

CRIMINAL LAW AND ITS RELEVANCE TO THE CIVIL SOCIETY

ABSTRACT

All organized societies of the world have legitimized rules to govern themselves. Most of the countries in the world have incorporated the principle of Rule of Law this term was expounded by A.V. Dicey in 19th century, it says that Law of the land shall be the sovereign and it should be same for each and every individual residing at that land. Similarly all states have laws to govern the society and the nation in form of constitution. Among all types of laws the criminal law is only one of the devices by which organized societies protect the security of individual interests and ensure the survival of the group. The regulation of civil life is enforced by ordinary police powers, and the sanctions available through tort actions. The law enforcement agencies like police force, army, paramilitary forces etc are the ones safeguarding the law, they are the one who take the immediate action after the commission of the crime at a place they arrest the suspect and then begin with the further investigation into the matter. This article focuses on the definition, need, codification of criminal law and also its comparison with civil law in the below given sections along with the case laws for a better understanding of the topics included within the article.¹ (Source: Hans-Heinrich Jescheck Jerry Norton n.d.) <https://www.britannica.com/topic/criminal-law> retrieved on 22 June)

INTRODUCTION

We can easily decipher that we need freedom and liberty in the modern world to survive without that we are nothing but the slave of the one who is in power and we all will have to work on the directions of the sovereign. Austin said that Law is the command of the sovereign; whatever the sovereign authority asks the people to do they are under an obligation to do the same. Law can be understood in simple words that it is just a set of rules that needs to followed by the citizens and if anyone violates those rules they shall be prosecuted for the same, the procedure for such prosecution is also given in the law itself. The law which defines the crime or offences and also telling about the punishment is the substantive law, whereas the one telling about the procedure of prosecution , the trial, recording of evidences and other related things are defined in procedural laws. All these procedures and definitions cumulatively make the law in to.

WHAT IS CRIMINAL LAW?

In general if we look to a branch of law called criminal law we shall see that it is something when a person does a wrong that is against the society at large. A person committing an offence of murder, he becomes a threat to the society such person is not meant to be among the other people. He tends to harm the environment of public peace, public order and public morality. Such person shall be punished and given a term of sentence. It is a system of law concerned with the punishment of offenders. Criminal law starts when a certain act begins to be criminalised it means that a particular act is said to be wrong in the eyes of law.

Criminal law refers to the body of law that defines criminal offenses, regulates the apprehension, charging, and trial of suspected persons, and fixes penalties and modes of treatment applicable to convicted offenders. Criminal law is only a single branch of set of rules that protects the civil society's norms and peace other branches are like Schools, family, institutions etc. Rules of a company or a firm are meant to maintain decorum at that particular space they are also meant to keep everything under control. To get this theory of controlling of acts by set rules that are established by the society itself and not by the statutes, one can learn a lot about this in subject of Sociology in the topic of Social Control. Social control in general terms is defined as how the rules, Laws, norms and the structures of society can regulate the human behaviour. Societies cannot survive without controlling the people living in the society without having a social order, thereby making social control a very crucial factor in the development of any country that wants to free from any internal disturbance.

Criminal law and the law of Torts are quite close but the difference is the tort is a civil wrong whereas the Criminal offence is an offence against the society at large, wrong against the state. In torts we get damages as the outcome of the litigation whereas in the criminal law the wrongdoer is rewarded with sentencing and fine .It can also be defined as a body of rules and statutes that defines conduct prohibited by the government because it threatens and harms public safety and welfare and that establishes punishment to be imposed for the commission of such acts. The term criminal law generally refers to substantive criminal laws.

Substantive criminal laws- crimes and establish punishments. But it is the procedural law what comes into action at first when an offence is committed. We do consider that procedural law is of much more importance, we are not saying that substantive law is not of much use. If we go into the intricacies of litigation we can see that the lawyers try to find out how can they get their clients out of trouble through the ways given in the procedures as it is of no use to question the substantive law as it is written and the same shall be followed. Due to these

loopholes in the procedural things these laws require a lot of updates from time to time with the changing society.² (Source: Article: Criminal Law n.d.) <https://legal-dictionary.thefreedictionary.com> retrieved on 22 June)

WHY WE NEED CRIMINAL LAW?

