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M.A. Criminology & Police Science

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FUNDAMENTALS OF CRIMINOLOGY, LAW AND CRIMINAL JUSTICE

UNIT-I: BASICS OF CRIMINOLOGY

Introduction

The social sciences in the recent past have become quite specialized in terms of the problems and responses covered in their purview. The origin of Criminology as specialized branch of learning was a part of similar process. Early Criminology better known as classical criminology emerged as part of protest against the prejudiced and discriminating legal practices that were prevalent in the contemporary society of the early eighteenth century. The leaders of criminal justice reforms were Beccaria and Bentham who demanded the reforms in the law and procedure. Afterwards Criminology has grown to be an advanced field of learning and practice. Emphasis in Criminology, in the interpretation of crime and criminality, has been changing over a period of time. The schools of thoughts in Criminology have been moving from classical to physiological, environmental to psychological and sociological to interactionist approaches and so on.

Definitions

Criminology (from Latin crīmen, "accusation"; and Greek -λογία, -logia) is the scientific study of the nature, extent, management, causes, control, consequences, and prevention of criminal behavior, both on the individual and social levels.

Criminology has been defined as the study of crime, the causes of crime (etiology), the meaning of crime in terms of law, and community reaction to crime. Not too long ago, criminology separated from its mother discipline, sociology, and although there are some historical continuities, it has since developed habits and methods of thinking about crime and criminal behavior that are uniquely its own. Criminology is hence perceived as a most inclusive concept. Criminology involves the inputs from all basic disciplines in social and behavioural sciences in explaining the problem of and response to crime.

Criminology is the scientific study of crime, including its causes, responses by law enforcement, and methods of prevention. It is a sub-group of sociology, which is the scientific study of social behavior. There are many fields of study that are used in the field of criminology, including biology, statistics, psychology, psychiatry, economics, and anthropology.

Just as criminology is a sub-group of sociology, criminology itself has several sub-groups, including

- Penology: the study of prisons and prison systems
- Criminal Justice
- Victimology
- Bio-criminology: the study of the biological basis of criminal behavior
- Feminist criminology: the study of women and crime
- Criminalistics: the study of crime detection

History of Criminology

Spiritual explanations for crime were rooted in people's religious beliefs and superstitions. The guilt or innocence of a crime, like victory or defeat in battles or disputes, was believed to be decided by divine intervention. Cures for criminal behavior ranged from religious conversion to torture and death. Natural explanations for crime were rooted in people's ideas about the nature of reality in the physical world. Ideas about reality were based on observations of nature but were not scientific. For example, the natural world was thought to include inherent good and evil, and crimes often were regarded as crimes against nature or the natural order rather than crimes against victims or against God. Seeking explanations for crime in the natural world provided a basis for the development of legal definitions and treatments of crime.

Cesare Beccaria, a major contributor to the classical school of criminology, was born in Milan, Italy, on March 15, 1738, and died in 1794. Born an aristocrat, he studied in Parma and graduated from the University of Pavia. In 1763, the protector of prisons, Pietro Verri, gave his friend Beccaria an assignment that would eventually become the essay "On Crimes and Punishments." It was completed in January, 1764, and first published anonymously in July of that year. The article caused a sensation, but not everybody liked it. The fact that it was first published anonymously suggested that "its contents were designed to undermine many if not all of the cherished beliefs of those in a position to determine the fate of those accused and convicted of crime. [An] attack on the prevailing systems for the administration of criminal justice has aroused the hostility and resistance of those who stood to gain by the perpetuation of the barbaric and archaic penological institutions of the day.

