

**TEACHING CRIMINAL LAW WITH LATEST DEVELOPMENTS: A CASE  
FOR INCLUSION OF CORPORATE CRIMES AND CORPORATE  
MANSLAUGHTER**

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**ABSTRACT**

Teaching criminal law in a law school is a unique experience to a teacher must have the required skills to teach the subject in a most unique manner. Teaching and learning criminal law gives a very fascinating experience by involving the students actively in a classroom environment. However, today in a law school set up most of the teachers are equipped to teach the subject based on the syllabus prepared or prescribed by the university authorities and Bar Council of India's model syllabus. In this context, it is an important question whether the prescribed syllabus gives a space and opportunity for the law teacher to teach in an innovative manner while keeping abreast with the challenges and development, which are posed by society. It is perceived that teachers do not have space and opportunity to include the on going developments and challenges to teach the subject in a more contemporary manner. This may involve various factors, which may include a lack of opportunity for the teachers to prepare the syllabus by themselves while engages to teach the students. Lack of expertise on the subject and not having an opportunity to teach the same subject continuously. Some of these are only indicative, and many other reasons are available in the Indian legal education system. The current essay is an attempt to study some of the pertinent issues and suggest teachers of criminal law to be more innovative and adoptive to the changes, which are taking in society.

**1. Teaching Criminal Law – An Introduction**

Teaching criminal law in law schools is a unique and interesting experience for a law teacher. For Students, learning criminal law in a law school is a fascinating experience, because most of the students come with some basic ideas, preconceived notions and real-time experiences based on the day to day events witnessed by them, general reading of news papers and watching some movies. In the midst of having a basic and pre-knowledge, teaching criminal law to the students is certainly a challenging task and the teacher has to play a key role in imparting knowledge and realising the dreams of students. Further, the task of a teacher is to prepare students to become committed lawyers, law teachers, judicial officers, civil servants and political leaders. Once a committed teacher imparts comprehensive knowledge, better and informed ideas of criminal law to the students of law, they may not go away from the ideals, which have been taught in the classroom. Therefore it is a challenge for the law teacher to teach and impart the knowledge of criminal law in a law school. Further, the prime object and purpose of teaching substantive criminal law are to produce students capable of representing clients and practising with social commitment in order to translate the ideals of the constitution into practice. Sanford H. Kadish, the American Criminal Law jurist describes that “the aim of teaching

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criminal law as to produce ‘good, sensitive, aware, socially conscious’ citizens”.<sup>2</sup>It is also worth mentioning the words of Andrew E. Taslitz, professor of criminal law that “the joy of teaching is part of what makes a law professor’s life so fulfilling”.<sup>3</sup>

## 2. Teaching Techniques and methodologies

As stated above teaching criminal law to undergraduate students is a unique experience, first we need to question us, what is unique about the teaching of criminal law? It is unique because it has relevance in everyday life, while dealing with the uniqueness of the criminal law; it is not an attempt to underrate or undermine the importance and relevance of other subjects or to overrate the criminal law. The uniqueness of the criminal law teaching can be easily related to each and every aspect of human life and bring on going development and contemporary challenges to the classroom discussion while teaching criminal law and make more interesting to the students. This subject can easily create interest among the students in a classroom learning process by analysing and critically examining with the participation of students. Apart from that, a law student can think and relates the subject easily to their real-time experiences and take good practices by reading of the subject seriously, which eventually facilitate them to become an outstanding criminal lawyer. Further students can critically examine the scientific and technological developments and their influence in society and the role of criminal law.

In the light of this background, this current essay focuses to suggest the law teachers who are teaching criminal law to bring some of the on going challenges and developments in society while teaching criminal law in law schools. The current development may vary from corporate manslaughter or corporate homicide, sedition laws, the law relating to limiting freedom of speech and expression, criminalising expression of art forms, socio-economic crimes, crimes committed online using cyberspace, growing crimes like mob-lynching and many others. These developments have to be brought to the classroom while teaching criminal law to the students. It is very important to note that the Indian Penal Code was adopted in 1862, since then not many developments and changes are brought to the Penal Code, except the Criminal Law Amendment act of 2013, which was made substantial changes in the criminal law in the wake incidents, which took place in Delhi.