The main purpose of criminal law is to protect and serve society. In the early days in American history during the so-called Wild West, morality was a low point. Criminals without a regard for the law dominated the social norm during the cowboy era. He also talked about deterrence; he said that deterrence is something when there is sense of fear in the minds of people who wish to commit any wrong, to control the criminal behaviour through the fear of sentencing of punishment. He wanted refrain people to from committing any wrong by creating a fear of punishment in their minds and let them know that there shall be consequences for their actions. Deterrence can be studied in a detailed way in the deterrence theory of punishment in Jurisprudence.

If we look into why we need criminal law, it can be simple and complex at the very same time, complex can be read by many jurists in the comments, books and articles. In simple words if we wish to know the actual need of criminal law we can go by seeing what we have around us in the present scenario.³ (Source: ----2018 15, August)

<https://www.ukessays.com/essays/criminology/criminal-law-and-the-purposes-of-protection-criminology-essay.php> retrieved on 23 June)

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1. (Source: [Hans-Heinrich Jescheck Jerry Norton](https://www.britannica.com/topic/criminal-law) n.d.) <https://www.britannica.com/topic/criminal-law> retrieved on 22 June)
 2. (Source: Article: Criminal Law n.d.) <https://legal-dictionary.thefreedictionary.com> retrieved on 22 June)
 3. (Source: ----2018 15, August) <https://www.ukessays.com/essays/criminology/criminal-law-and-the-purposes-of-protection-criminology-essay.php> retrieved on 23 June)

DIFFERENT TYPES OF CODIFICATION OF CRIMINAL LAW: AN OVERVIEW

Criminal law in the Vedic ancient India and Hindu religious laws contained many provisions for governing criminal as well as civil matters. Criminal law in the Islamic age with the advent of Islamic rule in India in several parts of the country saw major changes.

During the Mughal rule, the codification of criminal law became more sophisticated. Muslim criminal law had three broad categories namely: crimes against Allah/God, crimes against sovereignty, and crimes against individuals. Punishments include death, dismembering of limbs, stoning, levy of fines, confiscation of property, the punishment of exile, etc. 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. From 1790 onwards, Lord Cornwallis extended the process of codifying criminal law. Major changes took place in the subject of sentencing.⁴ (Source: n.d.) <https://www.toppr.com> retrieved on 23 June)

The Indian Evidence Act appeared in 1872 under the direction of Lord Macaulay. Its establishment was to a great extent the British law of proof; however it has seen numerous progressions from that point forward. After Independence, the Law Commission made many recommendations to update CrPC. CrPC was at last authorized again by the Parliament in 1973, and it has been revised commonly since then. Jury decision overturned by High Court (**KM Nanavati v State of Maharashtra**) - 1961 Hardly an open-and-shut case, the nature of the crime garnered media attention. This case is notable for being the last case when a jury trial was held in India KM Nanavati, a maritime official, killed his significant other's darling, Prem Ahuja. The jury decided for Nanavati and announced him "not liable" which was in the end put aside by the Bombay High Court. Amendment masquerades as law (**IC Golaknath v State of Punjab**) - 1967 Parliament's prevented from taking away individual rights. In the profoundly celebrated instance of Golaknath v State of Punjab in 1967 the Supreme Court decided that Parliament couldn't reduce any of the Fundamental Rights of individuals mentioned in the Constitution. Parliament's overarching ambitions nipped in the bud (**Keshavananda Bharti vs. State of Kerala**) 1973.

4. (Source: ----2018 15, August) <https://www.ukessays.com/essays/criminology/criminal-law-and-the-purposes-of-protection-criminology-essay.php> retrieved on 23 June)

The case was set off by the 42nd Amendment Act. Start of the fall of Indira Gandhi (**Indira Gandhi v Raj Narain**) – 1975, the trigger that prompted the inconvenience of crisis. In this landmark case regarding election disputes, the primary issue was the validity of clause 4 of the 39th Amendment Act. The Supreme Court held clause 4 as unconstitutional and void on the ground that it was outright denial of the right to equality enshrined in Article 14. The Supreme Court additionally added the accompanying highlights as "fundamental highlights" set down in Keshavananda Bharti case – popular government, legal audit, rule of law and locale of Supreme Court under Article 32.