Beccaria's Proposed Reforms

Beccaria's specific suggestions for a system of criminal justice based on the social contract covered the areas of guilt and punishment. Even though people had to surrender part of their liberty for protection, Beccaria believed they would want to give up "the least possible portion": "The aggregate of these least possible portions constitutes the right to punish; all that exceeds this is abuse and not justice; it is fact but by no means right." Given this view, Beccaria advocated that only legislators should be the creators of laws. He stated that the authority for "making penal laws can reside only with the legislator, who represents the whole society united by the social contract." In addition, unless it was ordained by the laws, judges were not permitted to inflict punishment on any member of society. Beccaria also made some important points about

being termed "guilty": "No man can be called guilty before a judge has sentenced him, nor can society deprive him of public protection before it has been decided that he has in fact violated the conditions under which such protection was accorded him. What right is it, then, if not simply that of might, which empowers a judge to inflict punishment on a citizen while doubt still remains as to his guilt or innocence?" This new concept, "innocent until proven guilty," underlies our criminal justice system today.

Doctrine of Social Contract Theory

Beccaria based his call for reform on the theory that citizens and the state have a "social contract" that entitles people to legal protections against crime. Beccaria's blueprint for reform had its roots in social contract theory, which stresses the idea that people were originally without government. People then created the state through a "social contract," by which they surrendered many of their "natural liberties." In return, people received the security that government could provide "against antisocial acts." Beccaria wrote, "Laws are the conditions under which independent and isolated men united to form a society. Weary of living in a continual state of war, and of enjoying a liberty rendered useless by the uncertainty of preserving it, they sacrificed a part in order to enjoy the rest of it in peace and safety. The sum of all these portions of liberty sacrificed by each for his own good constitutes the sovereignty of a nation, and their legitimate depository and administrator is the sovereign.

Pleasure, Pain, and Punishment

Pleasure and pain, according to Beccaria, are the only "springs of action," and the purpose of punishment is to prevent a criminal from doing any further injury to the community and to prevent others from committing similar crimes. Beccaria believed that punishment should be based on the pleasure/pain principle. For him, pleasure and pain were the only "springs of action" in people who are in possession of their senses: "If an equal punishment be ordained for two crimes that injure society in different degrees, there is nothing to deter men from committing the greater [crime] as often as it is attended with greater advantage." He also believed that punishment and penalties should be imposed on the guilty according to a scale determined by the degree of danger the given crime poses for the community: "If mathematical calculation could be applied to the obscure and infinite combinations of human actions, there might be a corresponding scale of punishments descending from the greatest to the least." With such an exact scale of crimes and punishments, people would know which penalties were attached to which criminal acts. What, then, was the purpose of punishment?

For Beccaria, its purpose was to prevent a criminal from doing any further injury to the community or society. The purpose of punishment was also to prevent others from committing similar crimes. These purposes required setting penalties that would make strong and lasting impressions on others with the "least torment to the body of the criminal." Punishment should be no more severe than deemed necessary to deter individuals from committing crimes against others or the state. Maximizing the preventive, or deterrent, effect would be achieved by prompt, effective, and certain punishment: "The more promptly and the more closely punishment follows upon the commission of a crime, the more just and useful will it be....I have said that the

promptness of punishments is more useful because when the length of time that passes between the punishment and misdeed is less, so much stronger and more lasting in the human mind is the association of these two ideas, crime and punishment; they then come insensibly to be considered, one as the cause, the other as the necessary inevitable effect." After proposing that the rich should be punished in the same way as the poor, and that both torture to obtain confessions and capital punishment should be abolished, Beccaria concluded: "So that any punishment be not an act of violence of one or of many against the other, it is essential that it be public, prompt, necessary, [as] minimal in severity as possible under given circumstances, proportional to the crime, and prescribed by the laws.

Jeremy Bentham

An influential early classical theorist was the British philosopher Jeremy Bentham, born in 1748. He is one of the greatest scholars on those days. He believed that people have the ability to choose right from wrong, good from evil. His explanation for criminal behavior included the idea that people are basically hedonistic, that is, they desire a high degree of pleasure and avoid pain. People who choose to commit criminal acts think they stand to gain more than they risk losing by committing the crime. Bentham believed that the criminal justice system should deter people from making this choice.