However, criminal law requires keeping abreast with changes taking place in the wake of economic globalisation. These changes are prompted by the developments, which took place in 1995. In the post liberalised economic world, big corporations and multinational companies are expanding their business across the shores. The business and investment activities are facilitated by various bilateral and multilateral agreements, which give concessions and subsidies to the corporation while they are establishing their entities. Whereas, these corporations during their operations in third world countries, they work directly with the local communities and they do involve in the exploitation of natural resources. In some places, while engaging in exploitation by the corporations they experience resistance from the local populations. During

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<sup>2</sup>Angela P. Harris and Cynthia Lee, “Teaching Criminal Law from a Critical Perspective”, *Ohio State Journal of Criminal Law*, Vol. 7 (2009), p. 264.

<sup>3</sup>Andrew E. Taslitz, *Strategies and Techniques for Teaching Criminal Law*, Wolters Kluwer Law & Business, New York, 2012

such circumstances, the company or corporation may involve in using force to the extent of violating the basic rights of people, killing and abuse of people. It is not only limited to it but also includes environmental violations and pollutions of the environment and climate in the region, fuelling the conflict by directly sponsoring the non-state armed actors and many others. These may lead to committing crimes, which are otherwise prohibited by the laws. However, in circumstances, criminal law and other domestic law are silent in third world countries including India. It is warranted that the Indian criminal must look into it and take the issues and circumstances which lead to the violations of the rights of the people which happened in the Bhopal gas leak tragedy and other industrial disasters.

Now the argument is that it is very important to look into these challenges in changing circumstances and include them in the teaching of criminal law in the classroom. It is an urgent necessity the Indian academia must focus on these aspects and take steps to address and engage the students and make them aware of these issues.

### **2.1 Teaching General principles of Criminal law in relation to other public law subjects**

As we are all aware, most substantive law for that matter teaching of public law discussion revolves around elements of law, in the case of teaching criminal law, it should start by imparting ideas about the general principles of criminal law or elements of a crime. Because, most of the students tend to take interest in learning criminal law due to several reasons. Teaching elements of a crime or general principles of criminal law play a more critical role in learning criminal law, these rules explain applicable rules to all crimes and the general nature of the major crimes. This discussion also reveals around the critical linkages between public law domains such as criminal law and constitutional law. For that matter, most of the offences in criminal law have been designated where the offenders violate the substantial rights of the people and the state has the duty to protect the basic fundamental rights of the citizens. Once the basic right is violated and it will take a convenient place in criminal law. It is important here to recollect the definition of crime provided by Blackstone, he defines crime as “an act committed or omitted in violation of public law forbidding or commanding it” this definition will cover the constitutional or political offences.

This definition attracted several criticisms, in response to which, he developed a modified version of the definition, he provides, "a crime is a violation of the public rights and duties of the own community". According to the improved version of the definition, "crime is a violation of public right or duty". This definition makes it clear that criminal law is designed to punish the offenders who violate the public rights of the people. It is also important to note that the state represents the victims in the criminal justice system, since state has an obligation to protect the rights of individuals in the society.

Based on the above definition and analysis it is pertinent that a law teacher while teaching criminal law necessarily bring the relevance of constitutional law. Without teaching the close linkages between the protections of constitutional rights in the light of criminal law mechanisms, students may not appreciate the efforts and relevance of the study of criminal law in law schools. Hence, it is an important duty of the law teacher to impart the criminal law knowledge to suits the requirements of the

constitutional law obligation. Further, it equips and prepares the students adequately for practice in criminal law.

