CHAPTER - VIII

EVALUATION OF THE WORK DONE BY THE COMMISSIONS AND COMMITTEES FOR PENAL REFORM

More to the point the academics who in their learned treatises have offered their views on the need for reform there are reports of the official commissions and committees in which they have reflected on the need for reform particularly with regard to the question what particular type of new offences should be created under the Statutes and what new punishment should be provided to deal with the crime and what new procedure should be evolved to prevent the recurrence of crimes. The work done by the commissions and committees on this subject may be summarised thus:

Stating form the beginning of 18th century there has been a spurt of reformatory steps in the matter of the criminal law of our country. The first agency which was at work was the lawcommission of India which was set up by the British regime and it was this commission which had taken great pains for the codification of laws in India. The indian penal code of 1860 was the work of the lawcommission which the Britishers had set up in our country.

After independence of the country we had many laws enacted by the British parliament which were not abrogated but given effect by art. 372 of the constitution. The idea was to maintain legal continuity and fill up the legal vacuum.

Despite the efforts of the lawcommissions the law has been suffering from various shortcomings; it is found to be inadequate and ineffective. Ever since India attained independence there is an urge on the part of the authorities to deal with the problem of crime in its various forms. Officially, several committees and commissions have been appointed so far to suggest changes in the criminal law and improve the system of punishment and prevention of crimes. Some such committees and commissions include the Santhanamcommittee, the Mallimathcommittee, the Justice Vermacommittee etc. and extensive reports have been submitted by these committees on the crime problem. Each of these committees was appointed on a specific subject of crime and punishments therefore. The recent developments in the field of penal law Reform were with regard to the following matters.

The methodology followed in presenting the discussion on this theme is : the material is presented in two sections, Section A is devoted to the work of the commissions and Section B is devoted to the work of the committees:-
SECTION A - EVALUATION OF THE WORK OF THE LAW COMMISSIONS

Stating from the beginning of 18th century there has been a spurt of reformatory steps in the matter of the criminal law of our country. The first agency which was at work was the law commission of India which was set up by the British regime and it was this commission which had taken great pains for the codification of laws in India. The Indian penal code of 1860 was the work of the law commission which the Britishers had set up in our country.

After independence of the country we had many laws which had been enacted by the British parliament and which were not abrogated but given effect by art 372 of the constitution. The idea was to maintain legal continuity and fill up the legal vacuum. But the law has to be adjusted to the Indian scenario and to the tune of the principles cherished in the Indian constitution.

The dire necessity of reforming all the laws was felt and on Dec 2, Dr. Harisingh Gour moved a resolution in the parliament recommending the establishment of a statutory law revision committee. Finally on November 19, 1954, the Lok Sabha discussed non–official resolution to appoint a law commission with the object of modernization of laws criminal, civil and revenue, substantive, procedural or otherwise and in particular the civil and criminal procedure codes and the Indian penal code to reduce and resolve the conflicts in the decisions of the highcourt’s on many points.

The commission was organized into two sections: statute Revision Section and the Section to deal with the reform of judicial administration. The first law commission was appointed in September, 1955 under the chairmanship of Attorney General Setalvad. Since then the law commission has been functioning. So far seventeen commissions are appointed. The commission conducted thorough survey into various aspects like criminal procedure code, civil procedure code, administration of justice, marriage laws, tenancy laws, taxation laws, insurance laws, evidence etc.

i) report of the law commission of India report on the abolition of Death penalty

There are a few reports prepared by the law commission of India which have contributed much to the subject of penal reform, to mention a few the 37th report of the law commission discussed the most controversial subject of Criminal law, namely, death penalty including the abolition movement in India, in various countries, the commission also discussed in its report the pardoning power of President and Governor, the list of executions done from 1950-1963 and statistics of violent crimes committed during the same period, the report substantiates its suggestions with the help of the statistics it has collected.
The lawcommission of India in its 187th report discussed the various modes of execution then there was a comparative study of executions prevalent in various countries and finally the report ended up with the suggestion to replace hanging with lethal injection.

ii) By the lawcommission of India on with the socio economic offences in IPC, 1860

According to lawcommission in its 42nd report discussed the whole indian penal code, section wise with the object of overhaul the penal code. Many reforms were suggested particularly in the area of punishment keeping in view the changing circumstances.