Utilitarianism

Jeremy Bentham, a major contributor to the classical school of criminology, based his theories on the principle of utilitarianism. Bentham's perspectives on human behavior had its roots in the concept of utilitarianism, which assumes that all of a person's actions are calculated. Utilitarianism is the doctrine that the purpose of all actions should be to bring about the greatest happiness for the greatest number of people. For Bentham, people calculate actions in accordance with their likelihood of obtaining pleasure or pain. Bentham stated that an act possesses utility if it "tends to produce benefit, advantage, pleasure, good or happiness (all this in the present case comes to the same thing) or (which again comes to the same thing) to prevent the happening of mischief, pain, evil or unhappiness to the party whose interest is considered."

Bentham developed a ***felicitous calculus,*** or moral calculus, for estimating the probability that a person will engage in a particular kind of behavior. People, he believed, weigh the possibility that a particular behavior pattern or action will cause current or future pleasure against the possibility that it will cause current or future pain. In response to the question of why a person commits a crime, Bentham would probably reply that the pleasure that the person anticipated from the criminal act was much greater than the subsequent pain that might be expected from it.

The Greatest Happiness and Social Control

Bentham advocated the "greatest happiness" principle and the use of punishment to deter crime. Bentham expounded a comprehensive code of ethics and placed much emphasis on the practical problem of decreasing the crime problem. He aimed at a system of social control -a method of checking the behavior of people according to the ethical principle of utilitarianism. He believed

that an act should be judged not by an "irrational system of absolutes but by a supposedly verifiable principle. The principle was that of 'the greatest happiness for the greatest number' or simply 'the greatest happiness.'" For Bentham, checks or sanctions needed to be attached to criminal behavior and set up by legislation, which would then serve "to bring the individual's pursuit of his own happiness in line with the best interests of the society as a whole." Punishment, Bentham believed, was a necessary evil -necessary to prevent greater evils from being inflicted on the society and thus diminishing happiness.16 Social control based on degrees of punishment that both fit the crime and discourage offending is part of our system of criminal justice today. As you can see, Jeremy Bentham, Cesare Beccaria, and the classical school of criminology had many influences on the American system of criminal justice.

Influences of the Classical School

The U.S. Bill of Rights is rooted in Beccaria's writings. Beccaria and Bentham also influenced the development of the modern correctional system. There are many different theories of criminology that have developed throughout the past 250 years or so, and while some have fallen out of popularity, others are still thought relevant today. The creation of criminology as a field of study can be tracked as far back as the 18th century, when two social theorists, Cesare Beccaria in Italy and Jeremy Bentham in England, each pushed the idea that the punishment should be so severe that the criminal would decide that the pleasure of the criminal act would not be worth the pain of the punishment. This was known as the classical school of criminology. As recently as 1995, a judge in California sentenced a man to prison for 25 years to life for stealing a slice of pizza. The judge stated that his hands were tied because of the three strikes law, and the law would not allow the judge to look at the specific crime. This example follows the classical school of criminology that was developed over 200 years ago.

During the early 19th century, criminologists started to argue that the classical school of criminology does not differentiate between varying degrees of crimes. These criminologists were known as the positivists. The positivists believed that the punishment should fit the criminal, not the crime.

Cesare Lombroso, Italian physician and psychiatrist, was a leader of the positivist theory. He believed that criminals were born, not made, and that crime was a matter of nature, not nurture. He conducted extensive studies on cadavers of executed criminals, coming up with the argument that certain facial features, such as very large jawbones and strong canine teeth, were obvious signs that an individual was or would be a criminal. However, this theory became less popular for moral reasons and in favor of later theories focusing on environmental factors that contribute to criminal behavior.

Durkheim also theorized about the ways in which modern, industrial societies differ from non-industrial ones. Industrial societies are not as effective at producing what Durkheim called a collective conscience that effectively controls the behavior of individuals. Individuals in industrial societies are more likely to exhibit what Durkheim called anomie, an Greek word meaning "without norms." Consequently, modern societies have had to develop specialized laws and criminal justice systems that were not necessary in early societies to control behavior.