## **2.2. Teaching Criminal law in broader perspectives**

There is no uniform set pattern in teaching criminal law. It is depending upon the background in which one person comes from and the skill, which the person possesses, makes the teaching difference. The methodology also differs from culture to culture and country to country. However, one useful style or method could be providing coherence and logical progression makes a big difference in understanding of the criminal law in general. It should be substantiated by providing or discussing some issues, which includes, the relevance of criminal law, purposes and object of criminal law in a legal system, steps in the criminal justice system, the purposes and object of sentencing in the legal system and teaching criminal law keeping abreast with the latest changes and challenges.

If we take the Indian criminal law or Indian Penal Code into consideration in the light of the above discussion, it is very important to see the emergence of the Indian Penal Code (IPC) and its relevance in contemporary society. As we know that IPC was adopted in 1860 during the British colonial regime to suits the requirements and political needs. This step was hailed and glorified as the unification of criminal law in India to render effective criminal administration of the justice system to the Indian masses. Since, 1862 the IPC applied and followed without making any changes or amendments until this day, except in the case of the criminal law amendment act of 2013 as illustrated above in the earlier paragraphs. In this situation, it is very pertinent to see the relevance of IPC in contemporary use. It is also warranted to see the application of certain rules, which have been there in IPC to the free and independent India, where free, and Independent India is governed by the principles and rules of the Indian Constitution. As we are aware, the Indian Constitution is based on the fundamental principles of Rules of Law and Democratic Governance.

Further, the governance in India has been changed drastically since its independence, due to changes in the international economic climate and onward march to globalisation. In the 1990s, when India has signed and ratified World Trade Organisation, the ideals on which Indian Constitution is based were more or less compromised. In the age of neo-liberalism, corporations and private business houses have dominated the governance and they are having direct contact with the people in certain areas. In such circumstances, if corporations have committed certain crimes or if they are found involved in certain industrial disasters, what would be the ideal mechanism and solution to address the situation?

Since 1980s India has been witnessing industrial disasters along with it, on going rights violations of people by the corporations in certain areas. These rights violations and industrial disasters have not been addressed either by the general laws or by the criminal law mechanism in India. There is a conspicuous gap existed in this situation. Otherwise, in some developed economies these incidents have been termed as “Corporate Manslaughter or Corporate Homicide” and legal regulations are designed to address them effectively. The other issue along with corporate homicide or corporate manslaughter, there are mass killings and mass murders of innocent individuals in communal riots, which have been widespread in India since its

independence. People who are victims of mass murders and communal riots are still languishing to seek justice in the administration of the criminal justice system in India.

Therefore, the law teacher while teaching criminal law to their students such kind of gaps has to be identified and address them in an effective manner. It is also required to encourage the students to conduct advanced study and research in such areas in order to address the existing gaps and challenges. Now, here we will discuss issues relating to corporate manslaughter or corporate crimes and the requirement of amendments in Indian criminal law.

### 3. Corporate Crimes<sup>4</sup> and Corporate Manslaughter

The general principles of criminal law with regard to offences against the human body provide serious homicide offences against the human body are murder and manslaughter. As we know the unjustified killing of another human being has traditionally been regarded as the most serious offence known to the law. Manslaughter is an unlawful killing that does not involve malice aforethought (blameable mental condition). The absence of malice aforethought means that manslaughter involves less moral blame than either first or second degree of murder. Thus, manslaughter is a serious crime, the punishment for manslaughter is generally lesser than it would be for murder.

Further, we are aware that 'murder is an intentional killing that is unlawful (in other words, the killing is not legally justified), and committed with "malice aforethought" (intent to harm or kill or reckless disregard towards life). The offence of murder and manslaughter have a common physical act (*actus reus*) which is the unlawful killing of another human being.

Therefore, based on the above principles if a natural person commits an act which is intentional or reckless disregard towards life it would be prosecuted. In such circumstances, if a legal or juridical person commits the same offence how should they be treated under law or not. Should that be treated as an offence equal to that of murder or manslaughter. As it is discussed, if there is blameable mental conditions and there is an unjustified killing of another human or reckless disregard to human life, that should be treated as manslaughter. In Indian criminal law, there is no such provision to deal with an offence of manslaughter, hence, there is an urgent need to address this problem by amending criminal law.

