

- **UNIT I – CRIME & CRIMINOLOGY**

MEANING & SIGNIFICANCE OF CRIME

• INTRODUCTION –

- Crimeless society is not found.
- Universal definition of crime not possible
- Crime relates with the social order
- Obligation on the State to maintain normalcy in society
- Crime relates with the deviation from the normal behavioral pattern & indulge in antisocial elements.
- Crime is a dynamic concept changing with the social transformation.
- It is a necessary feature of every society .

- **Salmond –**

- Law as rule of action regulating the conduct of individuals in society.
- The conduct which are prohibited by the law in force at a given time & place are known as wrongful acts or crimes whereas those which are permissible under the law are treated as lawful.

- **DEFINITION OF CRIME-**

- **BLACKSTONE –**

- Crime is an act committed or omitted in violation of public law forbidding or commanding it.

- **CROSS & JONES –**

- Crime is a legal wrong the remedy for which is punishment of the offender at the instance of the State.

- **HALSBURRY –**

- Crime is an unlawful act which is an offence against the public & the perpetrator of that act is liable to legal punishment.

- Crime implies **3 attributes** viz –
 1. Harm
 2. Preventive Means
 3. Legal Proceedings

- **Classification of offences under IPC –**
- **Offences** against/Relating To –
- I) Person, eg. Murder, dowry- death, rape, assault, kidnapping, abduction etc.
- II) Property, eg. Theft, burglary
- III) Relating to documents, eg. forgery
- IV) Affecting mental order, eg. assault
- V) Public tranquility, eg. Unlawful assembly, rioting
- VI) State, eg. Waging war against the State, sedition
- VII) Relating to public servants. eg. Bribe, assault

- **Characteristics of Crime/ Distinction between crime and non-crime -**
- 1. External consequences
- 2. Harm must be outlawed
- 3. An act (Actus Reus)
- 4. Guilty mind (Mens rea)
- 5. Prohibited act
- 6. Relation between voluntary misconduct & resulting harm
- 7. Punishment

- **Crime distinguished with –**
- **Tort,**
- **Sin &**
- **Moral Wrong**

Tort	Crime
1. It is a civil wrong	1. It is a violation of a rule of criminal law.
2. It causes harm to an individual	2. A crime is a social harm.
3. The option to take or not to take an action lies with the individual.	3. The victim of a crime does not have such option.
4. The purpose of tort law is to compensate the victim.	4. The purpose of the criminal law is to punish the offender
5. While awarding damages, the court generally takes into account the magnitude of the loss caused.	5. While awarding punishment the court considers – a) the magnitude of the harm b) The motive of the offender & c) The character of the criminal.
5. The rules of procedure of civil court are different.	5. The rules of procedure of criminal trials are different.

Crime

Sin

1. It is breach of law.

1. It is the breach of religious injunction

2. Motive is immaterial

2. Motive is material

3. It can be adjudicated

3. It can not be

4. Consequence is punishment.

4. Consequence is divine displeasure

Crime

Moral Wrong

1. It can be adjudicated

1. It can not be.

2. It is certain, definite and specific.

2. It is not so.

3. It is objective

3. It is subjective.

4. It is concerned with overt actions.

4. It is concerned with thoughts and feelings.

5. Object is to regulate human conduct.

5. Object is to perfect human character.

SIGNIFICANCE OF CRIME

- 1. Fear, insecurity, loss of life & property.
- 2. Sentimental interest of the victim & the offender-perpetrator of crime.
- 3. An obscure spontaneous morbid fascination to know about the crime & criminal.
- 4. Crime is expensive. Cost of the crime may be direct or indirect.

- 5. Crime is corrosive of public moral & morale of the society.
- 6. Crime reflects the social maladjustments or social ills & needs correction at the grass-root level.
- 7. Crime involves social dangers in larger & expanding proportion.
- 8. Crime stigmatizes the perpetrator & recidivist in the eyes of the society.

ORIGIN OF CRIMINAL LAW

- The origin of criminal law has four principal theories.
- The three of them regard it as a “Consensus” which means a group or society expresses its will in the form of criminal law.
- The fourth theory says that it is a “Conflict Model”.

1. The First Theory –

- The criminal law originated in torts

2. The Second Theory –

- Criminal law originated in the rational process of a unified society.

3. The Third Theory –

- Criminal law originated in the customs developed and achieved ethical values.