(iii) According to statement of the lawcommission of India on the Trial and Punishment of Social and Economic Offences

This report dealt with the question of effective performance of the substance provisions of positive Acts. These offences may briefly explain as social and economic offences. The main question which had been suggest to the commission could be thus particular manner;

"The power of India government had under deliberation the question of importantly dealing with some unsociable and financial offence. There are definite unique Acts planned for the help for public in society and the offences under such Acts are antisocial scenery. There are special law as Essential Community Act for the Pre-venation of Food adulteration, medication (control) Act, Imports & Exports (control) Act. Foreign Exchange Regulation Act, etc. These anti-societal offences also increase to deliberate evasion of duty and the question that create for anxiety is how drastically and swiftly penal action can be taken to prove a restriction against commission of such offences. The present trend of law and also the judicial advance to such offences appears to be that these offences are control lightly and the punishments are not proper having regard to the gravity of such offences. The government of India wanted to have a well-defined opinion of the law commission as regards prestige of dealing with proper and quickly such anti-social and financial crime."

This statement accordingly concerned itself with the Scope of question of dealing adequately and quickly with that crime. The reports. Determine the difficulty of dealing efficiently with social and so far fiscal offences is not a new problem.

The lawcommission in its report stated that, “We have examine this problem carefully and have unsurprisingly given due weight to the opinion expressed by our precursor commission. on
the other hand we have, with respect, come to the finale that in respect of the crime with which we are troubled an amendment in this respect is called for. As a matter of interest, we may note that such a provision has so far been made only in the income-tax Act, and there too the pardon is granted by the government.

The relevant section is quoted below:

“291. (1) by the central government if, it is of estimation (the reasons for such opinion being recorded in characters) that with a view to receiving the proof of any person attachment to have been directly or indirectly concerned in or privy to the suppression of profits or to the shirking of expense of duty on profits it is essential or convenient so to do. kind to such person protection from action for any wrongdoing beneath this Act or underneath the Indian penal code or below any other Central Act at the time of being in power and also from the obligation of any fine below this Act on situation of his construction a full and accurate discovery of the whole state of affairs describing to the suppression of profits or shirking of imbursement of duty on profits.

(2) A affectionate of susceptibility made to. and accepted by. the person disturbed, shall, to the degree to which the protection extends. Render him untouched from examination for any wrongdoing in high opinion of which the affectionate was made or from the burden of any penalty below this Act.

(3) If it appear to the central government that any individual to whom protection has been tender underneath this segment has not comply with the circumstance on which the affectionate was prepared or is obediently concealing whatever thing or is give false confirmation, …”

Many of the Acts dealing with economic offences empower the enforcement officers to summon and examine The statements made by these witnesses before such officers are not, however, admissible in evidence in the subsequent criminal prosecutions. We are of the view. That these statements, if recorded by occurs of suhiciently high status, to be determined by the government should be admissible in such prosecutions, since they are very often the earliest officially recorded version of the facts.

Certain conditions and safeguards will. no doubt, be necessary. Reference in this connection may be made to the evidence act, which has a provision relating to the admissibility of a statement made in a previous judicial proceeding. The relevant provision in the evidence act is as follows:
"33. Evidence given by observer in a legal proceedings- Relevancy mg, or before any human being permitted by law to take it. Is of positive relevant for the aim of proving, in a consequent legal scheduled, or in a later phase of the same legal scheduled, the accuracy of the proof which it states, while the witnesses lifeless or cannot be establish, or is powerless of generous verification, or is reserved out of the way by the unfavourable social gathering, or if his attendance cannot be obtained exclusive of an total of stoppage or disbursement which, under the situation of the case, the court considers difficult to deal with 1 Provided- that the happening was among the same parties or their legislative body in awareness: that the unfavourable party in the first scheduled had the correct and chance to question; that the questions in issue were significantly the similar in the primary as in the next happening.