As we all know that globalisation has accelerated economic growth by permitting unbridled access to multinational companies or corporations to boost the economy. These multinational companies act across borders with ease due to development in

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<sup>4</sup>Corporate Crime means, "An illegal conduct that is linked to a human rights abuse, including conduct that should be criminalized in order to meet requirements under international law even if the state has failed to do so." See Justice Ian Binnie and Anita Ramasastry, *Advancing Investigations and Prosecutions in Human Rights Cases: A Report of the Members of the Independent Commission of Experts*, Amnesty International and International Corporate Accountability Roundtable. Available <http://www.commercecrimehumanrights.org/wp-content/uploads/2016/10/CCHR-0929-Final.pdf> accessed on 18th June 2018

technology as well as favourable, trade and investment laws, they exercise significant power and influence in the countries where they operate. Sometimes they do get contacted directly with people and commit wrongful acts which, normally, go unnoticed and sometimes the legal system may not have sufficient rules to bring them to justice. This situation arises due to various reasons based on legal and non-legal issues. These issues may include, legal personality, limited shareholder liability and accountability, origin and registration of corporations in offshores and operating through a local subsidiary or joint venture in the host states. This conspicuous governance gap has created rather facilitated an environment in which the corporate actors commit serious human rights abuses with little or no accountability and with impunity<sup>5</sup>.

### 3.1. Nature of Corporate Homicide or Manslaughter

In developing countries like India, there is no such efforts have been made to define the offence of corporate homicide or manslaughter. However, the developed and industrialised countries have adopted laws to address the problems of corporate homicide or manslaughter. The common law country like the United Kingdom has adopted in 2007 the corporate manslaughter and corporate homicide act. The acts explain the offence: <sup>6</sup>

An organisation is guilty of an offence if the way in which its activities are managed or organised causes a person's death, and amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

The organisation to which this section applied are: a corporation, a department or other body listed in its schedule or a police force partnership or a trade union or employers associations that is an employer.

An organisation is guilty of an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach

This definition offer a comprehensive analysis of corporate crimes or homicide and which may range from industrial disasters such as Bhopal gas incidents, to abuse of child labour, human trafficking, abduction, arbitrary detention, beating and violence, complicity, death threats, denial of freedom of expression, denial of freedom of movement, disappearances, displacement, genocide, injuries intimidation and threats, rape, sexual abuse and sexual harassment, torture and ill-treatment. The list of the crimes provided above is not an exhaustive but to name a few crimes.

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<sup>5</sup>Justice Ian Binnie and Anita Ramasastry, *Advancing Investigations and Prosecutions in Human Rights Cases: A Report of the Members of the Independent Commission of Experts*, Amnesty International and International Corporate Accountability Roundtable. Available <http://www.commercecrimelhumanrights.org/wp-content/uploads/2016/10/CCHR-0929-Final.pdf> accessed on 18th June 2018

<sup>6</sup>Corporate Manslaughter and Corporate Homicide Act 2007, available at [http://www.legislation.gov.uk/ukpga/2007/19/pdfs/ukpga\\_20070019\\_en.pdf](http://www.legislation.gov.uk/ukpga/2007/19/pdfs/ukpga_20070019_en.pdf), accessed on 19<sup>th</sup> June 2018

Some of the crimes, which are listed above, have been included in special legislation but enforcement requires the will of the state to cooperate and coordinate with international actors. For example in transnational human trafficking, cybercrimes, transnational organised crimes, money laundering and corporate manslaughter needs international cooperation and also it is important states must comply with the obligations of the international treaty mechanism. In absence of international cooperation prosecution of the crimes of the above nature becomes challenge. These are some of the issues that must be brought to the knowledge of the students in the classroom while teaching in criminal law.

### **3.2. Corporate Crimes and Possible Legal Solutions**

The commission of the above-mentioned crimes such as corporate homicide and corporate manslaughter have witnessed by the international community during the World War II. During wartime, some of the senior officials of business houses and corporations were heavily involved in helping the Nazi regime to commit some of the worst crimes by supplying poisonous gas to concentration camps. Some of the corporations actively promoted and engaged in slave labour to work in their factories, some of them have ill treatment of slave workers and accumulated and enriched their companies by plundering property in occupied territories.