A stage in reverse for India (**ADM Jabalpur v Shivakant Shukla Case**) – 1976. Widely viewed as an infringement of Fundamental Rights. In this milestone judgment, the Supreme Court pronounced that the privileges of residents to move the court for infringement of Articles 14, 21 and 22 would stay suspended during crises. Protected legitimacy of individual rights maintained (**Waman Rao v Union of India**) - 1981SC decided that Parliament had violated its force of established revision. This case was a milestone choice in the sacred statute of India. This case has helped in determining a satisfactory method of addressing grievances pertaining to the violation of fundamental rights by creating a fine line of determination between the Acts prior to and after the Keshavananda Bharati case.

Maintenance lawsuit sets **precedent (Mohd Ahmed Khan v Shah Bano Begum)** - 1985 Shah Bano won the right to get alimony from her husband. The petitioner challenged the Muslim personal law. The Supreme Court decided for Shah Bano and allowed her support. Most favoured it as a secular judgment but it also invoked a strong reaction from the Muslim community, which felt that the judgment was an encroachment on Muslim Sharia law and hence led to the formation of the **All India Muslim Personal Law Board in 1973**.MC

Mehta v Union Of India - 1986 Mounting environment-related concerns.⁵ (Source: ---2015 7, December) <https://www.dailyo.in/variety/40-landmark-judgments> retrieved on 23 June

Thus it is clear from the above that the codifications change as per the contemporary need of the society from time to time. Every country has a civil society and the related laws to govern the society for the best of society. Laws are made for good governance and not for harassment of citizens. Therefore here a comparison of civil laws and criminal laws has also been done in below given section.

ELEMENTS

Numerous laws are implemented by danger of criminal discipline, and the scope of the discipline fluctuates with the purview. The extent of criminal law is too tremendous to even think about classifying wisely. By the coming up next are a portion of the more ordinary parts of criminal law.

ACTUS REUS

Actus reus is Latin for "liable demonstration" and is the actual component of perpetrating a wrongdoing. It very well might be cultivated by an activity, by danger of activity, or outstandingly, by an oversight to act, which is a lawful obligation to act. For instance, the demonstration of A striking B may do the trick, or a parent's inability to offer food to a little youngster likewise may give the actus reus to a wrongdoing.

MENS REA

Mens rea is another Latin expression, signifying "blameworthy brain". This is the psychological component of the wrongdoing. A blameworthy psyche implies an aim to submit some unfair demonstration. A lower limit of mens rea is fulfilled when a litigant perceives a demonstration is risky yet chooses to submit it in any case. This is wildness. It is the psychological perspective of the individual at the time the actus reus was submitted.

STRICT LIABILITY

Severe risk can be portrayed as criminal or common obligation despite the absence of mens rea or plan by the respondent. Not all violations require explicit aim, and the limit of culpability required might be decreased or downgraded. For instance, it very well may be adequate to show that a litigant acted carelessly, as opposed to deliberately or wildly. In offenses of supreme responsibility, other than the denied act, it may not be important to show the demonstration was deliberate

FATAL OFFENSES

A *murder*, defined broadly, is an unlawful killing. Unlawful murdering is likely the demonstration most much of the time focused by the criminal law. In numerous wards, the wrongdoing of homicide is partitioned into different degrees of seriousness, e.g., murder in the principal degree, in light of goal. Vindictiveness is a necessary component of homicide. Murder (Culpable Homicide in Scotland) is a lesser assortment of executing submitted without noxiousness, achieved by sensible incitement, or reduced limit. Compulsory murder,

where it is perceived, is a slaughtering that comes up short on everything except the most weakened blameworthy aim, carelessness.

PERSONAL OFFENSES

Numerous criminal codes ensure the actual uprightness of the body. The wrongdoing of battery is generally perceived as an unlawful contacting, albeit this does exclude ordinary thumps and shocks to which individuals quietly assent as the after effect of essence in a group. Making a dread of inescapable battery is an attack, and furthermore may offer ascent to criminal obligation. Non-consensual intercourse, or assault, is an especially intolerable type of battery.

