CHAPTER - VII

THE SYSTEM OF PUNISHMENTS UNDER SPECIAL LAWS AND THE NEED FOR PENAL REFORM

Like the general law of crimes about which there were problems as regards the offences punishable under the provisions of the Indian Penal Code, there were problems with regard to offences punishable under the Special laws also. The special laws are a separate and distinct branch of laws dealing with a specific subject, person, place or thing, and there are different provisions about the punishment to be given under the provisions of special laws. For example, the special laws deal with offences against women, juvenile delinquency, the Representation of Peoples Act, and a few other subjects, and there are provisions in these branches of law regarding punishment for various offences and owing to inadequacy of the provisions or difficulty with regard to enforcement of the provisions on account of which there is need for reforming the law.

It has been observed that owing to certain local conditions it is necessary to think of reforming the penal law to make the system effective and enforceable. In certain cases, the law is inadequate for the situations; in certain others there is no provision to deal with the new situations and in certain others there is the problem of misinterpretation of the provision on account of which the authorities consider it necessary to introduce reforms to the extent of having new offences punishable with a new kind of punishment, a new procedure to make the system more effective. In some cases, the Law Commission has been asked to give its opinion about changes to be effected in the provisions.

This chapter has the object of studying the circumstances in which there was need to make a new provision in the special laws. A few illustrations are given in this chapter to show how the authorities have felt the need of introducing changes in the special laws.

1. New Offences created under Special laws

a) Terrorist and Disruptive Activities (prevention) Act 1985 (TADA)

The government of India is constantly trying to control the terrorist activities from a long period. The Indian P.C. passed in 1960 has full tried to introduce the offence of sedition and waging of war against the govt. India. The capital punishment is specifically provided for the same in order to bring the retributive and preventive approach into reality. In post independence period the govt. passed certain enactments which becomes supplementary to the main court. Maintenance of Internal Security Act (MISA) was passed in 1975. It was followed by the terrorist and disruptive
activities (prevention) Act, 1985 up to 1987 the provisions of the Act were applicable to the Punjab only. Later on 1987 the criminal law amendment Bill was passed by the parliament and it was decided that the provision of Tada be applied to all the parts of India. In 1995 the govt. failed that the provision of TADA must be amended and the terrorist activities must be control with hard hand.

(a) prevention of Terrorism Act, 2002 (POTA)

The pretention and terrorism Act (POTA) was passed in 2002 by which vast power have been vested to the police department in order to control the modern terrorist methods. The implementation of POTA has becomes very successful throughout India. The sever punishments & speedy trial discourage the terrorists. The law commission of India is of the opinion that the persons engaged in throwing acid & dangerous chemical upon the other persons specially the women must be treated like terrorist and jurisdiction of POTA may be implemented upon them. It is to be noted that the cases under POTA are tried by the special courts established in major cities like Mumbai, Chennai etc. That has been passed in such a way that it should consider even the modern victim logical approach. Victim logy expects the monitory compensation from the convict to the complement in the same criminal case.

(i) The offence of Acid Attack

A report was submitted by law commission In July 2009 to the government in respect of acid attacks for the inclusion of acid attacks as specific offences in the indian penal code giving a separate section with description of punishment.

The reson the lawcommission took up the matter for researching and creating a report was that the victim of acid attack, Laxmi, had filed a writ petition in the supreme court under article 32 in 2006 in which the lawcommission of India was made respondent No.2. The law commission made it a point in their w.s. that no relief can be sought from them as prayed for in the writ petition.

The law commission observed that the Acid attack incidents have become a very common threat not only in India but also all over the world. In case of young and beautiful girl Laxmi the reason of acid attack was that she had refused to marry with the accused person.. Laxmi was badly injured and disfigured due to acid attack that her life became virtually hell and that she was
living like a dead corpse. She could not move about is society as her looks had changed and she
had become horribly ugly to look at. The parents were very poor, but luckily she was helped by a
benefactor for a medical expenses to the tune of about 2.5 lacks in that amount Laxmi got four
steps of plastic surgeries done on her. Because of those operations victims physical appearance
did not change much and she remained bad to look at Some more surgeries would be required to
improve her face and body

Following suggestions came up in respect of crime against women i.e. For the offence of
acid attack there was no separate description punishment is defined in the Indian penal code,
before 2 Fed. 2013. But in a penal code of India is inserted with a new offence which is described
as acid attack or attempt to inflict acid attack. Before 2 Feb. 2013 in Indian penal code there was
some law about that a offenders of acid attract, because there were no separate footing about the
other grievous hurt than the acid attack means a offender who through only type of acid to on any
person specially women victim is separately punishable under sec-326-A and 326-B. In that new
section a there were provided a larger punishment than the other gracious hunt and compensation
caused to the victim.