Criminology: Nature and scope

The field of criminology systematically studies the causes of crime. The explanations for crime are not simple; we live in a complex society, and the causes of crime are as complex as the society itself. As discussed in Chapter 1, the criminologist attempts to explore the conditions leading to criminal behavior and the factors in society that contribute to its continued existence. This chapter and those that follow explore a wide variety of theories regarding crime. These theoretical explanations contribute to an understanding of criminal behavior and also provide an important framework for examining current policies and past as well as present treatment efforts established to deal with or alleviate the crime problem.

Criminology is, ordinarily, the science of crime and seeks to study the phenomenon of criminality in its entirety. Criminology as a branch of knowledge is concerned with those particular conducts of individual behaviour which are prohibited by society. It is therefore a societal study which seeks to discover the causes of criminality and suggest remedies to reduce crimes. Criminology consists of two main branches- criminal biology, which investigates causes of criminality found in the mental and physical constitution of the deviant, 'and criminal sociology which deals with enquiries into the effect of environment as a cause of criminality.

Criminology, penology and criminal law are inter-related fields. Penology deals with the custody, treatment, prevention and control of crimes. Criminal law seeks to implement policies envisaged by criminology and penology (the formulation of criminal policy essentially depends on crime causations and factors correlated therewith). The object of criminology is to study the sequence of law making, law-breaking and reaction to law breaking from the point of view of the efficiency of law as a method of control. The science of criminology aims at taking up case to case study of different crimes and suggests measures to 'reform' the offenders. Liberalization of punishment for affording greater opportunities for rehabilitation of offenders has been accepted as the ultimate object of penal justice. The most significant aspect of criminology is its concern for crime and criminals. It presupposes the study of criminal with basic assumption that no one is born criminal. It treats reformation as the ultimate object of punishment while individualization (treatment accorded to each individual according to his personality) the method of it.

Criminology also seeks to create conditions conducive to social solidarity in as much as it tries to point out what behaviours are obnoxious and anti-social. The ultimate object is to render a crimeless society so far as possible with a view to achieving social harmony.

Criminology as a Social Science, Relations with Sciences

Criminology is the study of crime, as indicated by the formative Latin terms crimino (accusation or guilt) and logy (study of). As an intellectual domain, criminology comprises contributions from multiple academic disciplines, including psychology, biology, anthropology, law, and, especially, sociology. Although the defining statements of criminology are rooted across these diverse areas, contemporary criminology is becoming ever more intertwined with still additional sciences and professional fields such as geography, social work, and public health.

This plurality of influences, often referred to as multidisciplinary, is altogether logical given the complex subject matter and diverse nature of crime. Scholarly attention to crime from various perspectives allows for an extensive range of research questions to be addressed, making possible a fuller understanding of the criminal mind, the nature of crime, and social control processes.

Legal scholarship, for example, ranges from philosophical attention to social justice issues to technocratic factors determinant of case outcome. Alternatively, psychology approaches the topic of crime with a focus on individual-level maladjustment and behavioral abnormality. Sociological criminology differs still by concentrating on the multiple causes and nature of crime, as well as society's reaction to it.

The individuals who study crime, criminologists, engage research on virtually every imaginable aspect of illegality and society's reactions to it, ranging from the development of theories of crime causation, the roles and uses of social control (e.g., police, courts, and corrections), crime prevention, and victimization. Of course, criminologists have also developed substantial knowledge bases on specific offenses, which are often categorized as

(a) Crimes against property (e.g., burglary, theft, robbery, and shoplifting);
(b) Crimes against a person (e.g., homicide, assault, and rape);
(c) Morality/social order crimes(e.g., gambling, prostitution, substance offenses, vandalism); and
(d) Technology crime/cybercrime, which overlaps with and often facilitates crime in each of the other categories.

The collective basic knowledge that criminologists have generated through the scientific process has great potential for informing social policy and criminal justice practice through enhancement of the effectiveness and efficiency of prevention, intervention, enforcement, and rehabilitative strategies and practices in the 21st century.

While tracing criminology's history and acknowledging its intellectual diversity (these matters are more fully addressed in Research Paper on History and Evolution of Criminology), it is contended that criminology is correctly understood and best practiced as a social science.

