Jus Corpus Law Journal
Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

IPC 1860: A detailed overview

Sahil[a]

[a]National Law University, Odisha, India

Received 21 January 2022; *Accepted* 05 February 2022; *Published* 08 February 2022

In earlier times there was not a single uniform law that could have been commonly applied to the people of India. The INDIAN PENAL CODE (IPC) which is also a common criminal code, was passed in the year 1860 to fill that loophole and was framed by Lord Thomas Babington Macaulay. This is a very broad topic including various interpretations. This research paper will discuss briefly some major amendments and two controversial sections. My main motive for making this research paper is to introduce the IPC from the historical context to the present times. The research paper has mentioned some of the major happenings that took place while introducing this code. It has also very briefly explained the major changes that took place from time to time including some controversial sections which need to be looked upon. The research paper also includes some personal suggestions.

Keywords: *IPC, penal, offender.*

INTRODUCTION

Enacted in the year 1860 on the 6th of October the INDIAN PENAL CODE (IPC) on the recommendations of the first law commission came into force in the year 1862. **Sir Lord Thomas Babington Macaulay** was the main framer of this code which was drafted in 1834 and it is one of the oldest Criminal Code which is still serving and being applied. It is the official or

we can refer it to as a general criminal code of India which is used to penalize offenders of different types of offences such as criminal conspiracy, offences against the state or religion, offences affecting the human body, criminal breach of trust, etc. It comprises 23 chapters and then further has been divided into 511 sections which cover all the substantive aspects of the criminal law. As stated above, we can see how important and unique this code is for the Criminal Justice System. In this paper, we will broadly discuss the same topic. We will talk about its history and the reasons for drafting this code. We will also be talking about some major amendments and certain ambiguities that followed. It will be followed by the reasons for that Statute(s), Judgement(s), etc. coming into being. We will be also discussing the issues and the criticisms that followed. There will be some personal suggestions from my side that need to be looked upon. In this research paper, I have also tried to cover every small details that we need to know about with some personal reasoning and opinions.

HISTORY AND ITS BACKGROUND

Earlier, there used to be no uniform law to regulate and penalize the offenders. Either the punishments sometimes were too harsh or they played a minute role. After some time the law was getting shaped up, the quantum of the punishment got reduced and people started to pay some sort of compensation to the victims instead of getting under the aegis of a rule that believed in a *Tit for Tat* or *Truth for truth* principle. This resulted in a sliding scale coming into existence for any ordinary offenses and which furthermore gave birth to an Archaic Criminal Law. But there was a problem, earlier different personal laws were applied to both Hindus and Muslims, and there used to be a kind of confusion between the parties of different religions in any case. There was no common code to govern people from all religions throughout India.

Right before the Britishers took on India, the law which was used to penalize and punish offenders of various crimes was **Mohammedan law**. It was applied to both Hindus and Muslims. At that time, criminal courts were established, with the *Qazi*or *Mufti's* decision being subjected to the Collector's supervision. For civil and revenue-related cases, there was a court named **Sadr Diwani Adalat**, which comprised the Governor-General and Council. **Sadr**

Fauzdari Adalat was the court for criminal justice. An appeal court for criminal matters called **Sadr Nizamat Adalat** was established in Bombay and Madras but later got amalgamated into the Supreme Court system. In 1773, the **REGULATING ACT** came into being which brought some major changes. One of them was an elevation of **Warren Hastings** from Governor of Bengal to Governor-General of Bengal. This act also incorporated Bombay and Madras presidencies under Bengal's control. An executive council was made to assist him which included 4 members. The **CHARTER ACT OF 1833** created an All India Legislature including the office of law member in the council of Governor-General and provision being made for a law commission. Under this charter, the Governor-General of Bengal was elevated to the position of Governor-General of India; **Lord William Bentinck** became the first governor-general of India. One of the four members of that executive council which was made in 1773 was added as a law member under the CHARTER OF 1833.

