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# BHARTIYA NAYAYA SANHITA, 2023

## Part- 1

### PENAL LAWS IN INDIA-

The *Manu Smriti*, *Arthashastra*, and *Yajnavalkya Smriti* represent key ancient Indian texts that shaped the legal and social framework of India. Among them, *Manu Smriti*, also known as the *Code of Manu*, left a profound and lasting impact on Indian society. It is a comprehensive guide to law, governance, and social conduct that reflects the prevailing religious, philosophical, and customary practices of the time.

#### Key Aspects of *Manu Smriti*:

1. **Structure of Law:** The text divides law into 18 main categories that address both civil and criminal matters. These range from issues such as contracts, sales, and debt to personal disputes, boundary issues, and offenses like theft, assault, and defamation. This broad scope reveals a highly organized and detailed legal system.
2. **Criminal Offenses:** *Manu Smriti* categorized crimes including theft, assault, defamation, robbery, adultery, and gambling. It later added offenses like cheating and trespassing. Punishments ranged from fines and forfeiture to more severe penalties like imprisonment, banishment, mutilation, and even death.
3. **The Role of the King:** The king, as the highest authority, was responsible for administering justice according to Dharma. The text laid out principles for determining appropriate punishments, considering factors such as the nature of the crime, time and place, and the offender's social status, age, and wealth.
4. **Caste-Based Distinctions:** One of the controversial aspects of *Manu Smriti* was its discriminatory approach based on caste. Brahmins, the highest caste, were often exempt from harsh punishments like the death penalty. Instead, they could be banished, which was considered a severe punishment for them. On the other hand, individuals from lower castes could face extreme penalties, including death, for similar or lesser crimes.
5. **Gender-Based Disparities:** Women also faced distinct penalties based on their caste and social status. High-caste women were subject to public humiliation or banishment for offenses like adultery, while lower-caste men who committed such crimes could face the death penalty. This gendered and caste-based treatment reflects the rigid social hierarchy of ancient India.
6. **Punishments and Compensation:** While corporal punishment was prevalent, the practice of paying compensation for certain offenses also existed. However, punishment, particularly in the form of physical retribution, held a more prominent role than financial compensation in the legal framework.

#### Influence on Later Legal Systems:

Warren Hastings, the first Governor-General of British India, commissioned a group of scholars to compile a Hindu legal code. This code, known as the *Gentoo Code*, was largely based on

interpretations of the *Manu Smriti* and other ancient texts. The code played a role in governing Hindus in India under British rule, although later, the Indian Penal Code (IPC) of 1860 supplanted it.

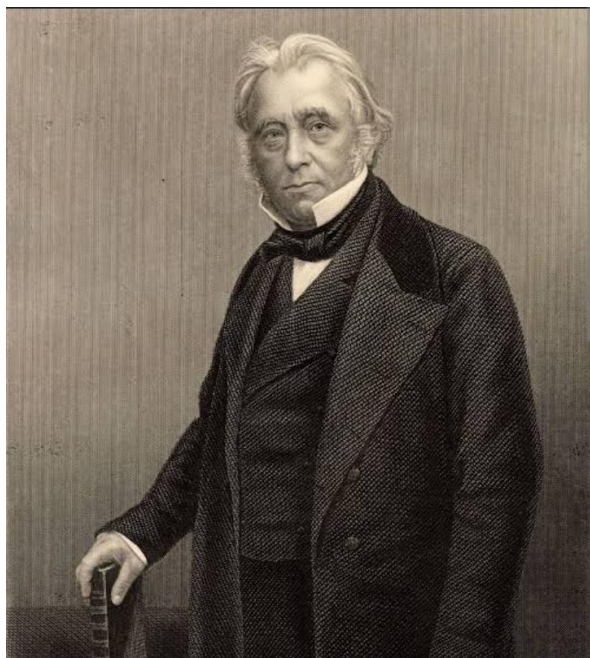
Despite its archaic and hierarchical nature, the *Manu Smriti* shaped Indian legal and social norms for centuries, influencing not only ancient but also colonial and post-colonial legal traditions. However, the discriminatory caste- and gender-based laws within the text were eventually replaced by more egalitarian legal codes in modern India.

### **Development of Criminal Law in India under the British Rule-**

Before the introduction of British law, the predominant penal system in India was based on Mohammedan Law, which continued to be applied during much of the East India Company's rule with necessary modifications. The British administration largely refrained from interfering with this existing system, except in cases where Mohammedan Law and British regulations conflicted. A significant effort to reform the criminal justice system began with the Regulating Act of 1773, leading to the establishment of new courts, such as the Foujdaree Adalat in each district, which were overseen by Mohammedan officers and supervised by a European collector to ensure fairness. A superior court, Nizamat Sadar Adalat, was set up in Moorshedabad to review decisions from the district courts. Further reforms in 1793, under Lord Cornwallis's Judicial Regulations, created courts in each district led by European judges, assisted by experts in Hindu and Mohammedan law. Four appellate courts were established in Calcutta, Dacca, Patna, and Moorshedabad, with final authority resting in the Suddar Nizamat Adalat in Calcutta, presided over by the Governor-General and his council. Eventually, civilian judges replaced the Governor-General and council in this court, and district judges became responsible for criminal cases.

These courts primarily governed native Indians, while a separate system of Supreme Courts and Justices of the Peace administered English law for Europeans in India. The Regulating Act of 1773 authorized the establishment of a Supreme Court in Calcutta, which held jurisdiction over British subjects and had powers akin to the King's Bench in England. Similar courts were later set up in Madras and Bombay. This dual system created inconsistencies, as British judges increasingly referred to English criminal law, while the courts in Presidency towns adhered to their own laws. The first attempt to standardize penal law came in Bombay in 1827, with the enactment of the Bombay Regulation (or Elphinstone Code), which replaced Mohammedan law and remained in force until the Indian Penal Code (IPC) of 1860. Other regions, such as Punjab, saw similar developments, with local codes being introduced after British annexation. By the time the Crown took over from the East India Company in 1858, various provinces had their own penal laws, though efforts to create a unified legal framework had already begun with the Charter Act of 1833.