Furthermore, as a field of scientific inquiry criminology is no longer a specialty area of other established disciplines, such as deviance within sociology or abnormal psychology, but instead is a new and steadily growing independent academic discipline in its own right. Last, the rise of academic criminal justice is acknowledged as a shaping force on criminology that is steadily moving the discipline toward greater interdisciplinary status and public policy utility.

Criminology Vs Criminal Justice

Criminology is the study of the anatomy of a crime, specifically its causes, consequences and costs. Criminal justice, on the other hand, refers to established systems for dealing with crime, specifically detection of crime, detaining of criminals, and criminal prosecution and punishment.

Difference between Criminology and Criminal Justice

Criminology is the study of the anatomy of a crime, specifically its causes, consequences and costs. Criminal justice, on the other hand, refers to established systems for dealing with crime, specifically detection of crime, detaining of criminals, and criminal prosecution and punishment. Criminal justice is directly associated with law enforcement. Students pursuing career opportunities in criminal justice will study the different components of criminal justice and law enforcement systems. Students pursuing a career as criminologist will study the behavior patterns, backgrounds, and sociological trends of criminals. While both fields are different, criminologists and criminal justice professionals work together in the criminal justice system to thwart crime.

Criminology: Nature and Scope

As there are many different specialties within the field of criminology, it can be difficult to identify one career that encapsulates what "typical" member of the profession is and does. Depending on the background, education, experience and position, a criminologist may perform any number of functions, including crime scene investigation, interview and interrogate suspects, participate in autopsies, or profile criminals. Some within this field focus almost exclusively on research; others work as consultants for government's agencies or liaisons, while some work as consultants and employees of private security companies. Criminologists also work with law firms and courts to provide expert testimony in criminal proceedings and a few works within the prisons systems assisting in the rehabilitation of convicted criminals.

No matter what career specialty of criminology pursued, most criminologists will be involved in data collection and profiling. Criminologists are analysts. They study crimes, collect data and then analyze their findings to provide actionable information and recommendations. Criminologists seek to identify who committed crimes, when crimes were committed, and why they were committed. As part of their analysis, criminologists consider psychological behavior, socioeconomic and economic indicators, and environmental factors.

When dealing with high-profile cases, it's not uncommon for criminologists to spend a fair amount of their time corresponding with media and public relations managers. Sometimes criminologists will go as far as publish their experiences and findings in industry journals or even write books. However, the day-to-day routine for most criminologists is far less glamorous -performing much of their work alone, outside of the public eye.

Much of the work performed by criminologists involves the collection of statistics which are used to develop active profiles to be used by other law enforcement professionals and agencies to better understand and predict criminal behavior. In order for a criminologist's work to be useful and effective, it must be precise and accurate. Consequently, professionals working in criminology must have a good understanding of statistics and math.

Launching a career in criminology typically requires college level education criminology,

statistics or mathematics. While an associate's degree will qualify candidates for some entry-level positions, a bachelor's degree is usually the minimum entry-level requirement, and a master's degree or PhD is preferred. The best positions and career advancement opportunities are reserved for professionals who have master's or doctorate degree.

Even with a degree, success as a criminologist requires dedication, intelligence, the ability to analyze complex situations, and a desire to help improve society. Skills including creativity, verbal and written communication, and an analytical mind are essential attributes of a criminologist.

Criminal Justice: Nature and Scope

Unlike criminology, where the primary focus is on the study and analysis of crime, criminal justice revolves around the societal system(s) set up to address criminal behavior and the perpetrators of crimes. The three main components of the criminal justice system in the India include: law enforcement, the courts and corrections. These components are intended to prevent and punish criminal behavior. Criminal justice careers almost always fall into one of these three component categories.

The most visible and popular component of criminal justice is law enforcement – and within law enforcement police officers. Police officers are our front line of defense against the criminal element in society. They patrol communities and focus on crime prevention. They also investigate crimes once they've occurred and apprehend suspected criminals. Other law enforcement offers that perform duties similar those of police officers include CBI, State Police, Anti-corruption Bureaux, Probation Services, Protection Officers, Border patrol and Victim services. Once someone has been arrested, they then enter the courts system.