4. The Fourth Theory –

- Criminal law originated in the conflict between interest groups of the society.

Concept of Crime – International Perspective

- **Early Concept of Crime –**
- The concept of crime seems to have always been changing with the variations in social conditions during the evolutionary stages of human society.

- During 12th & 13th centuries, only those acts were crimes which were committed against the state or the religion. Treason, rape & blasphemy were crimes but not the murder.
- The primitive societies did not recognize any distinction between law of crime & torts.
- Recourse to legal remedy was considered merely an optional alternative to self-redress.
- The quantum of injury or loss, status of the victim were deciding factors while awarding the compensation (*bot*).

- There were also certain **botless offences** such as house-breaking, refusing to serve in the army, breach of peace, etc. the punishments to such cases was death, mutilation or forfeiture of property to the king.
- From these botless offences, the modern concept of criminology has emerged.
- The botless offences increased manifold after 12th century.

- Then, the wrongs which could be redressable by the payment of compensation (bot) and those which were not redressable by the payment of compensation (botless) . In the course of the time, former came to be known as ‘torts’ and the latter as ‘crime’.

- **During the period of 1000 to 1200 AD**, there were the system of ordeals by fire or water to establish the guilt or innocence of the accused. Such ordeals as mentioned in **Dharmashastra** were known as samaykriya, sapatha, divya or pariksha.
- **Yajnavalkya** mentioned five kinds of ordeals such as, balance, fire, water, poison and kosa.

- **18th and 19th century –**
- **In European countries**, the study of crime and criminals was carried out **on scientific basis**. The ideas of superstitions, divine displeasure and myths were all abandoned.
- With the changing times, new crimes were spring up and old crimes were deleted.
- The concept of crime was closely related with the **social policy of a given time**. The social standards of the society can be judged by studying the criminal policy adopted by it.

- The safety, security and dignity of women and children were the issues on agenda.
- Certain examples in Indian society are – protection from domestic violence act, dowry prohibition act, the protection of children from sexual offences act etc.

- **20th Century –**

- The rate of crime was increasing day by day considerably **because of modernization, urbanization, industrialization, advance of science and technology, growth of civilization and advent of materialization.**
- With **economic growth**, peoples craze for wealth and other luxuries of life has increased beyond limits. For satisfying their urge, the people were engaging in unlawful activities. Again, the scientific progress was helping to the offender for committing wrong acts and also for escape.

- **21st Century –**
- The use of computer network has given rise to **cyber crimes and other computer related unlawful activities.**
- The cyber crimes are different from regular crimes. It is easy to learn how to commit them. With least resources it can be committed, they can be committed in a jurisdiction without being physical present it and they are often not clearly illegal.
- The cyber crimes include fraud, hacking, fishing, pornography, viruses, stalking, harassment, data-diddling etc.

- The social change which is inevitable in a dynamic society. But it resulted into disharmony, conflict and cultural deviations.
- A fresh approach to crime and criminals is necessary to cope with the new situations and keep crimes well within control.

Historical Background of Criminal Law in India

- In ancient and medieval literatures of India, numerous references are found about the antisocial behaviour since Vedic period.

- The **Rigveda** visualized the degeneration of early religion and morals and recorded the anti-social behaviour on the part of the members of the society.
- **Manu**, the law-giver felt that, there was an age when “**Dharma**” prevailed in perfection but gradually “**Adharma**” was practiced. The tendency of certain people in the society was changed. Theft, falsehood and fraud were practiced.

- The **Brahaspathi and Narada** did the same remark. In their opinion, in former ages men were strictly virtuous and devoid of mischievous propensities but the time has been changed and malice became their tendency.
- The **Vedic literature** speaks about the common crimes. The Rigveda specifies about theft and robbery.
- **Kautilya- Chanakya** condemns thieves & robbers as the pests of the society & suggested various steps to deal with them.

- The famous foreign travellers **Megasthenes, Fa-hien & Hiuen-tsang & Al-beruni** recorded that sex offences, theft, robbery, gambling, adulteration of medicines & of edibles, counterfeiting of coins, crimes of violence, political crimes etc. were prevalent in India.
- It was also recorded that, some of the offences were botless. The only remedy in such cases was only punishment.