## MAKING OF INDIAN PENAL CODE-



*Lord Thomas Babington Macaulay*

The Charter Act of 1833 marked a pivotal moment in the legal history of British India, aiming to standardize laws and judicial systems across the region. It established a unified legislature, with the Governor-General assuming the role of primary lawmaker for both the Presidency towns and the mofussil regions. This legislature had the authority to create laws of both provincial and all-India application, assisted by an Executive Council. For the first time, a "law member" was introduced to the Governor-General's Council, with voting rights solely in legislative meetings. Thomas Babington Macaulay, known for his belief in anglicizing India, became the first appointee to this position on June 27, 1834.

Additionally, the Charter Act of 1833 called for the creation of a "Law Commission" to thoroughly examine and report on the legal system in British India. In 1834, the First Indian Law Commission was formed, consisting of Macaulay and three other commissioners—Sir John Macpherson Macleod, George William Anderson, and F. Millett. From 1834 to 1836, under Macaulay's supervision, the Commission developed the Draft Penal Code. This draft, which was submitted to the Governor-General-in-Council in 1837, marked a significant step in legal reform. The draft was printed and carefully revised under the Commission's oversight.

Crucially, the Commission opted not to base the Draft Penal Code on the existing penal laws of different provinces or religious legal systems, such as Hindu or Mohammedan law. In a letter to Lord Auckland on October 14, 1837, the Commissioners argued that none of these systems deserved priority. They instead drew from multiple legal systems, including the French Code and the Louisiana Code, while maintaining independence in their provisions. The Commissioners asserted that their code was designed for India's unique context and not a mere adaptation of any existing system.

After receiving feedback from various presidencies, the draft was revised by new commissioners, Charles Hay Cameron and D. Elliot, who submitted their reports in 1846 and 1847. The Draft Penal Code was further reviewed by jurists, including judges from the Supreme Court, and Sir Barnes Peacock was added to the Commission for his expertise. After detailed deliberations, the Draft Penal Code was adopted with minimal substantive alterations.

The revised Penal Code was first read in the legislative council on December 28, 1856, and after a second reading on January 3, 1857, it was published in the Calcutta Supplementary Gazette. Following a thorough review, the Indian Penal Code (IPC) was passed by the Legislative Council and received the Governor-General's assent on October 6, 1860. It came into force on January 1, 1862, after being deferred for a year to familiarize judges and the public with its provisions.

The IPC is the product of nearly three decades of rigorous drafting and revision, led primarily by Lord Macaulay. Despite some contemporary Indian scholars criticizing its "foreign" origins, it is widely regarded as a codified version of English criminal law adapted to Indian circumstances. Sir James Fitzjames Stephen, an eminent jurist, hailed the Penal Code for its durability and effectiveness, highlighting how well it had served India in the years following its enactment. While some, like Sir Hari Singh Gour, criticized the severity of the sentences it imposed, many others recognized the Code's significance as the foundation of India's legal system.

Structurally, the IPC can be divided into four main sections. The initial chapters (I to V) cover general principles, including the extent of its application, definitions, and punishment. Chapters VI to XV focus on offenses against the state, while Chapters XVI to XXII deal with crimes against individuals. The final chapter (XXIII) covers residual offenses and attempts to commit crimes.

The IPC's structure is notably enriched with explanations and illustrations, providing clarity on its provisions. These illustrations were intended to simplify complex legal concepts, guiding the reader through practical examples of how the law would be applied. The framers of the Code acknowledged that precision sometimes required complex language, but they compensated for this by offering ample illustrations to aid understanding.

In sum, the Indian Penal Code of 1860, though periodically amended, remains the cornerstone of India's criminal law. Its careful drafting, clarity, and adaptability have allowed it to stand the test of time, with only minor adjustments made over more than 150 years of use.

### **Introductions of Bhartiya Nyaya Sanhita, 2023-**



The Bharatiya Nyaya (Second) Sanhita, 2023 aims to replace the Indian Penal Code (IPC) of 1860, bringing in reforms to consolidate and amend the provisions related to offenses, and address matters connected or incidental to criminal law. The new Bill proposes a streamlined legal framework, reducing the number of provisions from **511 sections in the IPC to 358 clauses in the updated version.**



The IPC, enacted in 1860 and implemented in 1862, has served as the principal criminal law governing India for over a century. It defined various crimes and prescribed punishments for them, applying across British-controlled India, though it excluded the Princely States, which maintained their own legal systems at the time. As India's legal system evolved, there has been growing recognition of the need to modernize the IPC to better align with contemporary requirements.

The initial version of the Bharatiya Nyaya Sanhita, 2023, was introduced by Union Home Minister Amit Shah in the Lok Sabha on August 11, 2023. Following its introduction, the Bill was referred to the Department-related Parliamentary Standing Committee on Home Affairs by the Chairman of the Rajya Sabha on August 18, 2023. This Committee, tasked with reviewing the Bill, held extensive deliberations and submitted its report to the Rajya Sabha on November 10, 2023. The report included several observations and recommendations aimed at enhancing the Bill.

Taking the Committee's feedback into consideration, the government decided to withdraw the initial Bill and introduce a revised version, the Bharatiya Nyaya (Second) Sanhita, 2023. This new version incorporates the Committee's accepted recommendations, reflecting the government's commitment to creating a more efficient and updated legal framework for India's criminal justice system.



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