For the benefit or for the moral and economically support one provision is inserted i.e.
compensation for victim, and that compensation is not a nominal compensation, means a accused
person gives a victim to minimum compensation for her whole medical treatment is some cases
court grant compensation to victim from the accused person 3 to 4 lacks which is not too adequate
for treatment for plastic surgery. u/s-236-A of the Indian penal code prescribed a minimum
punishment of r the offence of acid or administering acid attack. The minimum punishment is
described that for a term which is minimum ten years and maximum up to the term of imprisonment
for life and fine also, all fine which is collected from the accused paid to the victim.

In sec-326-B of the Indian penal code defined the attempts of acid attract in that a minimum
punishment is prescribed which may be five years and maximum prescribed punishment of
seven years imprisonment. Both the above mentioned offences are cognizable non-bailable and
to be tried by court of sessions.

The irony is that acid attack has been equated with grievous hurt. The hurting is generally
done by a sharp weapon. The wound after healing does not look bad and ugly. In acid attack the
victims are in 99% cases women and young marriageable girls. They are chosen for acid attack
by the males who know the girl/woman for some time and have been forcing the girl for marriage
or cohabitation and are nursing grudge and sentiment of revenge for have been ignored/refused
/thwarted advances by the girl. Such males attempt acid attack or succeed in disfiguring. The
punishment of five years of jail term appears to be too small, considering what has been planned
for the girl. Section 326 B does not mention the actual fine and leaves it to the discretion of court.
There should have been a minimum amount mentioned which should have been at least five lacks.
The objective of inserting 326A and 326B is clearing of the nature of deterrence. The why in 326B amount of fine not mentioned is an intrigue.

The Acid attack victim Laxmi filed Criminal Writ Pi
tition in 2006 Laxmi versus union of India and others. The law commission of India was made second respondent. The law commission took three years to prepare report and submitted report in 2009. Five years have passed but the ministry of law Justice and Company Affairs government of India is yet to come up with the crime Victim Compensation Board. The unpardonable delay in setting up of a crime Victim Compensation Board speaks volumes about the attitude of the government towards handling of sensitive issues related with atrocities on women.

(iii) Certain New Economic Offences:

Dr. N.L. Mitra committee (Chairman committee on Legal Aspects of Bank Frauds, Reserve Bank of India ) which submitted its report to the Reserve Bank of India in 2001, conceded that criminal jurisprudence demanded evidence beyond reasonable doubt for conviction. The committee felt that no evidence sufficient to grill can be obtained in bank frauds. This presumption of N.L.Mitra committee is baseless. Banks demand dozens of documents and certificates for granting loans. Entries in ledgers and counter entries in cash register are maintained then why evidence cannot come forward? The answer is that police is not educated in accounting and auditing matters and therefore might not be able to extract and arrange in order documentary evidence. The inability of police is being termed as flaw in jurisprudence that is wrong. Jurisprudence cannot be altered for punishing some class of employees.

The committee’s contention that financial fraud is not an offence is totally a mistaken statement. The investigation team is poorly equipped. The police department must recruit by a special drive chartered accountants to the post of deputy superintendent and above to investigate economic offences. With specially trained investigating officers alone bank frauds can be unearthed. Generally in economic offences voucher audit is done. Which pieces of papers can become vouchers in the strict sense is not defined in auditing. No handwritten paper without serial number .and initials signature of accountant cashier clerk cannot become voucher. If some strict rules are made circulated and followed bank frauds investigation will be a useless time consuming exercise.

New financial frauds are under the rules based on RBI guidelines and insisting on obtaining compliance reports by actually visiting factories godowns and work in progress sites upon which huge loans have been given. Second important thing is that ascertaining whether the judges and prosecutors know accounting methods and auditing principles. If adjudicating authority is not
having specialized knowledge of accounting and auditing how will he frame charges is a very pertinent question that is never asked at any level. It is again surprising and shocking that one committee appointed by government doing nothing concrete and simply is recommending appointment of another committee. One high ranking officer from anti corruption department had commented that for finding out fraud of Rs. 100/-the government incurs expenditure of at least Rs. 6000/- because the cases continue on boards for decades and all officers and government servants claim their work/travel/ stay allowances for attending court.