- With the advancement of civilization, the dawn of rational thinking and the tremendous progress in the science and technology, the concept of crime has also been changed radically.
- With this, the concept of criminology emerged out as a scientific body of knowledge of crime & criminals.

- **Development of Criminal Law in India / Codification of Law of Crimes in India –**
- Introduction
- Different Types Of Codification of Criminal Law
 - A) Criminal law in the Vedic age
 - B) Criminal law in the Islamic age
 - C) Criminal law in the British period
 - D) Codification of Substantive Criminal Laws
 - E) Codification of Procedural Criminal Laws

- **Introduction –**

- The history of codification of modern criminal law in India generally begins from the **advent of the British rule.**
- However, its roots date back to the **Vedic age & the rule of various Hindu and Muslim dynasties.**
- The modern criminal justice system is based on English laws & practices. These practices are practical as well as contemporary. As a result, a major chunk of criminal laws that exist today still relies on the **British-era laws.**

- **Different Types Of Codification of Criminal Law**
- **A) Criminal law in the Vedic Age –**
- The history of criminal law in India started after the Aryans had settled in this country. The Aryan society developed its political & social organization & other institutions.
- The penal law of ancient communities is not the law of crimes but it is the law of wrongs. Various punishments were provided for various offences.
- The measure of punishment was decided on the basis of various factors such as gravity etc.
- The purpose of punishment was deterrent & expiatory. No one was exempted from punishment.

- In ancient India, Hindu religious laws contained many provisions for governing criminal as well as civil matters.
- The Vedas, Shrutis, Smritis & even other documents like Manusmriti contain provisions regulating criminal law. The practice of codifying criminal offences existed in this period as well.
- These laws also contained detailed procedural rules & regulations for trials. There are some records which also show the existence of principles of evidence to govern these trials.

- **B) Criminal law in the Islamic age –**
- When the country was conquered by the Muslim rulers, they had introduced their system of criminal law, which was purely based on Islam. The Quran, Ijma and Quiyas.
- Under Muslim ruling, there were four kinds of punishment under criminal law –
 1. Qisas (Retaliation)
 2. Diyut (Blood money)
 3. Hadd (punishment which cannot be increased or reduced) (which is mandated & fixed by God)
 4. Tazar & Siyasa (discretionary & exemplary punishment).

- During the Mughal rule, the codification of criminal law of law became more sophisticated.
- Muslim criminal law came under three broad categories: **crimes against God, crimes against sovereignty, and crimes against individuals.**
- The law even divided modes of punishments into categories. These included death, dismembering of limbs, stoning, levy of fines, confiscation of property, the punishment of exile, etc.
- After the British arrived in India, they initially decided not to interfere much with existing Muslim criminal laws. They implemented changes in a phased manner so as to not upset the locals.

- **C) Criminal law in the British period -**
- When **Warren Hastings** introduced his **Judicial Plan of 1772**, he did not make any severe changes to substantive criminal law.
- In **1773**, he slowly started changing rules of procedure & evidence in existing criminal laws. For example, he abolished the practice of allowing male relatives of victims to pardon their killers.
- During this time, serious offences like homicide became crimes against the state instead of being private offences. This laid the foundation of the modern practice of the state prosecuting people who commit public offences.

- From 1790 onwards, **Lord Cornwallis** extended the process of codifying criminal law. Major changes took place in the subject of sentencing. As a result, the process of levying punishments physically harming & dismembering convicts slowly started fading.
- **Lord Wellesley** made even more changes to the offences of murder and homicide in the early 1800s. **Ex.** The law now made distinctions between intentional & unintentional killing.

- Furthermore, rules of evidence became stricter & the threshold of proof to indicate guilt increased greatly. In presidency towns like Madras, Bombay and Calcutta, the British made many changes keeping local conditions in mind.

- **Codification of Substantive Criminal Laws –**
- In **1832**, a very important change took place and a regulation was passed to bring about the end of Mohammedan Criminal Law. There was no uniform criminal law followed by all presidencies.
- A/c to the Charter Act, 1833, **India's First Law Commission in 1834** recommended drafting of the **Indian Penal Code**.
- **Lord Macaulay**, who was the Chairman of that Law Commission, spearheaded its drafting. The Code was basically a comprehensive enactment describing all major crimes in existence at that time.