This sort of criminal activities committed by corporations did not stop or limited to the World War II, it resurfaced in the age of neo-liberalism where transnational companies have committed brutal atrocities and knowingly assisting governments, and rebel armed groups and other non-state armed groups to commit gross human rights abuses.<sup>7</sup> Oil, mining companies from the advanced countries that seek concessions and security from the third world countries have been allegedly involved in supplying arms, ammunition, money, vehicles to the government as well as armed rebel forces. These state actors and non-state armed actors with the help of transnational corporations committed systematic violence and killed civilians and were involved in the disappearance of civilian populations. These abuses are keeping on happening in most of the third world countries including India.

In the current economic climate of interdependence, social, political and cultural aspects are heavily impacted by the behaviour of business entities. The empirical evidence reveals that there exists a complex relationship between businesses, individuals, communities and governments. Further, it is understood this is the kind of nexus between government and multinational corporations greatly affecting the lives and rights of individuals. As described above, the companies mostly enjoy the culture of impunity, due to the considerable political influence, which they have on the host government. Many of the corporations have developed close political relationships with those in power, including governments or non-state armed groups that perpetuate human rights abuse and commit criminal activities against the local population and innocent people.

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<sup>7</sup> A Report of the International Commission of Jurists Expert Legal Panel on *Corporate Complicity in International Crimes: Facing the Facts and charting a Legal Path*, vol. 1, International Commission of Jurists, Geneva, 2008.

In this background, it is pertinent to understand the close nexus between the multinational corporations and the political corridors in the country. It is also pertinent to understand the operation of the legal framework, which can offer better protection to the individual those who are victims of the current system. Hence it is urged that the criminal law teacher must be aware of the current and on going challenges and to provide space for the student to debate and discuss them in the classroom. It is also warranted that the teachers should motivate themselves and students to conduct advanced research on these areas, which is very pressing and to locate solutions to the emerging challenge in order to fill the gaps in the existing criminal law mechanisms.

Further, the criminal law teacher is expected to clarifying the legal and policy meaning of new age crimes such as mass murders, corporate manslaughter and corporate homicide to the students. It is also expected that to explain to the students that the complicity on part of the governments and corporations in addressing these crimes within the legal framework. Along with the governments, business groups enjoy the culture of impunity and this aspect needs to be informed to the students and encourage them to engage in research to address the measures, which can end the culture of impunity within the jurisdictions. If it possible engage students to the extent of writing research briefs and policy documents, so that these briefs and documents may be submitted to the appropriate forums to undertake necessary changes in the legal system or amendments which are required.

#### **4. The way forward**

As elucidated above, the Indian criminal legal system is not providing many solutions to emerging and new challenges. As we have witnessed since 1980s, the Bhopal gas victims still waiting for justice, along with that victims of the state perpetrated violence in places like Chhattisgarh, victims are knocking on the door of the apex court, but their voices have not been heard and justice has not been done to them within the constitutional mechanisms. Now the time has come for the law teachers and students to start thinking on these lines to conduct advanced study and research to provide justice to the victims of corporate crimes. Further, it is the role of a teacher to make aware of the students to such kinds of gaps, which are existed in the criminal law subject and encourage them to look for alternatives in order to strengthen the criminal legal system. Finally, research blended teaching would help the teacher to update their knowledge and to provide and to disseminate the advanced knowledge to the students. This would certainly make students and new generations of individuals and professionals aware of the new challenges and also provide a platform to think and equip them to fight for the rights and justice to the victims. It is also important to note that criminal law teachers must updates their knowledge and contribute research articles in order to create awareness among the legal fraternity. This may lead to a greater debate among law students, legal scholars and judiciary and policymakers. These debates may eventually help in the inclusion of the above-mentioned acts in the discourse and pedagogy of criminal law.