According to the present researcher, Dr.N.L.Mitra committee report had a shortcomings mentioned supra. The committee forgot to recommend that there should be specialized team of police officers to unearth bank frauds and stock market frauds and also find out money laundering destinations. The police department will have to recruit through Chartered Accountants to the post of Deputy Superintendent / Assistant commissioner by a special Public servicecommission examination either of UPSC or state PSCs have to recruit class I police officers. The present class I police officers come from various backgrounds some are IIT engineers some are MBBS doctors but none is Chartered Accountant. Fraud case requires audit skills including voucher audit legal document audit title audit valid transaction audit and physical audit of land infrastructure etc. which specially trained person alone can handle. Present officers are not equipped to unearth frauds and even if they do, they will not be able to successfully get the conviction for the offenders from the court. Handling bank frauds and stock market frauds is a specialised job. Whatever investigations were carried out so far in big scams nothing satisfactory came out in terms of result. Were the investigations in major scams handled ineffectively? The present researcher's view is that the scams really were handled in a perfunctory manner. If we compare financial scam investigation in other countries we find that England had created Serious Frauds Office under the relevant law. For handling investigation and prosecution of voluminous economic offences with search and seizure powers.

The different types of wide ranging economic offences and cyber crimes related to online bank accounts take place in India on regular basis. There is need that these crimes be handled on priority basis.

(a) crimes relating to banking and financial: Historically, crimes in these areas are obtaining loans from banks presenting totally fake investment shown or inflated investment shown in papers. There is always under invoicing to save taxes and over invoicing to obtain loans and subsidies by the borrower which may be an individual proprietor or a partnership firm or a company. The collusion of bank officials at some level is necessary for scam to take place. All bank employees are not fraudulent but a few are
certainly working in banks who are vulnerable to bribes. Many private organizations cheated the people.

The Sahara Group, the Peerless group, the Saradha group cheated millions of the middle class and lower middle class depositors. Now funds can be embezzled through hacking account numbers of wealthy people and doing mischief of national electronic fund transfer. The cyber bank frauds are very intricate to explain in simple terms. Account numbers are sold by mobile phone companies to all sorts of operators brokers insurance sellers telemarketing companies who certainly sell the mobile phone number data to fraudsters who can hike identity by obtaining PAN card numbers etc. The ponzy game pyramid schemes run by famous companies like AMWAY are not uncommon in India. Internet websites and social networking is expanding knowledge base but has also become a source of defrauding naïve people in England the bank card fraud alone was to the tune of Euro 300 million.

(b) Prevention of Money Laundering Act 2002


Director of Enforcement is exclusive head to take action under the PMLA against any rich person howsoever rich he may be. The meaning of money laundering is that just like clothes are sent laundry for wash illegal money is sent for a wash and converted into legal money. The money earned in a narcotic business is shown as earned in dairy farm. Money earned in flesh trade (trafficking in women) is shown as money earned in construction business. The huge funds can be used in funding terror schemes, buying prohibited weapons for mass killing and attack on police force.

Prevention of Money Laundering Act 2002 was amended twice. Firstly in 2013 and for second time 2in 1 preventive settlement are set in leave. As file of arraign and examination takes moment, there should be range for short-term accessory of all property including bank financial records with the court accomplishment into investigate the nexus among offence and material goods. There must be a lower financial top limit and insist on all communication through cheques (unless in the case of banks, there should be activities for coverage such deposit, when they are suppose), avoidance of 3rd party endorsement unless the particulars
in the transactions are made available and treatment by banks of all announcement above a certain limit as well as other communication which are understand, with suitable transform of bank prudence clause.

(c) Insurance crimes: indemnity fraud which runs into trillion dollars if full amount for all countries‘ is taken. The client firm insures enormous stock of raw fabric on document in reality only 5% or 10% of it is in reality at the site. Then it is set on fire at midnight and the grounds is always short course. The claims of indemnity obtain by bribing officials or through the court by appointing a mischievous crafty lawyer. There are more bizarre stories than this happening all over the world.

(d) Credit card crimes: These crimes include credit card theft and use of the card by the thief, debit card and automatic teller machine (ATM) card theft and use by another person are frequent. The CCTV camera is not helpful in prevention of fraud since the thief may use the mask or helmet Fraud /loss in the credit card industry is over $ 1.5 billion annually and rising every year.

These crimes are constant increasing

(e) Medical reimbursement fraud in government departments is very big and runs in to several lac crore rupees.

(f) Telecommunications: Communication Fraud Control Association (CFCA) in its 2011 report says that all over the world telecommunication frauds must be swindling money to the tune of 40 billion dollars. Telecommunication fraud is rising with acceleration. The main illegal activity of this fraud is in relation to identity.

(g) Telemarketing frauds. This kind of fraud has not remained endemic but now it has grown spatially and has become universal. The telephone caller obtains your number from telecom company and keeps on phoning to sell fake insurance and other fake products.

