

International Seminar

ON

"Relevance of Indian Penal Code in Controlling and Combating Crime in Modern Age"

(Commemorating the Hundred Fiftieth Anniversary of the Indian Penal Code, 1860)

December 14-15, 2010

The Centre for Criminal Justice Administration at Dr. Ram Manohar Lohiya National Law University, Lucknow, organized an International Seminar on "Relevance of the Indian Penal Code in Controlling and Combating Crime in Modern Age", on December 14-15, 2010, commemorating the 150th anniversary of the Indian Penal Code, 1860.



The Indian Penal Code, 1860 is the earliest, comprehensive and codified criminal law that the British Indian Administration enacted primarily for India and later on extended to other Asian countries like Singapore and Malaysia. It is to the credit of this unique Code that even after one hundred and fifty years, it has continued to occupy the position of the basic criminal Law of India and other Asian countries that have undergone significant social and political

transformations during this long period. This has been possible, both, because of inherent normative qualities of the Code, as well as its amenability to creative interpretations that the judiciary has fully deployed. This has enabled the Code to remain alive and socially relevant document even today. For a Penal Code to remain alive and socially relevant even after such

a long period, is no mean achievement and calls for a grand commemoration. The forms and styles of commemorations can differ, depending upon the objective at hand. The National University of Singapore in their commemoration of the Penal Code, on June 9 to 11, 2010 had taken up the theme: "A Model Indian Penal Code Adhering to the Philosophy of Macaulay". The seventeen presentations to the symposium (fifteen in person and



two through video conferencing) from scholars drawn from Australia, U.K., Canada, Malaysia, India and Singapore primarily focused on the great contribution of Lord Babington Macaulay to the drafting of the Penal Code, and also deliberated on the continuing relevance of Macaulay's Philosophy to Criminal Law reform and a Model Penal Code. Since the

symposium was a part of a project on the same theme the Penal Code commemoration event was heavily influenced by the project objectives.

In India it was incumbent upon us to pay our rich tributes to this living law by organizing a commemorative event in the form of an International Seminar, bringing together all the consumers and stakeholders of the criminal justice system of those countries where the Indian Penal Code is the most important penal document. Envisioned by stalwarts like Prof. B.B.Pande, Prof. M.Zakaria Siddiqui and Prof. Balraj Chauhan, the Centre for Criminal Justice Administration, undertook this onerous task of organizing this seminar on Dec 14-15, 2010 at RMLNLU, Lucknow.



Objectives of the Seminar were:

1. To sensitize the participants with a view to make them aware of the relevance of the Indian Penal Code.
2. To study and analyze the implications and effects of the provisions of IPC in the light of changing societal structures and new types of offences entering into.
3. To educate Civil Society Groups about the legal and the Constitutional issues and stakes involved.
4. To assure citizens regarding their concerns for privacy, personal liberties and freedoms.
5. To identify the possible areas of operation and conflict.
6. To draw a mechanism for modification of provisions of Indian Penal Code.

The working Sessions of the Seminar were:

1. Ideology, History and Philosophy of IPC.
- 2 Law and Morality Debate in the context of IPC with special emphasis on suicide and homosexuality.
3. Punishment in IPC with special emphasis on death penalty.
4. Reforms in Homicide Law.
5. Offences against Religion and Public Tranquility.
6. IPC, Judicial Law Making and Agenda for Reform.



