Lecture-11

Administration of Criminal Justice

During the Mughal reign, Mohammaden Law was applied in the administration of Criminal Justice. The holy Quran was the main source of law, which was applied in deciding both civil and criminal cases. The Qazees (Judges) used to interpret the words of holy Quran by following the precedents of eminent Muslim jurists like Imam Abu Hanifa, Imam Malik, Imam Hambal and Imam Shafi in deciding the cases brought before them.

After the fall of Moghal Empire, the English Criminal Law as modified by several Acts, was administered in the Presidency towns of Calcutta, Madras and Bombay. However, in the Mofussil towns, the Courts were mainly guided by the Mohammadan Criminal Law. The system of administration of justice in the Presidency town of Bombay was revised in the year 1827 and from that time, the law administered by the Criminal Courts was in accordance with the law laid down in Regulation XIV of 1827 but in the remaining Presidencies of Calcutta and Madras, the Mohammadan Criminal Law remained operative till the Indian Penal Code came into force.

The Indian Penal Code came into operation on 1st January, 1862. It was drafted by the First Indian Law Commission of which Lord Macaulay was the President and M/s Neeleod, Adderson and Mellet were the members. They drew not only upon English and Indian laws and regulations, but also upon Livingstones Louisiana code and the code of Napoleon. The draft code was placed before the Governor General of India in Council in the year 1837 and it was revised by Sir Barnes Peacock, Sir J.W. Colville and others. After its completion in the year 1850, it was presented before the legislative council in the year 1856 and ultimately it was passed on 6th October, 1860. The Indian Penal Code was thus given effect to on 1st January, 1862. In the Indian Penal Code, the Criminal law of India has been codified. It deals specifically with offences, being the substantive law.

For the proper trial of offences provided under the Indian Penal Code, procedural law was necessary but prior to the year 1887, there was no uniform consolidated criminal procedure for the whole of British India. There were few separate Acts for the Presidency Towns and Provinces. Having realized the necessity of a Uniform law of Criminal procedure, a

uniform law was introduced in the year 1882 for the whole of British India, both in the Presidency Towns of Calcutta, Madras and Bombay and also in Moffussil courts. Thus, a uniform Criminal Procedure Code was passed in 1882. Thereafter, came the Criminal Procedure Code of 1898 which remained operative till the present Criminal Procedure Code (Code of Criminal Procedure 1973) was enacted. The code of Criminal Procedure Bill was presented in the Rajya Sabha (Upper House) on 4th December, 1972 and it was passed on 13th December, 1972. The Lok Sabha (Lower House) passed the aforesaid Bill with certain amendments on 12th December, 1972 and the Rajya Sabha on 18th December 1973 by adopting all the amendments carried out by the Lok Sabha. The Criminal Procedure Code got the assent of the President of India on 25th January, 1974 and it came into force on 1st April, 1974. It has been laid down in section 4 of the Code that all offences under the India Penal Code shall be investigated, inquired into, tried and otherwise dealt with in accordance with the provisions contained therein. Some of the salient features under the new Code with the object to expedite the disposal of Criminal cases are as under:

(a) The committal proceedings, which preceded the trial by the Court of Sessions under the old code of criminal Procedure 1890 has been abolished as it had caused considerable delay in the trial.

(b) Summons procedure was adopted for the trial of offences punishable with imprisonment up to two years instead of one year as was under the Criminal Procedure Code 1898 for expeditious disposal of the cases.

(c) The scope of summary trials has been expanded by including offences punishable with imprisonment up to two years instead of six months as was under the Criminal Procedure Code 1898 and summons procedure to be adopted for all summary trials.

(d) The new Code curtailed the revisional powers of Courts against interlocutory orders as it had been found to be one of the main causes of delay in the disposal of criminal cases.

(e) In transfer matters, the provision for compulsory stoppage of proceedings by subordinate courts on the mere intimation by the party of his intention to move the higher court for transfer of cases has been dropped and a new provision was introduced in

the new Code to the effect that the High Court and the Court of Sessions shall not stay further proceedings in cases unless it is necessary to do so in the interest of justice.