Thomas Babington Macaulay became the first law member in that executive council of the Governor-General of India. After all these happenings, the first law commission was made in 1834 with Lord Macaulay being its chairman and also the then Law Minister. The other members were Sarva Shri Macleod Anderson and Millet. The draft was proposed to the Governor-General of India in council on 14th Oct 1837. But it didn't take any effect. Another commission was set up for reviewing the proposed draft and it got completed in the year 1850. It was also presented to the legislative council but it didn't work due to some reasons in 1856. After the revolt of 1857, **Sir George Barnes Peacock** revised the draft thoroughly. He is the one who later becomes the first Chief Justice of Calcutta High Court. Then comes the year 1860 in which the code passes from the Legislative Assembly on 6thoct. But the twist was Lord Macaulay was already dead. He didn't get to notice the passing of the code which was framed by him only. It extended to the whole of India but wasn't applied to the princely states initially. They had their own legal system till the 1940s. After that, it extended to the whole of India except in the state of Jammu and Kashmir till 30th Oct 2019. It got into effect after the dilution of article 370 on 31st Oct 2019 replacing the Ranbir Penal Code.[1]

[1] The Indian Oaths Act, 1873, *Law Commission of India,* 28, 9 <https://lawcommissionofindia.nic.in/1-

TOPIC ANALYSIS

We can divide or classify our all laws into two parts. Those are **SUBSTANTIVE** and **PROCEDURAL** laws. The former provides defines a different kinds of offences including essentials, Ingredients, etc. In the same place, Substantive Laws also prescribe punishments. The latter talks about the implementation of Substantive Laws. It also talks about the procedures while in a trial. The INDIAN PENAL CODE falls under the first category i.e. Substantive Laws as it prescribes punishments, provides explanations and exceptions, and at the same place defines or covers different kinds of offenses. While framing this code there was a number of objectives that had to be filled. The very main objective of the code was to have a general or we can term it as a common code throughout the country. The code has also been amended several times since the very early stages. Although IPC has been amended at least 77 times, however, it has not been amended completely since the day it got enacted and was enforced later. Even the 42nd law commission recommended various changes but a majority of the recommendations are still in that document and haven't been implemented yet. The time when this code was implemented was really different from now. Society has been evolved at a great pace and the world has become more advanced than before. Modern society is very different from the earlier ones. So it is highly expected that law needs to evolve and modify its procedure and workings from time to time. Although the code was intended to bring a certain kind of uniformity in the society and modification to the process that was followed with regards to criminal law earlier. Still, certain ambiguities in the code is still needed or were needed to be revisited to make it more liberal or well suited for the time being. Let us discuss some sections and case laws which is controversial and have some ambiguities that need to be changed and looked upon. But before that let us briefly know about some major amendments that took place after the enactment of the code.

The Indian Oaths Act, 1873: As oaths already existed in ancient India, earlier they used to be governed by the Muhammadan Law, Dr. KP Jayaswal had stated: *"Oaths which have been treated by the Hindu Lawyers as a species of ordeal came under the province of the Dharma Thinkers.*

50/Report28.pdf> accessed 31 December 2021

They recommend its application to all witnesses in the King's Courts and Apastamba prescribes a special formula to be administered."[2]

The Indian Oaths Act, 1873, didn't order any new laws. It only merged the law regarding the matter foundation which was contained in some old Regulations and in Act 5 recorded in 1840. The act shows up that before this Act was passed some old Regulations of the Government of the East India Company necessitated that Muhammadans were to be sworn on the Quran and the Hindus on the water of the Ganges. Act 5 of 1840 nullified these structures, pledge, and Hindus and Muhammadans to give proof on grave confirmation. The arrangements of Act 5 of 1840 were reached out by sec 9 of Act 18 of 1863 to the High Courts. Then, at that point, came Act 6 of 1872.

Sec 1 is a conventional segment containing the short title, and so forth sec 2, which cancelled specific authorizations, was itself revoked by the Repealing Act of 1873 (12 of 1873). Sec 3 avoids from the domain of the Act procedures under the steady gaze of Courts-Martial. Sec 4 specifies the people who are approved to direct promises and attestations. Sec 5 gives that all observers, translators, and legal hearers will commit to pledges or confirmations. Sec 6 orders that Hindus, Muhammadans, and different people who have an issue with committing to a promise may, all things considered, make an insistence. Sec 7 engages the High Courts to prescribe the types of pledges and certifications, and to identify with what is ordinarily known as "uncommon pledges". Sec 13 authorizes, that oversight to make a vow or make an assertion will not refute any procedures, etc. Sec 14 requires each individual to give proof regarding any matter under the watchful eye of any court or individual approved to regulate vows or insistences to express reality on such subject.