- Despite several revisions over almost thirty years, the law did not come into force until 1860. It was only **after the Rebellion of 1857** that the British decided to implement it.
- IPC has seen several amendments since it first came into existence. Although it largely relied on British laws & practices, many of its provisions are still the same.
- Even the **Indian Evidence Act** came into existence in 1872 under the guidance of Lord Macaulay. Its foundation was largely the British law of evidence, but it has seen many changes since then.

- **Codification of Procedural Criminal Laws -**
- The British had enacted a Criminal Procedure Code for India in **1862**, modern procedural laws came much later. The Code of 1862 was amended and replaced many times later to make procedural laws modern.
- After Independence, the Law Commission made many recommendations to update CrPC. The most important reason for these changes was to make the criminal procedure **quick & effective**. CrPC was finally enacted again by the Parliament in **1973**, and it has been amended many times since then.

- In **1860**, the Indian penal code was passed. It formed the backbone of criminal law in India.
- In **1872**, Indian Evidence Act was enacted which came into force in Sept 1872.
- In **1973**, Criminal Procedure Code was enacted which came into force on April 1974.
- Above three criminal laws form **the very basis of criminal laws in India.**

- Besides these, various special criminal laws were passed by the Indian Parliament such as Prevention of Corruption Act, Dowry Prohibition Act, Food Adulteration Act, etc. were passed. Along with this, thousands of minor acts are passed in India.

CLASSIFICATION OF CRIMES

- **1. Legal Crimes**
- **2. Political Crimes**
- **3. Economic Crimes**
- **4. Social Crime**
- **5. Miscellaneous Crimes**

- **1. Legal Crimes –**
- Legal crimes can be termed as traditional crimes.
- Legal crimes include Theft, robbery, dacoity, rape, hurt and rioting etc.

- **2. Political Crimes** -

- Political offences which are motivated politically or committed in violation of the election laws or norms set out for the politician in course of their political activities,
- Political crimes include booth capturing, restraining person from voting etc.

- **3. Economic Crimes –**

- Under this category various offences come which are related with the economy.
- In economic offences the persons who are having a high social status are involved. Under this classification tax evasion, smuggling, prostitution, gambling, foreign exchange violation crimes.

- **4. Social Crimes-**

- Social crimes which are committed under social legislation such as

- Child Marriage Restraint Act, 1978

- Dowry Prohibition Act, 1961

- Juvenile Justice(Care and Protection) Act, 2000

- SC & ST Prevention of Atrocities Act, 1989.

- **5. Miscellaneous Crimes -**
- All other remaining crime which are committed under local or special Acts are termed as miscellaneous crimes.
- For example –
 - offences under Prevention of Food Adulteration Act, 1954
 - Consumer Protection Act, 1986 etc.

- **Major Categories of Criminal Offences –**
- Following are the major categories of criminal offences -
 - 1. Criminal Offences Against a Person
 - 2. Criminal Offences Against Property
 - 3. Statutory Criminal Offences
 - 4. Inchoate Criminal Offences
 - 5. Financial & Other Criminal Offences

- **1. Criminal Offences Against a Person -**
- These are the category of criminal offences which are perpetrated **against the body or mental faculties of a person.**
- Commission of such criminal offences results in either physical injury or mental harm to its victim.
- These are often considered grave and can be further classified into two categories i.e., the subclasses of homicide and other crimes of a violent nature.
- **Eg.** Murder, homicide, kidnapping, rape, etc.

- **2. Criminal Offences Against Property -**

- Criminal offences which are carried out against the property of another person comprise this broad category.
- Although such crimes are primarily perpetrated against the property of another, they may also result in causing either physical or mental harm or both to a person as a direct consequence.
- They are often carried out to interfere with the lawful & peaceful possession of the property of another person.
- **Eg.** Theft, robbery, etc.

- **3. Statutory Criminal Offences -**

- These include the broad category of offences that are deemed criminal by way of a statute and often overlap with the other category of crimes.
- The commission of these offences is specifically prohibited under special statutes such as those relating to the use of drugs, banned substances, or financial offences.
- **Eg.** Drunk driving, consumption of drugs, etc.

- **4. Inchoate Criminal Offences -**

- These offences relate to those which were commenced but not completed.
- This includes acts such as aiding the commission of a criminal offence or conspiring to perpetrate a criminal offense. Such acts to be considered criminal offences must include active & substantial steps by an accused to see through the commission of a criminal offence.
- The punishment for inchoate criminal offences can often be as grave as that prescribed for the commission of the actual criminal offence.
- **Eg.** Aiding, abetting, conspiracy, attempt, etc.