Explanation—A illegal examination or investigation shall be deemed to be a going on amid the prosecutor and the accused within the sense of this part."

We think that the safeguards mentioned in the proviso to section 33 need not appear in the new provision which we contemplate. We are further of the view that the court should have a discretion to admit the statement in evidence, if the circumstances of the case so require, even where the maker of the statement is a witness in the proceedings before the court. Though such discretion is not very frequently met with in Indian statute law, in this case it is necessary for obvious reasons.

We therefore recommend that the provisions may be added in the relevant Acts 2 "A statement made and signed by a person in a proceeding under this Act before any officer authorised by land to record it, being an officer of a rank inform by the central government in this behalf shall be appropriate, for the rationale of prove. ina examination for an wrongdoing below this Act. The accuracy of the evidence which it states.-

(:1) when the human being who finished the declaration is lifeless or cannot be establish, or is powerless of giving confirmation, or is kept out of the way by the unfavourable party, or if his attendance cannot be obtained exclusive of an quantity of delay or disbursement which, under the situation of the case, the court believe difficult to deal with; or when the human being who made the announcement is examine as a observer in the case. And the court is of judgment that having view to the state of affairs of the case. The announcement should be admitted in verification in the interests of fairness"

(iv) report of the lawcommission of India on Sanction for Prosecution of Public Servants
The lawcommission had occasion to examine the question whether sanction was required in respect of a public servant on the date of the court taking cognizance of the offence. The original code of criminal procedurehad provided for the safe guard of sanction in respect of public servants who were to hold the office. While dealing with the matter the lawcommission of india its 41st report observed that the Government servants doing their duties fearlessly and impartially could face litigations filed by rich and powerful people therefore protection to them by a piece of law is necessary. The protection provided by section 197 of criminal procedure code is necessary and the protection under this sanction is needed while in service and also after the retirement of the government servant. This arrangement of protection after retirement was thought necessary since protection afforded by Section 197 would be insufficient in case any person affected by the legal action by the government servant waited until the public servant retired and then filed a complaint. The ultimate justification for the protection afforded by Sec.197 of cr.p.c. is the public interest in seeing that government servants are not harassed by legally affected people by filing criminal complaints. It should be left to the high officials in government to determine whether the government servant really knowingly acted in excess of his power.

It was in pursuance of this opinion of the lawcommission the rule regarding sanction was made applicable even in cases where a retired public servant is sought to be prosecuted. After amendment of the code, the relevant sanction starts with the wording: “When any person who is or who was a public servant”.

The power to withdraw criminal prosecution given to a prosecutor is bad. The prosecutor withdraws the criminal case on the instruction of the top bosses of the government sitting in secretariat. The withdrawal is always politically motivated. The politicians involved in scams and other economic crimes pressurize Advocate General to order withdrawal of criminal cases pending in any of the district courts. The necessary element in the grant of the power is that it should be exercised in the interest of administration of justice which may be either that the state will not be able to produce sufficient evidence to sustain the charge or there is fear that the defense is capable of falsifying all evidence which the prosecutor has gathered through the police. The duty of the trial judge is to see that the withdrawal is not demanded by prosecutor on grounds other than judicial interest and that politicizing of prosecutor’s office is not being done by the ruling political party.

(v) report of the lawcommission of India on the question whether white collar crimes may be included in the indian penal code.
The lawcommission in its 29th report offered its views on the question whether the penalcode should contain the provisions on White Collar crimes, and what should be the nomenclature of the white collar crimes in India.

The lawcommission in its 42nd report discussed the whole indian penal code, section- wise with the object of overhauling the penal code. Many reforms were suggested particularly in the area of punishment keeping in view the changing circumstances.

The lawcommission of India in its 187th report discussed the various modes of execution then there was a comparative study of executions prevalent in various countries and finally the report ended up with the suggestion to replace hanging with lethal injection.