In England, the law on promises and attestations is to be found in the precedent-based law and in specific resolutions. The ability to direct promises is contained in section 16 of the Evidence Act, 1851. The Perjury Act, 1916 makes specific saving arrangements with respect to anomalies in the structure and service of advertisement serving a promise. At long last, the Oaths and

[2] The Indian Oaths Act, 1873, *Law Commission of India,* 28, 9 <https://lawcommissionofindia.nic.in/1-50/Report28.pdf> accessed 31 December 2021

Evidence (Overseas Authorities and Countries) Act, 1963, manages pledges to be directed in England for acquiring proof for use in a country outside England.[3]

The Criminal and Election Laws (Amendment) Act, 1969: This act of the Parliament of India further amended Acts 45 of Indian Penal Code 1860, 5 of the Code of Criminal Procedure 1898, and 43 of Representation of the People Act 1951. It also brought some rules against obscene materials and publication of certain illicit or controversial materials which could have been objectionable. The major issue that occurred here was regarding the definition of the word CONTROVERSIAL. It could have been resulted in political targeting and in arresting of any individual without any lawful justifications.

Criminal Law (Amendment) Act, 2013 (Nirbhaya Act): Before moving further let us discuss its background. It was December 16th of the year 2012 in Delhi when a girl was brutally raped in a bus by 4-5 men when she was traveling with her friend after watching a movie. In this case, it was also alleged that an iron rod was also inserted in her reproductive organ and she was dragged on the bus floor by her hair.[6] There was a huge public outcry after this incident. Thousands of people throughout the country came out and protested on various streets and monumental places. After a number of hearings and case findings, the convicts (Mukesh Singh, Vinay Sharma, Akshay Kumar, and Pawan Gupta) were hanged to death on 20th March 2020).

It is also important to mention that the first such uproar was visible in *Tukaram and Another vs State of Maharashtra* which is famously known as the *Mathura Rape Case* in which two policemen had raped a girl who hailed from a marginalised section on 26th March 1972. The case resulted in various civil groups around the country coming together further resulting in the **CRIMINAL LAW (AMENDMENT) ACT, 1983** coming into force with certain changes and new definitions. But after the Nirbhaya Case, the government was worried and was thinking to bring certain changes in the existing criminal laws. They were also thinking to broaden the scope of the same. After some days of the incident, a committee was appointed under the central government for advising some changes. That committee was headed by a

[3] *Mukesh v State (NCT of Delhi)* [2017] 6 SCC 1

retired judge of the Supreme Court **JUSTICE JS VERMA.** Other members included **JUSTICE LEILA SETH** who was also a retired judge and an advocate named **GOPAL SUBRAMANIAM.** They submitted the report after a month only. The report highlighted certain loopholes and the main causes behind such incidents. The report also talked about the main driving factor behind such cases after consulting many experts from the respective fields. They also highlighted how the government and the police failed on their side to ensure the security of women which were the major cause(s) behind these kinds of crimes. On 1st Feb 2013, the ministers of the government agreed to bring an ordinance for the changes or the amendments suggested by the Verma Committee. The majority of the suggestions were added to the original legislation. On 3rd April 2013 considering the whole outrage regarding the Nirbhaya Rape Case, the then President **PRANAB MUKHERJEE** brought the ordinance. It was passed on 19th March 2013 and 21st March 2013 in Lok Sabha and Rajya Sabha respectively.

This act amended the Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973[7] mainly on the laws related to sexual offences. Some new offenses were added further which are as follows:

- Acid Attack.
- Sexual Harassment.
- Stalking.
- Voyeurism (Observing or watching people while they undress, during sexual intercourse, or are naked).
- Attempt to an acid attack.
- Non-treatment of the victim by the hospital.
- Assault or Sue of criminal force to women with an intent to disrobe.

Other new sections include 166-A which talks about Public servants disobeying direction under a law which was cognizable and bailable in nature and 370 which talked about trafficking of a person or more than one person, Minor and More than one Minor. The punishment(s) extended from 7 years to14 years and was cognizable and bailable in nature. It also clarified further that the absence of any resistance will not imply consent. The offence of

any sexual assault used to be gender-neutral earlier but after this act came into being the offense became more women-centric. Now as the legislation came into being, the major issue here was that it was too inclined towards a specific gender (sec 326A and 326B being the exceptions here which talked about Acid Attack and attempt to Acid attack respectively). As earlier there was a complete gender-neutral perspective of this kind of offences but it got drastically changed after that. The other issue was that some major suggestions of the Verma Committee were missing in the original bill. One such thing was the age of taking or giving consent being reduced.[4] However, the suggestions were not fully rejected, they weren't just implemented.