While less visible to the public than law enforcement, the courts system is just as vital to the U.S. criminal justice system. The primary purpose of the courts is to determine the guilt or innocence of suspected criminals. The courts system includes various criminal justice professionals including attorneys, judges, and bailiffs, to name just a few. In the courts a suspect is considered innocent until proven guilty and all suspects are entitled to a fair trial. However, if found guilty, a suspect is given a sentence, or punishment and mostly remanded to the corrections system.

The corrections system is responsible for enforcing punishments and carrying out sentencing as mandated by the courts. The corrections system is made up of incarceration, probation and parole. All three subsets are designed to punish and rehabilitate convicted criminals. Careers in corrections include probation officer, parole officer, prison warden, and guard, among others.

Social Disorganization and Crime

Social disorganization is a theoretical perspective that explains ecological differences in levels of crime based on structural and cultural factors shaping the nature of the social order across communities. The theory directly links crime rates to neighborhood ecological characteristics; a core principle of social disorganization theory is that place matters. The theory has not been used

to explain organized crime, corporate crime, or deviant behavior that takes place outside neighborhood settings.

The theory of social disorganization states a person's physical and social environments are primarily responsible for the behavioral choices that a person makes. At the core of social disorganization theory, is that location matters when it comes to predicting illegal activity. Shaw and McKay noted that neighborhoods with the highest crime rates have at least three common problems, physical dilapidation, poverty, and higher level of ethnic and culture mixing. Shaw and McKay claimed that delinquency was not caused at the individual level, but is a normal response by normal individuals to abnormal conditions. Social disorganization theory is widely used as an important predictor of youth violence and crime.

Social Disorganization Theory and Delinquency

"***Poverty is the mother of crime***"…Marcus Aurelius

Shaw and McKay discovered that there were four (4) specific assumptions as an explanation of delinquency.

- The first assumption is the collapse of community based-based controls and people living in these disadvantaged neighborhoods are responding naturally to environmental conditions.

- The second is the rapid growth of immigration in urban disadvantage neighborhoods.

- The third is business located closely to the disadvantaged neighborhoods that are influenced by the "ecological approach" of competition and dominance.

- The fourth and last assumption is disadvantaged urban neighborhoods lead to the development of criminal values that replace normal society values.

Social disorganization theory suggest that a person's residential location is more significant than the person's characteristics when predicting criminal activity and the juveniles living in this areas acquire criminality by the cultures approval within the disadvantaged urban neighborhoods. Therefore, location matters when it comes to criminality according to social disorganization theory.

Social Pathology and Crime

Social pathology definition, a social factor, as poverty, old age, or crime that tends to increase social disorganization and inhibit personal adjustment. Social pathology is a term used to describe social factors, such as poverty, old age or crime that bolster social disorganization.

Social pathology is a concept developed in modern social science to refer both to aspects of social structures and to the behaviors and values attributed to particular social categories.

Definitions of *social pathology* are particular to specific times and reflect the dominant moral concerns of the era. This concept fits within the ideas of anthropologist Mary Douglas. In *Purity and Danger* (1966) she examines the universality of cultural explanations of things considered "out of order" as polluting and dangerous. These cultural constructions emerge in specific contexts. Regarding social pathology, prior to the Enlightenment in Europe, social transgressions (pathologies) were attributed to supernatural forces exerted by spirits (e.g., possession) or evil humans (witchcraft). As the Enlightenment focused on human reason and scientific understanding of the natural world, early social scientists began to objectify what they defined as natural laws of "society" that explained undesirable human behaviors as transgressions of natural law.

Modern social science developed during a period of rapid social change produced by expanding industrial capitalism and colonialism. Such processes created increased migration and a growing wealth gap between, on the one hand, colonial nations and colonized territories, and on the other, wealthy industrialist/financiers and European working classes. These social changes produced dislocations and inequalities that led to fears among established groups of moral and social danger. In the nineteenth century, following parallel developments in the advancing science of biology, social theory often used either biology (e.g., racial types) or biological analogies to the physical body and biological processes to explain the social system.