The inauguration ceremony was held on 14th December, 2010. The Chief Guest for the Hon'ble Justice Sri F. I. Rebello, Chief Justice of the Allahabad High Court, marked the beginning of his address with a brief discussion of the history of the Indian Penal Code and how it came to be drafted by Lord Macaulay and amended several times since then. The Code completed its 150 years of existence on 6th October 2010 and is thus celebrating its 150th

anniversary this year. He showed as to how the robust Act, which the rock-bed of criminal jurisprudence in our country, is also among the oldest surviving criminal laws in the world – the most comprehensive and admirable compilation of substantive criminal law. In his opinion, what remains the main beauty of this code is the fact that most of its provisions are as suitable today as they were when enacted in A.D. 1860. He commended the drafting and far-sightedness of Lord Macaulay who single handedly drafted this masterpiece which has successfully stood the test of the time. The days when the concept of individualization of punishment was totally unconceived, it defined offences and prescribed separate punishment for each. However, he cautioned that the Indian Penal Code is not a modern code in true



sense of the term. In fact, it requires changes to meet the aims and aspirations of contemporary society with emphasis on penology having shifted from punitive deterrence to reformation and correction. He congratulated the Vice-Chancellor, faculty members and patrons of this seminar and the students of the University. He expressed hope that the discussions that will take place in the seminar alongwith the opinions of foreign scholars present here, we will have some new ideas for reform and accordingly, the lacunae in the Code can be easily filled to give it a modern look.

Hon'ble Dr. Rakesh Dhar Tripathi, the Cabinet Minister for Higher Education, Government of Uttar Pradesh presided over the inaugural function. Hon'ble Dr. Tripathi laid emphasis on enacting an indigenous penal code as the Penal Code is of colonial origin which was imposed upon the subcontinent to enslave the Indians and to suppress and punish the rebels. He urged the august gathering of legal luminaries to come up with a nationalized IPC which shall reflect the State's policy of welfare for people. He opined that the law should not be simply for punishment but primarily for the welfare and upliftment of the people. He also extended his support to the University and expressed his pleasure and privilege to be among the distinguished scholars and dignitaries.



Prof. Balraj Chauhan, Vice Chancellor, Dr. Ram Manohar Lohiya National Law University, discussed as to how criminal law can be compared with a tree. A tree has 3 parts – roots, branches and leaves. Similarly, IPC can also be divided into 3 parts – principles being the 'roots', doctrines in the Code being the 'branches', and the specific offences being the 'leaves'. There are certain tests to determine whether any criminal law is fulfilling its functions as a good law. Firstly, we must see whether it is able to maintain public

order. Secondly, it must provide sufficient safeguards, especially to those who are weak. Thirdly, it must protect the society from criminal activities. He concluded that IPC comes true on all these considerations.

Prof. B. B. Pande discussed the relevance of IPC in today's age and said that the provisions of IPC e.g. S. 302, S. 303 have been challenged because of the Constitution which was not there in 1860 and therefore because of the Rule of Law and Constitutional practice. He laid emphasis on the fact that we will have to check whether the provisions of IPC are relevant today or not.

The first plenary session was chaired and co-chaired by Prof. B. B. Pande and co-chaired by

Prof. M. Zakaria, Former Dean, AMU, Aligarh. The keynote presentation was by Prof. Kam C. Wong of Xavier University, USA, shared his theories on policing which he has devised after 20 years of study and experience. He also pointed out as to how resourceful people do not report matters to the police and the most important of such resources are education. He emphasized that the closest person should solve people's problems and police should be the last resort. The police first try to solve a person's problem, even by bending the law, rather than solving a crime.



Prof. K. I. Vibhute of UNISSA, Darussalam, Brunei, shared his experiences and observations of policing and the Criminal Justice Administration in Africa. Prof. Jianhong Liu, Professor and Chair, University of Macau, threw light upon the contemporary Chinese Criminal Justice administration and primarily punitive nature of the same, while also elaborating upon the changing trend and the increasing inclination towards mediation mechanism, probation and parole, community corrections and other restorative measures. He also explained the marvel and relevance of Confucian legal thinking and its effect on the Chinese Legal System of today.



Prof. Sylvie Cimmomonti, Dept. of Criminal Justice, France, gave a taste of the European legal system. She threw light on the evolution of the Penal Code of France and the latest developments regarding the law of preventive detention over there.