The Criminal Law (Amendment) Act, 2018: This bill was introduced in Lok Sabha on July 23rd, 2018, and was passed on July 30th, 2018, and Aug 6th, 2018 in both the houses (Lok Sabha and Rajya Sabha) respectively. The act amended **IPC 1860** and **POCSO Act**, 2012. The quantum of the Punishment was increased in certain offences like Rape and Gang rape for minor women below 12 and 16 years and 16 years and above. A few years back, several states had also introduced or passed a bill(s) agreeing on the punishment for the death penalty for rape of girls below 12 years of age.[5] Those states were Arunachal Pradesh, Madhya Pradesh, Rajasthan, and Haryana. Here I provide a short summary of the changes that were introduced in the new act:

- If the age of the victim woman is below 12 years- If the offence is rape then the minimumpunishmentwasincreasedfrom10yearsto20yearsandthemaximum from life imprisonment to life imprisonment or death. If gang-rape then the minimum punishment would be life imprisonment and the maximum included the death penalty too.
- If the age of the victim woman is below 16 years- If committed rape then the minimum

[4]Rahul Karmakar, 'Arunachal prescribes death for raping girls under 12' (*The Hindu*, 16 March 2018) <https://www.thehindu.com/news/national/arunachal-prescribes-death-for-raping-girls-under-12/article23274886.ece> accessed 11 December 2021

[5] Amendments to Criminal Law, *Committee on Amendments to Criminal Law*, 134 <https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf> accessed 9 December 2021

punishment will be of 20 years which is twice more than the previous one. The maximum punishment remained unchanged. For a gang rape, the minimum punishment would be now life imprisonment and the maximum punishment remained unchanged.

- If the age of the victim woman is 16 years and above- If committed rape then the minimum punishment will be of 10 years (added 3 years more) and the maximum remained unchanged.

The new act also decreased the time period of completion of the investigation of the rape of a child from three months to two. It allowed disposal of the appeal against the case in 6 months and barred anticipatory bail if the victim is a minor girl below the age of 16years. Again, the very main issue here was that the act is not gender-neutral. It specifically talked about a particular gender only. It is also to be noted here that the offender was always presumed to be a male and the victim to be a female to form a case of rape. Also, the provision carried a higher punishment. However, it was not applied in the case of minors. The offence here is totally gender-neutral according to the POCSO act. The Verma Committee had also recommended the explanation and the offence of the rape be made totally gender-neutral.[6]

Here, I mentioned some other controversial sections that need to be acknowledged:

Sec 124 A (SEDITION) – As IPC was introduced in 1860, there was no mention of section 124 A which talks about the Sedition Laws. It was introduced in chapter VI of the IPC in 1870. The law relates itself with the offences against the state. But there was no trial in the coming 20 years. The first trial ever in this section was conducted on 25th Aug 1891 in *Queen-Empress vs Jogendra Chunder Bose and Ors* which is also known as THE BANGABASI CASE. This section was introduced by the Britishers to curb dissent of any kind against its rule which has always drawn criticisms due to its misuse which we will be discussing in the next part further. The law had also resulted in the imprisonment of the freedom fighters such as **LOKMANYA TILAK** and **MAHATMA GANDHI**. The law was further amended to make it a cognizable offence in 1973 by the then Prime Minister **INDIRA GANDHI**. In the initial stages, there were

[6] *Kedar Nath Singh v State of Bihar* [1962], AIR 955, SCR Supl. (2) SCR 7

two main ingredients to make a case on sedition. Those were Public Disorder and Violence. After sometime later the courts decided to narrow down the definition of Sedition which further goes like this; whenever any act threatens the security of the state then that act or the conduct will amount to sedition. When the seditious activities were on the rise, the constitutional validity of the act got challenged. In *Kedar Nath Singh vs State of Bihar* (1962), the appellant Kedar Nath Singh was accused of criticizing the then government and was arrested on a sedition charge. The then 5 Judge bench of the Supreme Court which was headed by the then **CJI BP SINHA** contended that the sec 124A of the IPC which talks about sedition is constitutionally valid. However, in *Balwant Singh and Another vs State of Punjab*[7] (1995), the Supreme Court held that mere raising of slogans without any reaction of public will now amount to sedition. Here is an excerpt;

'The raising of some slogans only a couple of times by the two lonesome appellants which neither evoked any response nor any reaction from anyone in the public can neither attract the provisions of Section 124-A nor of Section 153-A IPC Some more overt act was required to bring home the charge to the two appellants Raising of some lonesome slogans a couple of times by two individuals, without anything more, did not constitute any threat to the Government of India as by law established nor could the same give rise to feelings of enmity or hatred among different communities or religious or other groups.[8] However, there are plenty of criticisms and requests to abolish this section as a whole as it is used as a political tool to curb dissent which we will be discussing further.