SECTION B – EVALUATION OF THE WORK OF THE OFFICIAL COMMITTEES ON PENAL LAW REFORM

Despite the efforts of the lawcommissions the law has been suffering from various shortcomings; it is found to be inadequate and ineffective. Ever since India attained independence there is an urge on the part of the authorities to deal with the problem of crime in its various forms. Officially, several committees and commissions have been appointed so far to suggest changes in the criminal law and improve the system of punishment and prevention of crimes. Some such committees and commissions include the Santhanam committee, the Mallimathcommittee, the Justice Verma committee etc. and extensive reports have been submitted by these committees on the crime problem. Each of these committees was appointed on a specific subject of crime and punishments therefore. The recent developments in the field of penal law Reform were to the following matters.

Several of the committees appointed by the government of India which studied the question of penal law reform offered a comment on the status of the criminal law of India and stated that the penal law of India is in need of reform since a long time; when it was enacted in the colonial era it was not in accordance with the international standards; therefore there is need for urgent reform of the law by the legislators. For example,

Another report on the subject of penal reform was the ‘Mallimathcommittee report’ submitted by the Justice Mallimath which made various recommendations for reforming the system of criminal justice.
Then there was the Justice Verma committee which was set up by the government of under the presiding rule of senior jurist and three other members to consider reforms to strengthen laws against sexual violence. And this was done when a 23 year old girl was raped by a gang of four persons on a commuter bus in Delhi. This was the worst incident of rape.

i) Santhanam committee report

K. Santhanam was a politician who belonged to Tamilnadu state. He was the most erudite among the members of parliament and was also respected for his integrity and spotless character.

In 1962, The Government of India appointed Santhanam to preside over the committee created to study prevention of corruption. Because of its thorough investigative work and recommendations, the committee earned a reputation as Santhanam committee on corruption. In his 1976 'code of Conduct for persons in power, authority or positions of trust' he included ministers and members of parliament and members of state legislatures as persons of position. The Santhanam committee recommended that there should be no use of position of authority for personal or family’s advantage, Santhanam committee also recommended that the persons having position or authority should not indulge in any dealing of business aimed at getting undue profits or benefits. Santhanam Committee also condemned taking of gifts and accepting hospitality while conducting doing official transactions.

ii) Malimath committee report

A committee for suggesting reforms in criminal justice system was appointed under the chairmanship of Dr.V.S. Malimath, former chief justice of Kerala High Court. The members of committee travelled to several nations in Europe to study important elements of criminal justice systems in Europe. The committee lost its focus which should have been on victims of crime and tranquillity in society. The committee instead examined criminal procedures on piecemeal basis and came out with recommendations which were felt by legal scholars neither dynamic nor radical and the tragedy is that most recommendations of Malimath committee were ignored by the central government.

Malimath committee was serious about fundamental rights of people in India and felt that in India public lives in constant fear of police. The investigation of crimes is done in an adversarial manner in which police and defending party do their sides of investigation and a neutral judge examines the evidence gathered. The flaw of this system is that the police has power, government funds, reach and aura where as the defence has no money no aura. One of the two parties has everything at its disposal. The accused or defending party is poor, uneducated, cannot hire top
lawyer and cannot gather evidence in support of his /her innocence. In matters of detention under stringent anti terror laws th common man cannot do any thing called defence.

Malimath committee suggested inquisitorial system in which investigation is supervised by an independent prosecutor or a magistrate called Examining judge. In France this authority is known as judged'instruction. Inquisitorial system of criminal investigation is not police oriented but its public oriented. While the adversarial system is based on mistrust questioning validity of each and every thing placed by both the parties viz. prosecutor and the defence, the inquisitorial system is based upon trust. The independent examining judge supervises the investigation and therefore there is no place to doubt the evidences gathered by both the parties viz. prosecutor and the defence. Malimath suggested that quest for truth must be the goal and somehow punishing the accused should not be the goal of criminal justice system.

There is no cross examination of witnesses allowed in inquisitorial system. The judge will ask questions to witnesses and the lawyers will not. Inquisitorial system disallows tricky and confusing questioning usually resorted to by some criminal side lawyers, especially targeting women complainants in matters of molestation and rape, in a very filthy manner.