In the second plenary session, Prof. B. B. Pande, in his key theme presentation, emphasized upon putting meticulous effort for revising the IPC and also talked of balancing of the scales

of justice. He talked about the historical background of the Code and the intentions of the colonial government. His address was followed by a speech by Prof. Faizan Mustafa, Vice Chancellor, National Law University, Orissa, who talked about the Malimath Committee Report. He went on to point out that the abuse of power by the courts is the biggest challenge before the Criminal Justice Administration today. In the evening, the students and the faculty members of Bahtkhande Music University enthralled the participants and guests with their catching performance showcasing the rich Indian heritage and traditions. Hon'ble Vice-Chancellor of the Music University Prof. Shruti S. Katkar also graced the occasion.

On the second day (Dec 15, 2010), the final technical session was chaired by Prof K.I.Vibhute , UNISSA, Darrussalam, Brunei and Co- chaired by Prof. R. Thilagraj, University of Madras. Many legal luminaries shared their views on relevance of IPC today. Speaking on the occasion, Prof. M. Zakaria Siddiqui, Former Dean, AMU shared his experience of teaching in Countries like Nigeria and Malaysia which have adopted the IPC with little modifications as their domestic Penal Code. He also pointed out some illogical sentencing structures in IPC and proposed for deliberation on these points. Prof. Faizan Mustafa, Vic-Chancellor of NLU, Orissa spoke on the death penalty and pointed out the unconstitutionality of death penalty and how the Courts have failed to strike it down as unconstitutional in some of the cases. He also spoke on the transition period between Pre-Bachan Singh case and Post-Bachan Singh case where the 'rarest-of-rare' doctrine was propounded. He expressed his concern at the 3% increase in awarding of death penalty by Supreme Court in the present decade.

Prof. G. I. S. Sandhu, Registrar, R.G.N.U.L., Patiala, spoke on the theme 'Crime against Religion' and laid emphasis on the secular fabric of our nation. Prof. Latha, Asstt. Professor, Tamil Nadu Open University, Madras, presented her empirical research on Woman and Child Trafficking. She emphasized on the need for a new legislation particularly targeting on Woman and Child Trafficking.



The technical session was followed by the formal Valedictory Session. The Chief Guest for the Valedictory Session was Hon'ble Mr. Justice Vishnu Sahai, Member, State Human Right Commission, Uttar Pradesh. Prof Balraj Chauhan, Vice-Chancellor, RMLNLU gave Welcome Address and expressed his gratitude towards all the participants for the fruitful discussions leading to a successful completion of the seminar. He enumerated the contributions made by Justice Vishnu Sahai as a member of Human Rights Commission, in the field of criminal law and human rights interface. On this occasion, Eminent Scholar Prof B.B.Pande was felicitated by Prof. Balraj Chauhan and RMLNLU fraternity for his great and unmatched contribution in field of law especially in field of criminal law and criminology. Presidential Address was given by Prof. M.Z.Khan, Former Dean, Jamia Milia Islamia University, Delhi. Prof. Khan highlighted the suggestions and recommendations which emerged from different technical sessions in the two day seminar.

On this occasion, Hon"ble Mr. Justice Vishnu Sahai, appreciated the vision of the colonial masters, the British who researched and understood the psyche of Indian masses and came up with IPC, 1860. He further said that the rise in scepticism for relevance of IPC was because of the rise in crimes such as terrorism, hijacking ,trafficking ,etc. for which the provision of IPC are not enough and can only be seen in embryonic form. He also said that the punishment for some crimes such as outraging the modesty of a woman is inadequate and there is a need for reform in this area.



Dr. Mridul Srivastava, Assistant Registrar of the University proposed a Vote of Thanks and told that the seminar was the brain child of Prof. B.B. Pande, who should be thanked for his motivation in this direction. He also thanked his learned colleagues Prof. K.A. Pandey and Prof. A.P. Singh for all their endeavour put together which ensured the success of the seminar.