PROPERTY OFFENSES

Intruding is unlawful section onto the genuine property of another. Numerous criminal codes give punishments to change, misappropriation, burglary, all of which include hardships of the estimation of the property. Burglary is a robbery forcibly.

PARTICIPATORY OFFENSES

Some criminal codes condemn relationship with a criminal endeavour or contribution in culpability that doesn't really work out as expected. A few models are supporting, abetting, scheme, and endeavour.

MALA IN SE V. MALA PROHIBITA

While wrongdoings are normally broken into degrees or classes to rebuff fittingly, everything offenses can be isolated into 'mala in se' and 'mala prohibita' laws. Both are Latin lawful terms, mala in se meaning wrongdoings that are believed to be inalienably underhanded or ethically off-base, and accordingly will be broadly viewed as violations paying little mind to locale. Mala in se offenses are lawful offenses, vandalism related misdemeanours, indecent demonstrations and degenerate demonstrations by open authorities. Mala prohibita, then again, alludes to offenses that don't have injustice related with them. Stopping in a confined territory, driving the incorrect route down a single direction road, jaywalking are instances of acts that are denied by resolution, however without which are not viewed as off-base. Consequently, it very well may be contended that offenses that are mala prohibita are not actually violations by any stretch of the imagination.

https://en.wikipedia.org/wiki/Criminal_law

A BRIEF COMPARISON OF CIVIL LAWS AND CRIMINAL LAWS

The law can be precarious to explore, in any event, for legal counsellors and courts. At its center, there are two standards: criminal law and common law. As per Enjuris Editors a criminal preliminary is totally different from a common case. On the off chance that you were harmed, you probably won't know which one would be best for you to get alleviation and it may rely upon what sort of help you're searching for. There are some lawful words which are utilized in both common and criminal cases.

Plaintiff - The offended party is the individual or element that documents a claim in a common case. For our motivations, we'll allude to an offended party personally, yet it very well may be an individual, organization, non-benefit association, government or public association (for instance, a school locale), or anything that has lawful status. The offended party professes to have experienced mischief the litigant's activities. That damage could be physical, enthusiastic, or monetary.

Defendant – In a common claim, the litigant is the individual or element that is being sued. In a criminal continuing, the respondent is the individual accused of a wrongdoing.

Civil lawsuit - Regardless of whether there's a casualty, that individual isn't an offended party they may be an observer, yet the case is documented by an examiner, not a private person. The legal process includes all following court motions and settlement negotiations, all the way to trial and judgment (if it goes that far).

Criminal proceeding – A criminal case starts when an individual is captured and accused of a wrongdoing, and that individual turns into the respondent.

4. (Source: n.d.) <https://www.toppr.com> retrieved on 23 June)

5. (Source: ---2015 7, December) <https://www.dailyo.in/variety/40-landmark-judgments> retrieved on 23 June

DIFFERENCES BETWEEN CIVIL AND CRIMINAL LAW

One significant contrast among common and criminal law is that a common claim is consistently the after effect of damage to an individual or substance. A common claim is recorded when somebody was hurt because of somebody's carelessness or wildness, yet the litigant hasn't really violated any laws. For instance, on the off chance that you slipped and tumbled from a water spill on a store floor, you could possibly record a common slip and fall claim for your wounds. The store staff may have been careless in not protecting the strolling zone, however that doesn't mean they carried out a wrongdoing. For example, if you slipped and fell from a water spill on a supermarket floor, you might be able to file a civil slip and fall lawsuit for your injuries. The store personnel might have been negligent in not keeping the walking area safe, but that doesn't mean they committed a crime.