Section 309 (ATTEMPT TO COMMIT SUICIDE) - The term 'Suicide' means to take own life due to certain reasons. This section mainly talks about the attempt to suicide and its punishment. It further explains: *'Whoever attempts to commit suicide and does any act towards the commission of such offense, shall be punished with a simple imprisonment for a term which may extend to one year [or with fine, or with both.]'*[9]

The 42nd law commission in its annual report had recommended the removal of this section. Although the Amendment bill was passed from the Rajya Sabha it was unable to get passed

[7] *Balwant Singh v State of Punjab* [1995] 1 SCR 411
[8] Indian Penal Code, 1860, s. 309
[9] Indian Penal Code, 1860, s. 3

from the Lok Sabha as The Parliament got dissolved that time. In *Gian Kaur vs State of Punjab*, 1996, a Constitution Bench of the Supreme Court maintained the protected legitimacy of Section 309. Nonetheless, in 2008, the Law Commission in its 210 Report, said that an allowance to self-destruct required clinical and mental consideration. In March 2011, the Supreme Court excessively prescribed to Parliament that it ought to consider the plausibility of erasing the part. In 2014, replying to an inquiry in Rajya Sabha, then, at that point, the then Minister of State for Home said the public authority had chosen to drop Section 309 from the IPC after 18 states and 4 Union Territories had supported the suggestion of the Law Commission but in vain. The major issues regarding this whole section were regarding restriction on someone's life and further even punishing for it. Some people even question edit based on Article 21 which talks about the Right to Life and Liberty.

FUTURE PROSPECTS

The INDIAN PENAL CODE (IPC) has certainly evolved from earlier times but there are many things which of those still need to be worked upon and re-looked at. When it came into the effect, its main purpose was to meet the needs of the then British Empire. Although it has helped in revamping the Indian Criminal System still there are some loopholes that do exist even today. The major problem we face today is the implementation of a new law. For that, we need to sensitize everyone and make everyone aware of everything going around them. The majority of the times we came across an ill-behaving policeman, late registration of FIR, delayed justice which results in a bulk of cases piled up in the court. These are very basic things that need to be reformed and bring certain major changes.

Apart from these, certain major changes are required in some sections of the IPC. Let us talk about sec 124A as a matter of the fact. As we know, it was enacted when the revolt of Indian Freedom Fighters was on a rise. It was enacted to curb the dissent of our countrymen. But even after independence, we have seen how it has been as a mere political tool to curb the opposing voices by putting them behind the bars without any lawful justification. The conviction rate is always low as there is no substantial case and strong evidence against the accused. In *Shreya Singhal vs Union of India* (2015), two women were arrested for posting something which was

allegedly offensive on social media. It was related to the shutdown of Mumbai City after the death of a political leader. The court in this case discussed three important concepts that were Discussion, Advocacy, and Incitement, and also told that Mere Advocacy or a Discussion is not incitement. It is also important to note that there was no case of sedition from the year 1972 to 2009 in the United Kingdom which resulted in the law being abolished in the year 2009 there. Another major issue was regarding sec 377 from the colonial era which criminalized homosexuality.[15]However, it was further decriminalized in the modern era. As you can see the perspective changes from time to time. The laws which are obsolete and not applicable in the current occasions ought to be distinguished and removed totally or amend the same.

CONCLUSION

The whole research paper was based on the INDIAN PENAL CODE 1860 with its historical background and how it evolved with modern times. It also discussed how some sections were not well suited in the Indian context and the issues related to it. It talked about some famous and important cases or the judgements related to it which played a huge role in bringing reforms to this statute. We also discussed various loopholes and issues which is required to be noticed including the attest cases. Not only reforms but proper implementation of the same will suffice. As you can see there have been many amendments in IPC but it has not been reformed and restructured totally. It would not be an easy step. It needs re-structuring the whole justice delivery system including those who ensure the law of the land to be implemented on a ground level that is the Police. Restructuring the Police system is also a need of the hour.