

LL.M 2 Year (3rd Semester)

History and basic principle of criminal law

L-3009

Criminal jurisprudence in Primitive and Ancient Ages.

Introduction-

The criminal law is the body of law that relates to crime. Mostly criminal law is established by statute, which is to say that the laws are enacted by a legislature. Criminal law includes the punishment and rehabilitation of people who violate such laws. The law of crimes took birth along with our civilization .as soon as people grouped themselves into an organized society, the need for criminal law was immediately felt the purpose of criminal law is to punish the criminal and to prevent recurrence of crime. Sir Henry Maine has called the ancient Law, stated that the penal law of ancient communities was not the law of crime, but was the law of wrongs. Criminal Law, in its earlier stages was largely dominated by the idea of retribution. this was in accordance with human nature, as it satisfied the desire for vengeance. The responsibility for crimes was attached not only to human beings but also to animals and even to inanimate objects.

Criminal Law of The Hindu System-The Aryans settled first in our country as wander farmers. In course of time they made their own laws for their good government. The Hindu Law of crimes ,especially the law of punishment ,is of immense importance. Arthasastra, Manu Smriti and Yajnavalkya. Smriti are the three leading law codes of ancient Indian. It is Manu Smriti or the Code of Manu. Which has made a lasting impact on human behavior in India.¹The Kautilya s Arthashastra contains different forms of criminal law violations during his time.

It list the duties of the king and rule ,based on Dharma of administration of justice of them .In Manu smriti ,law was discussed under 18 principal heads ,covering both modern civil and criminal branches of law such as gifts sales without ownership, recission of sale and purchase, partition bailment ,non-payment of debt ,loans ,wages or hire ,breaches of agreement and contract, disputes between partners master and servant ,boundary disputes ,assault and slander, defamation ,trespass cattle ,damage to goods and bodily injuries in general .It specifically recognised ,assault ,batter, defamation, theft ,robbery, gambling violence to body, adultery ,altercation between husband and wife as

¹Pillai PSA, Criminal law Lexis Nexis Butterworths Wadhwa .Tenth Edition,2008 P.21.

crimes.² The highest prescribed punishment was the death sentence .Before punishing the offenders, the social states ,caste etc. of the accused plus factors leading to the commission of the crime were to be kept in view³ .This shows that criminal jurisprudence of Manu is not free from bias.

According to P.V. Kane “The mere ancient criminal law in India was very severe and drastic ,but from the times of Yajnavalkya and Brahaspati the rigour of punishment was lessened and softened and fines came to be the ordinary punishment for many crimes”.The Hindu law of punishment occupied a more prominent place than compensation. Manu Smriti distinction between the higher and lower castes in the matter of giving punishment. Brahmins ,persons belonging to highest caste of the Indian society ,and woman were exempt from the death sentence .a brahmin was to be banished as it was considered a greater punishment for death penalty .If a man belonging to a lower caste ,if an avarna man committed adultery with a savarnas wife,say a Namboodiri woman ,the man would be awarded the death penalty ,If a higher caste woman, ie,savarna committed adultery with a lower caste man,she would be publicly humiliated or cast out of the house and city ,or thrown to the dogs, and in the same cases, burnt alive. various tariffs of damages were provided for different types of assaults and defamation. According to Dharmashastras there is a reference that the administration of justice was firmly establish as an important function of the king ,Who was looked upon as a be holder of social and moral order for the purpose of maintaining Dharma.He was empowered to punish the offenders and it was his duty to maintain up hold the law. A Hindu code was compiled by the pandits of Benaras at the instance of Warren Hastings, when the latter was the Governor-General of the India. It was called the Gentoo Code. It provided death penalty for murder. Theft was divided into open theft and concealed theft, and different punishments were prescribed as in Roman law.

Mohammedan criminal law ----Mohammedan criminal law it is believed, originated from the Holy Quran. It was further expounded through

Hadis- The sayings of the prophet

Ijmma-Analogical deductions from the text laid in the Holy Koran,

Kiyas- Views of the learned scholars.

Sunna-Rule of conduct.

Hidaya-General principle of Muslim criminal law.

²Pillai PSA ,Criminal Law ,Lexis Nexis Butterworths Wadhwa,10th Edition 2008.P.22.

³Srivastava O.P. Principles of Criminal Law ,Eastern Book Company.4th Edition 2005.P.1.

Fatwa-i-alamgiri-Collection of case law.⁴

So can say that the substantive Mohammedan criminal law has divine origin. When Mughal rule was established over major portions of India, Mohammedan criminal law supplanted the ancient Hindu penal law. Mohammedan criminal law expounded by the leading doctors of the suni Mohammedans, Aboo Haneefa and his two disciples Aboo Yoosuf and Imam Mohammed, that was introduced by the Mughal conquerors whose power reached its Zenith under Akbar (1556-1605)

Mohammedan criminal law all offence classified as follows-

Qisas → Retaliation → Offences against a person → Willful killing.

Diyat → Blood money → Payable to the victim → Compensation.

Hadd → Fixed penalties → Thief, Robbery, Mutilation, Adultery.

Tazeer → Discretionary punishment

Siyasat → Ordinance of the ruler.

The Mohammedan criminal law recognized five kinds of Homicides –

- 1) Katl-amd → Willful homicide by a deadly weapon → Equivalent to our murder .**
- 2) Katl-sabih-amd → Culpable homicide not amounting to murder .**
- 3) Katl-i-khata → killing under a mistake.**
- 4) Katl-I mobah → justifiable homicide.**
- 5) Accidental Homicide.⁵**

Under Mughal rule civil justice and revenue laws came under the authority known as Diwani, Where as military and criminal justice came under Nizamat. Mohammedan criminal law suffered from many defects as many of its provisions were not in conformity with good government, natural justice and common sense. 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 punishment varied according to the nature of the crime.⁶ Thus we can say that there was no uniformity in the administration of criminal justice during the Muslim rule in India ,and it was a most chaotic state.

⁴ Paranjape Prof.N.V. Indian Penal Code,1860,Central Law Publications.1st Edition 2010.P.3.

⁵ Paranjape prof.N.V,Indian Penal Code 1860.Central Law Publications,1st Edition2010.P.5.

⁶ Gaur K.D.,Criminal Law Criminology and Administration of criminal Justice, Lexis Nexis Third Edition 2015,P.198

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