are legitimately substantial. Criminal cases normally happen in open trial, in spite of the fact that in constrained conditions shut trials happen. Techniques exist for bid to higher courts.

India has an incorporated and generally autonomous court framework. At the peak is the Supreme Court, which has unique, investigative, and warning locale (see The Judiciary, ch. 8). Beneath it are eighteen high courts that manage the states and association regions. The high courts have supervisory expert over every single subordinate court inside their purviews. All in all, these incorporate a few locale courts headed by region justices, who thus have a few subordinate officers under their watch. The Code of Criminal Procedure set up three arrangements of officers for the subordinate criminal courts. The principal comprises of official judges, whose obligations incorporate issuing warrants, prompting the police, and deciding appropriate strategies to manage open brutality. The second comprises of legal justices, who are basically trial judges. Third, trivial criminal cases are here and there settled in panchayat.

CONCLUSION

The recorded foundation of discipline and its usage demonstrates that the disciplines in those days exceptionally boorish, brutal, frightful and ignoble and their executions were likewise extremely impossible to miss. The old types of disciplines which are more graceless and brutal, for example, felting stones until death, cutting of ear, nose, fingers, legs and hands for various offenses, marking various types of figures on the body of the indicted individual and so on

changed to worthy types of disciplines in perspective of the changing inclinations of the general population. Wrongdoings can be found in all kinds of different backgrounds and has affected each area of the general public. The present age old legal discipline framework isn't reasonable to control the offenses it ought to experience a radical change. The just a single method to control the violations and to reduce its united awful consequences for the general public is forcing legitimate discipline to the capable people and executing them immediately.

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