(h) Identity theft: In poverty alleviation programmed of the District Rural Development Agency was defrauded by many politicians who stole the identity of poor men in their locality and obtained loans for buying goats buffalos and floor mills. The poor men did not know until the recovery officer reached them and demanded recovery of loan deducting whatever subsidy the scheme had.
cyber crimes in relation to copy rights and trademark is very common. In India too plastic overhead tank manufacturers in smaller industrial estates affix names logos of TATA ,Reliance Mahindra & Mahindra , Kirloskar, Harison, Bosch, Siemens , IBM etc. The private English Schools in talukas and district in backward areas use the names like Oxford, Cambridge, Trinity. Etc.to impress the innocent and gullible. In USA stealing industrial/commercial secrets, cyber squatting etc are very common frauds.

Technology and offense: by means of increasing e-commerce, there is augment in cyber money-making crime. For every financial crime, there is a replicated version with much more probable, larger profits and less important risk. While the ecommerce, as a organization is immediate and proficient, its very speed and efficiency are creating troubles. The Internet has made all boundaries and legal authority out of date. Criminal can remain in one influence and commit crimes elsewhere and avoid prosecution. Therefore, a high degree of synchronization to put off crime and collaboration to put on trial and discipline crime turn out to be necessary particularly as the profits of these offenses go into additional crime including drugs and arms.

Pornography (including child pornography): These offences involve aggression against women and brood. These offences would cover produce, possession and profitable use of pornography counting child pornography. The more serious part of pornography is so as to they obtain sex slaves from poor countries or such countries where war is going on and economy is shattered. After the war broke out in Bosnia, Serbia. Herzegovina the trade industry and agriculture totally collapsed. The women and girls had nothing to eat so they stood on highways to sell their bodies to the lusty and the rich. All pornography makers lure the poor women to act into pornographic films and videos. This trade is worth trillion dollars.

Crimes against the environment- any different type of environment protect law. Which are very dangerous to the public health.. Oil spills in oceans, illegal mining, illegal forest cutting, illegal fishing, illegal use of pesticides , illegal release of chemically treated water back into the river are the crimes which are not pardonable since the innocent people dependent on forests rivers and land are poisoned slowly until they are crippled or condemned to die.

Dangerous connection of economic frauds with terrorism:

Criminologist Leon Radzinowicz in a statement said that a society that applauds innovation in the world of business cannot expect that the innovation will not be used by criminals and terrorists.
There is always possibility that all latest electronic circuitry and gadgets would be used by terrorist outfits for making improvised explosive devices and clandestine sending and receiving messages without coming on the radar of police and military intelligence. The money needed to buy latest gadgets is provided to the terrorists by the drug mafia, human traffickers, illegal arms sellers, poachers road robbers and politicians who have illegal rights petrol diesel, bitumen, paraffin, heavy chemicals etc. the attention of the media and the intelligence department of the government. There is secret connection between terrorism and economic offences.

Terrorists need guns, bombs, cars, wireless sets and computers. They need money. To consolidate their position as terror outfit they raise funds through sale of narcotics internationally, print fake currency and transfer funds through havala. Sale of weapons to insurgents is yet another activity of terrorist. This is the reason the terrorist have connection with money laundering and other economic crimes. There is need to disconnect terrorists from economic crimes.

Defence to women beside offences:

Many of Indian functioning women will now be restricted from sexual annoyance gratitude to the momentary of a invoice planned at engage in discarded performance such as sexual advance, needs for sexual prejudice and sexual insinuation finished at theory test.

Exclusion of politicians from contesting Elections again

in recent times, the former Chief Minister of Bihar, Lalu Prasad Yadav, and Jagdish Sharma were declared disqualified from the LokSabha following their conviction in the fodder scam. RashtriyaJanata Dal (RJD) chief Lalu Prasad, an MP from Bihar's Saran district, and Janata Dal (United) MP Jagdish Sharma from Jahanabad in Bihar are the first LokSabha members to be disqualified after the supreme court order.

A few days before this verdict, the Congress leader RasheedMasood was disallowed from the RajyaSabha, following his confidence in a dishonesty case.

On Sep 30 2013, a individual Central Bureau of Investigation (CBI) court convict Lalu Prasad, Jagdish Sharma and others in a case of deceptive extraction of Rs.37.70 crore from Chaibasa coffers in the then complete Bihar during 1994-95 when Lalu Prasad be the chief minister.
Punishment to the Juveniles

There is a special law called the Juvenile Justice Act under which the quantum of punishment and the procedure for the trial of juvenile has been prescribed in a distinct manner. The punishment meted out recently to a juvenile in the case of Delhi Gang Rape Case has resulted in a hue and cry whether the system is worth being continued in our country like this. A brief account may be given of the controversy which has arisen about the punishment meted out to the juvenile who was involved in the gang rape murder case.

The verdict on the minor accused in the December 16, 2012 gang rape was pronounced by the Juvenile Justice Board on August 30, 2013. The verdict pronounced by the court has come in for criticism that the quantum of punishment is very less and does not meet the ends of justice.