(f) The courts have been empowered to order costs to be paid by the party seeking adjournment to the other party.

(g) Provisions have been made for service of summons by the registered post in certain cases.

(h) In petty cases, the accused has been enable to plead guilty by post and to remit the fine specified in the summons.

(i) If the appellate court or the revisional court finds out that any error, omission or irregularity in respect of charge has occasioned failure of justice, it need not necessarily order retrial.

(j) The de novo trial was abolished in cases left by predecessor presiding officer. The succeeding sessions Judge or Magistrate can conclude all the trials left part heard by his predecessor.

(k) Provisions have been introduced for obtaining admissions or denials regarding the genuineness of the documents filed by the parties in Criminal cases like civil cases to dispense with the formal evidence for proving the documents, the genuineness whereof is admitted by opposite party.

(l) Provisions prescribing period of limitation on graded scale for launching criminal prosecution in certain cases have been introduced.

The criminal Procedure Code is objective in its scope. It intends to consolidate the law relating to the criminal procedure, which is necessary for the proper application of Indian Penal Code. The Code provides smooth machinery for the punishment of offenders against the substantive criminal law. It lays down the procedure for enforcement of the provisions of the Penal Law in general and India Penal Code in particular. In special Acts, for instance, U.P. Gangster and Anti Social Activities (Prevention) Act, Narcotic Drugs and Psychotropic Substance Act, Terrorist and Disruptive Activities (Prevention) Act, etc., where there is silence regarding certain procedure, the General Law i.e. the Criminal Procedure Code has to be attracted and the provisions contained therein shall prevail since the commencement of

proceedings till its end. The Criminal Procedure Code is the procedural law not only for the administration of Indian Penal Code, but also for the Special law. Thus, the Code is designed to further the ends of justice. The main object of the Code is to ensure that an accused person gets a fair trial along with certain routes (well defined lines) in accordance with the principles of natural justice.

The Code of Criminal Procedure is primarily a procedural law but at the same time, it delineates the power of the courts, their hierarchy, the power of the police in dealing with the offenders and makes provisions for prevention of the crimes. The code is also socialistic in its approach by providing for maintenance to wives children and parents who are unable to maintain themselves.

The Indian Penal Code prescribed death sentence for heinous offences. Murder is, no doubt, an evil of first degree as it causes maximum injury to the victims family and also to the society at large. The human life becomes extinct by the act of the offender. The idea underlying the provision of death sentence is to administer deterrence to the potential offenders.

Of late, there has been a raging controversy about the retention or abolition of Capital Punishment. Views for and against are being canvassed. But if the matter is travelled upon in a calm cool and dispassionate manner, one would converge to an inevitable conclusion that retention of capital punishment in the Indian Penal Code is a must for the safety of the society having regard to the obtaining law and order situation in the country. It is a prudent step more of a tortoise than of a hare on the part of the Indian Legislature not to act with precipitation in abolishing the capital punishment. Manu in his Dand Neeti; Kautalliya in his Arth Shastraand the Holy Quran have explicit terms declared that there is safety for your lives in death penalty.

After the commencement of our Constitution, attempts were made to get the Capital punishment declared ultravires of the Constitution, but all in vain. The Supreme Court has upheld repeatedly the validity of Capital punishment in its various judgments viz 1980 (2) SCC 684, Bachan Singh Vs. State of Punjab; 1983 (2) SCC 344, Sher Singh Vs. State of Punjab; J.T. 1988 (2) SC 171, Allauddin Mian Vs. State of Bihar; 1989 (1) SCC 678 Smt. Treveniben Vs. State of Gujrat and J.T. 1988 (1) SC 31, Jumman Khan Vs. State of U.P. Thus, there does not appear that the Capital punishment is going to be abolished from the Indian Penal Code in