A criminal act is an offense against the public, society, state, or individual. A person can be charged with a criminal offense even if no one was harmed simply because the behaviour was against the law. In other words, a crime was committed, even if no one gets hurt. Here are a few instances of harmless wrongdoings:

- Drug use
- Trespassing
- Public inebriation
- Gambling

There are a few conditions when a case could be both common and criminal. Conceivably the most notable illustration of a case that was attempted both in criminal court and in a common claim is O.J. Simpson case. The reality of the case are: Simpson was a Heisman-winning football player, sports caster and entertainer. In 1994, he was accused of homicide in the passing of his ex, Nicole Brown Simpson, and her companion Ron Goldman. After a protracted and exceptionally saw criminal preliminary, he was vindicated (seen not as blameworthy). Notwithstanding, the groups of Brown Simpson and Goldman recorded a common unfair demise claim against him. In that procedure, the court granted the families a \$33.5 million judgment subsequent to finding that Simpson was at risk for their demises. How could it be conceivable that one court seen him not as blameworthy and the other discovered him responsible? This happens in light of the fact that the weight of verification is distinctive in a criminal continuing than a common claim. In a criminal preliminary, the

weight (or obligation) of demonstrating the litigant's blame is consistently on the indictment. The litigant is assumed blameless except if the arraignment demonstrates that person liable. In a common preliminary, the weight starts with the offended party yet once in a while moves to the respondent. All in all, the offended party makes a case and presents an underlying arrangement of grumblings.

In Simpson's criminal trial, the jury found that the evidence was insufficient to prove beyond a reasonable doubt that he committed the murders. In any case, the jury in the ensuing common preliminary confirmed that a prevalence of the proof showed that he was responsible for the passing of Nicole Brown Simpson and Ron Goldman.

In a criminal case, the result will be a discipline if the respondent is seen as blameworthy. Shouldn't something be said about twofold danger? Twofold peril is a sacred right gone ahead by the Fifth Amendment that disallows the public authority from indicting somebody twice for a similar wrongdoing. That implies in the event that somebody has been accused of a wrongdoing, the public authority can't arraign a second time after the individual is cleared (seen not as liable). On the off chance that there are a few conditions emerge like what if new proof surfaced today that demonstrates his blame? Say, for instance, video film is revealed that shows him murdering Nicole Brown Simpson and Ron Goldman. It's past the point of no return. He's now been absolved in a criminal preliminary. Regardless of what the proof is or how convincing it is, he can't be criminally attempted again for a similar wrongdoing. In any case, if O.J. was sentenced (seen as liable) and new proof is found that would excuse him (show that he wasn't blameworthy), that proof could be introduced to the court as an allure. However, if O.J. was convicted (found guilty) and new evidence is discovered that would exonerate him that evidence could be presented to the court in the form of an appeal. ⁶ (Source: Enjuris Editors n.d.) <https://www.enjuris.com/personal-injury-law/civil-vs-criminal-law.html> retrieved on 23 June

6. (Source: Enjuris Editors n.d.) <https://www.enjuris.com/personal-injury-law/civil-vs-criminal-law.html> retrieved on 23 June

CONCLUSION

The above segments uncover the definition, need, codification of criminal law and furthermore its correlation with common law. Criminal law alludes to the collection of law that characterizes criminal offenses, directs the anxiety, charging, and preliminary of suspected people, and fixes punishments and methods of treatment appropriate to indicted guilty parties. Criminal law in India implies offenses against the state, it incorporates crimes and misdeeds. As Frank Schmalleger, the creator of Criminal equity today, the "central to the idea of criminal law is the suspicion that criminal demonstration harm people, however society as a whole."Therefore all nations and social orders of the world require rule of law for better administration and glad life. It develops from the Vedic Period and work for the government assistance of the general public till today. Criminal law is represented by Indian reformatory Code, CrPC, Evidence Act and so on the historical backdrop of codification of current criminal law in India by and large starts from the approach of the British guideline. Be that as it may, its foundations date back to the Vedic age and the standard of different Hindu and Muslim lines. The cutting edge criminal equity framework depends on English laws and practices. These practices are commonsense just as contemporary. Thus a significant piece of criminal laws exist today actually depends on the British-time laws. As per Enjuris Editors on the off chance that you were harmed, you probably won't know which one would be best for you to get help and it may rely upon what sort of alleviation you're searching for. Further we can close there are standards which are made for the great overseeing and government assistance of the general public.