In adversarial model of investigation at present followed by all court in India the victim of crime is badly neglected and has no importance at all. He or she has no legal right to give direction to investigation or point towards what is lacking. In inquisitorial system of investigation the victim has a role. The victim can demand the proper direction of investigation to unearth truth.

committe appointed to deal with the problem of crime against women

The government of India set up a three-member committee, headed by former supreme court chief justice J.S. Verma, to consider reforms to strengthen laws against sexual violence. And this was done when a 23 year old girl was raped by a gang of four persons on a commuter bus in Delhi. This was the worst incident of rape. The girl had received very serious injuries by cruel assault with an iron rod by rapists so much that she was admitted to intensive care unit, operated several times taken outside india for better surgical facility and finally succumbing to injuries died within a few days died. Public outcry over the whole episode of I gang rape and murder of the young woman filled the media reports. government of India founded a committee under retired chief justice verma to review the law on rape and suggest changes. The committee received massive reactions from the public, women's rights groups, academics, gender experts and lawyers. The recent changes in rape law are the result of reaction registered by the public with the verma committee.
Recommendations

Some of the key recommendations put forward by the Verma committee on the subject of penal law reform are given as infra

1. Voyeurism, stalking and intentional touching to be an offence

Voyeurism is watching someone, woman, or couple in their private mode. Because it incites criminal feelings among the voyeur. It can be an offence punishable by up to 3 years in jail. Loitering around a woman with bad intention is called stalking. The committee suggested stalking must be an offence punishable by at least three years in jail. Intentional touching the body of a woman, using obscene language audible to woman or doing gestures suggestive of sex act is suggested to be similar to a sexual assault offence.

1. Change forcible sex law.

Forcible sex with minor must carry at least ten years imprisonment. —Forcible sex by a gang must be defined separately and it be punishable by at least 20 years in jail. Death caused by violent rape must be punished with minimum 20 years in jail and maximum by death penalty. The committee suggested that marital rape be a criminal offence.

3. Fresh view of security laws in conflict zones

Media reports of sexual offences committed by the members of armed forces in India’s conflict zones such as Kashmir, Mizoram, Manipur, Tripura, Nagaland, Assam have already alerted the central government. And the public. Armed Forces Special Powers Act (AFSPA) - a controversial law that gives sweeping powers to Army and often confers immunity on security forces has to be reviewed. Security forces must be brought under the purview of ordinary criminal law rather than under army law. Special commissioners for women’s security must be deployed in all areas of conflict. These officers should be senior women IPS officers. Such commissioners will have powers to take action in all cases of sexual violence against women by armed personnel..

4. Control or declare illegal, patriarchal village councils

The khapanchayat is a kind of male dominated village committee in parts of north India. This unauthorized committee appointed by custom decides cases in unauthorized manner and
punish love marriages, molestation, assault on women etc. Khappanchayats are always against women traditionally and need to be abolished and declared illegal.

5. Take fresh view of medical examination of rape victims

Medical examination must be done by female doctor. Two finger per vagina test must be abolished. Wearing glove the inserting of fingers to know whether girl is virgin or habitual of sex is a crude practice and must be replaced by more scientific practice.

6. Bill of rights for women

There is a need that a set of fundamental rights must be redefined in the matter of women. India is women unfriendly and should institute a "Bill of rights" for women. There is such a bill of rights for women in New Zealand. The bill would set out the rights of women such as the right to life and dignity protection bodily integrity of women. Equality with other genders.

7. Human Trafficking

The poverty ridden young people from India, Pakistan, Bangladesh, The Philippines, Indonesia, Srilanka have only one dream that they one day would land in USA or Canada with a good job and earn fifty times the wage they would get in their native countries. The women also wish to work as domestic help, nurses, hospital attendants and teachers in kindergarten and There is a need to redefine the offence of trafficking in the Indian penal code. Trafficking is illegally transporting women as domestic workers in European countries and America.

These women are promised decent jobs and later deceiving them they are thrown into prostitution. This happens on a substantial level in interstate trafficking within India also. Trafficking should be punishable with a jail term of no less than seven years and must extend to life imprisonment. Employing a trafficked person or child as a domestic servant, should carry a jail term up to three years.