the near future. But the question still remains whether the Capital punishment has been able to serve as a check or worked as deterrent in the recurrence of murder cases in our country. The answer is definitely no. Rather at present the number of murders has increased by leaps and bounds upon survey of the past records. Today our courts are flooded with cases of murder. The Supreme Court has no doubt upheld the legality of Capital Punishment in Indian Penal Code but the backlog with our courts has been unremitting causing enormous and undue delay in the administration of justice. At present, murder appeals have been pending decision in Allahabad High Court for the last 12 or 15 years adding each year to the backlog with the Court. There does not appear any quick disposal of the backlog in the near future having regard to the less number of disposals of criminal appeals than the large number of fresh filing of appeals in the High Court. Under the circumstances, the day is not far, when the patience of the litigant public shall run out and they shall have no faith in the administration of criminal justice necessarily leading to the utter failure of administration of justice. The same sorry state of affairs also permeates the subordinate trial courts.

The question remains as to how to ease the Courts of the backlog of cases in order to replenish the confidence of the litigant public in the administration of criminal justice, and refurbish the sagging image of the judiciary. Considering the provision with regard to compounding of the offences incorporated in section 320 Cr. P.C. it is apparent that the provision and its application is confined to minor offences. The present situation as shown above can lookup and the confidence of the litigant public can be retrieved if all the offences including the offence of murder is by legislation made compoundable subject to the permission of the court. Though this drastic proposition appears to be quite alarming at the first blush but there is no other suitable and quick remedy to get rid of the backlog of cases pending in the courts and also for future accumulation of cases in courts. The apprehension that the accused may compel the complainant to consent for compounding the offence under duress is chimerical and is no valid ground for discarding the aforesaid proposal for compounding the offences. The scope of the provision-contained u/s 320 in Criminal Procedure Code, has to be enlarged as to achieve the object. The Courts must be satisfied about the bonafides of compromise arrived at between the parties before the permission is granted to compound the offence. The compounding of offences in heinous offences like murder may also lead to

peaceful behaviour and fellow feeling between the parties and to set at rest the hostility thereby making it conductive to the larger cause of peace in the society.

Another aspect of the matter which deserves serious consideration is the question of awarding compensation to the victims of the offences and at the same time to the accused persons for false accusation brought against them. Provision has been made in the Criminal Procedure Code for both the situations, viz., section 250 and 357. Section 250 Criminal Procedure Code deals with the compensation to be awarded to the accused person for accusation against them without reasonable cause. Likewise, section 357 Criminal Procedure Code provides award of compensation to the victims of the offence. But the law courts seldom make use of these provisions while deciding the cases.

In my view, if these provisions are liberally used by the courts while deciding the cases, it would have salutary and healing effect on the aggrieved persons and the confidence of the society at large in the administration of Criminal justice shall stand restored. In may cases courts can impose sentence of fine instead of awarding jail sentences and out of that amount of fine, compensation be awarded to the victims considering the gravity of the damage caused to them. Under Section 357 Cr. P.C., the Courts can award compensation to the victims irrespective of the sentence of imprisonment or fine that the courts may choose to pass.

Similarly if the courts find that the accused persons brought before the court for trial are the victims of false accusation, the courts can order payment of compensation to the accused by the complainant, the first informant or the prosecuting agency as the case may be.

MULTIPLE CHOICE QUESTIONS:

1. The chief justice get retired at the age of :-

a. 56 years
b. 40 years
c. 58 years
d. 75 years

Ans: (d)

2. 'Rule of law' was defined by :-

a. Dyasi

b. Glade stone

c. Laski

d. Glade stone

Ans: (a)

3. The Indian judiciary consists of a _____ for entire nation.

a. High Court

b. Supreme Court

c. District Court

d. All of these

Ans: (b)

4. Marshal judge is related with :-

a. Constitutional law

b. international law

c. Public law

d. Rule of law

Ans: (a)

5. When one see violating the law, one immediately think of informing the _____.

a. Police

b. Judge

c. Lawyer

d. None of these

Ans: (a)