- **5. Financial & Other Criminal Offences -**

- These are offences that are carried out by way of acts such as fraud, deception, etc. to wrongfully obtain financial gain.
- These are often also referred to as white collar crimes.
- **Eg.** Fraud, embezzlement, tax evasion, etc.

- **Types of Criminal Offences under the Code of Criminal Procedure -**
- The Code of Criminal Procedure, which lays down the procedure for trying criminal offences under the Indian justice delivery system classifies criminal offences into the following categories, namely -
 - **I) Bailable & Non-Bailable offences**
 - **II) Cognizable & Non-Cognizable Offences; &**
 - **III) Compoundable & Non-Compoundable offences**

- **1.Bailable offences -**
- **Sec.2 (a) CrPC -** The offences which are laid down in the **First Schedule of the Code.**
- Bailable offences are punishable with imprisonment of fewer than 3 years or with a simple fine only.
- These carry an unfettered right of bail, therefore a person arrested without a warrant for a bailable offence has an absolute right to be released on bail, provided he is willing to pay the bail amount.

- The bail amount is fixed by the court of law, and the grant of bail is conditional upon an accused satisfying this demand.
- CrPC also provides for the form which has to be filled by an accused while applying for bail.
- **Eg.** Common hurt, public nuisance, bribery, etc.

- **2. Non-Bailable Offences -**

- Non- Bailable offences are those which do not accord the accused an unfettered right to bail.
- These are not included in the First Schedule of CrPC.
- These offences are either punishable with the death penalty, life imprisonment, or rigorous imprisonment for more than 7 years.

- The granting bail is discretionary of court of law which may refuse or grant it subject to certain conditions.
- While deciding whether to grant or refuse bail to an accused, a Magistrate is required to record the reasons for such a decision in the order of the court.
- An application for bail in case of a non-bailable offence can be made by submitting Form 45 (CrPC).
- **Eg.** murder, dowry death, kidnapping, rape, etc.

- **3.Cognizable Offences -**

- These are offences for which the CrPC grants the police administration the authority to carry out the arrest of an accused person without a warrant.
- Cognizable offences are often always more serious offenses of a grave nature which carry the more severe punishments under the IPC.
- The First Schedule of the CrPC provides a list of all offences under the IPC & other statutes which are categorized as cognizable.
- **Eg.** Murder, rape, dowry death, etc.

- **4.Non-Cognizable Offences -**

- Contrary to cognizable offences, non-cognizable offences are those against which the police administration is not provided with the unfettered authority to arrest without a warrant.
- Non-cognizable offences are often more petty & menial offences, which do not entail severe punishments in law.
- The injured party in such cases are often private individuals & society as a whole is not considered a victim of the offence.

- The aggrieved/injured party is expected to approach the police administration or the judiciary & initiate criminal proceedings.
- The Court issues the warrant deeming the arrest of the accused essential to meet the ends of justice.
- **Eg.** Forgery, cheating, defamation, etc.

- **5. Compoundable Offences -**

- Compoundable offences are those which can legally be settled & put to a quietus by way of an agreement between the accused & the injured party.
- The injured party can undertake to withdraw prosecution against the accused in exchange for some form of consideration or gratification, thereby settling.
- **U/s Sec. 320, CrPC**, the list of criminal offences which are compoundable in nature is provided.

- **Sec. 320** further classifies compoundable offences into two subclasses namely -
- I) Those which can be compounded **without the intervention of a court of law, &**
- II) Those which can only be settled **with the permission of a court of law.**
- If the parties associated with the compoundable offense agree to settle the matter and reach a compromise, the court records such settlement and disposes of the criminal proceedings before it.
- **Eg.** Wrongful confinement, criminal breach of trust, cheating, etc.

- **6. Non-Compoundable Offences -**

- These are offences that cannot be settled by way of agreement between the affected parties to the crime.
- All offences not mentioned in the list of compoundable offences u/s 320 fall under the category of non-compoundable offences.
- The compounding of such offences which are often graver in nature is against public policy.

- Any agreement executed to effect the compounding of a non-compoundable offence is void in the eyes of law.
- Only the Supreme Court can permit the compounding of a non-compoundable offence.
- **Eg.** Murder, rape, dowry death, etc.