8. Based on the report of the Verma committee the government of India issued an Ordinance to deal with certain offences against women. But the ordinance came in for criticism from certain sections of society particularly the human rights Watch which said that the new regulation unfortunately ignore the committee’s solution recommendation, particularly on police responsibility as well as frame sexual aggression as a breach of women’s civil rights to physical honesty. The human rights Watch has said that legislation address sexual aggression should reproduce
worldwide human rights law and principles, and slot in key recommendation of the newly selected Verma committee.

9. The individual constitutional rights observe has also sharp out that the ordinance issued by the government of India cascade short of worldwide human being rights principles in numerous ways, the constitutional rights group said. It fails to criminalize the complete collection of sexual aggression with suitable punishment in agreement with international human rights law. It includes unclear and prejudiced requirements, and introduces capital penalty in some cases of sexual physical attack. The rule also retains efficient official protection for members of state safety services accused of sexual aggression, troubles quite than helps adolescents by increase the age of permission to sex, and defines "trafficking" in a way that strength conflates it with mature consensual sex labour.

The comment of the human rights Watch is to the effect with the intention of some of the definitions included in the regulation do not suitably defend women from sexual aggression. The regulation retains ancient and prejudiced concept used to identify wrong offenses as "abuse" or "outrage" to women's "humility" rather than crimes touching their right to bodily integrity. This violate India's worldwide legal obligation to improve all laws contain sexual category prejudiced requirements. The regulation includes penetrative sexual offenses within the description of "sexual physical attack" and fails to draw a peculiarity between the damage caused by penetrative and non-penetrative offenses.

For example, the act of emotive another people breast is known the same penalty as penetrative sexual offenses. The regulation discriminates moving women base on their matrimonial status and deny them equivalent strengthening earlier than the regulation. Under section 375 of the amend penal code, wives cannot bring a accuse of "sexual physical attack" against husbands except for under particularly slight grounds: where she is "livelihood independently under a verdict of division or under any tradition or practice."

In country of India has ratify treaties and supported statement that uphold the accurate to sexual independence as a substance of women's fairness, counting the right to make a decision generously whether to have sex free of compulsion, prejudice and hostility. Illegal law must offer protection from married rape below all conditions, the human rights group said.

The committee appointed by the government of India to deal with the problem of crime against the women at workplace submitted its report in February 2013 based on which the parliament passed a Bill protecting millions of India's working women from sexual harassment which intended at tackle uninvited performance such as sexual activity, requirements for sexual
favouritism and sexual positive discrimination and sexual innuendo made at work position. The Sexual irritation of Women at place of work (avoidance, exclusion and redress) statement, approved by the assembly aim to ensure a safe surroundings for women functioning in both the community and personal sector.

Below the new regulation or act/law which also covers students in schools and colleges, patients in hospitals, nursing homes maids in undisclosed residence and undeveloped labourer employer have to set up accusation committees to look into all complaint. employer who fail to fulfil will be fine up to 50,000 rupees. repetitive violation may lead to advanced fine and annulment of authorization or registration to carry out production.

The following are a few of the latest reports which the researcher reviewed from the point of view of the scope of her work

1. Amnesty international which is an international organization based in London UK to monitor the state for human rights in various countries by governmental and quasi-governmental agencies. Amnesty had condemned the secret hanging of Afzal Guru and the secret burial of the dead body of the convict Afzal Guru. The human rights Watch has has in its recent report submitted to the government of India at New Delhi in February 2013 argued that the Legislature in India should, in the forthcoming session of parliament, substantially amend or replace the new criminal law on violence against women.

2. The human rights Watch, non-profit international organization having headquarters in Empire state Building New York has also has reverberated its concern and said that the law on sexual violence should reflect international human rights standards and incorporate the recommendations of Verma (Chief justice Retired) committee. human rights Watch has offered a comment on the status of the criminal law of India and stated that the penallaw of India is in need of reform since a long time; when it was enacted in the colonial era it was not in accordance with the international level penological research done in recent years. ; therefore there is need for urgent reform of the law by the state legislatures and the parliament.