Émile Durkheim, a French sociologist, created the foundation for the modern sociological study of society by focusing on social facts, structures, and systems rather than individuals. His profound ideas generated many concepts and laid the basis for many fields of study. Like other foundational social theorists confronting rapid change, he privileged solidarity and cohesion as normal. Durkheim introduced two analogies for a smoothly functioning social order characterized by solidarity: the machine (mechanical) and the body (organic). He envisioned society as a system seeking equilibrium with norms for behavior. *Anomie* was a pathological condition of moral breakdown at the societal level.

Throughout the early twentieth century, this emphasis on social equilibrium or structural functionalism, further developed by such thinkers as Talcott Parsons, dominated U.S. social theory. In defining equilibrium and stasis (status quo) as desirable, it was implied that change and disorder were abnormal and threatening. These pathologies were not attributed to the differential nature and value of individuals but rather to aspects of structure. Nonetheless, such ideas emphasized the value of returning to the status quo over change.

The idea of declaring the behavior of individual's in particular social categories as socially pathological followed a different trajectory. In the post-Darwin nineteenth century, Darwin's theories of evolutionary change were applied loosely in ways that misinterpreted his theory. Particular social categories or populations were seen as having an essential, innate, and immutable behavioral inferiority leading to criminal and dangerous behaviors. While Darwin saw natural selection occurring in a random, purposeless way with no implied hierarchy of worth, Social Darwinism saw different classes and races as arrayed in terms of inferiority and superiority.

The development of race studies occurred as new nation-states were restructured from former European imperial monarchies, creating a need to build national unity and loyalty among diverse citizens. This led to preoccupations with the dangers of difference and an interest in the scientific study of race. Throughout the new nations of Europe and in the United States, nascent disciplines emerged such as the now-repudiated anthropological "science" of race and the racially tinged science of criminology, which used race to predict and explain criminal behavior and justify policies of "social hygiene." In the twentieth century, the racial ideas of scientific racism and criminology continued, especially in Germany. There they culminated in Nazi racial theory, which advocated a removal of categories of people defined as biologically debased, such as Jews, Gypsies, and homosexuals.

As such racial thinking was repudiated in the twentieth century, concepts of culture and cultural relativism, as well as concepts related to the self, psychic states, and personal identity, developed. Behaviors viewed as pathological for society relied less on innate racial attributes. While they continued to be associated with specific social categories, the new link between populations and pathology emphasized cultural learning and personal experience rather than biology. While biological attributes retained explanatory power for differences between genders and sexualities (e.g., homosexuality), behavioral pathologies were more associated with improper values, choices, and psychological states.

Ideas such as the culture of poverty first promulgated by Oscar Lewis blamed poor people for perpetuating their condition through inappropriate values and "weak ego structures." A whole series of "social pathologies," from dependence on welfare to substance abuse and inner-city gang violence, were linked to having learned improper values through substandard parenting in single-parent households. Yet these explanations, which blamed specific populations for social pathology, merely replaced racial determinism with cultural determinism.

Because stability and order are privileged as natural and normal and the profound and rapid social changes of recent decades are relegated to the sphere of the abnormal and dangerous, people who are the most disadvantaged and excluded in dominant ideologies and representations, such as single mothers ("welfare queens"), nonwhites, and non-heterosexuals, are blamed for their own situations. They also function as popular scapegoats for broader social problems and "moral decline." In this way, they carry the weight of social problems not only through their personal circumstances of material and political deprivation but also through their symbolic representation as stigmatized and despised people.

Social science critiques of the culture of poverty examine ways to represent poor people as varied individuals with competence and awareness that cannot be categorized in terms of innate biology or culture. Particular behaviors of the poor can be analyzed in terms of the extremely constrained options of disadvantaged social positions, as rational strategies, or as political opposition rather than social pathology.

Moreover, in the second half of the twentieth century U.S. sociologists such as C. Wright Mills and William Ryan began to point out the role that dominant elite interests play in defining normalcy and pathology as the status quo as well as the way this masks the relationship between

structural relations of power and the social production of inequality. Blaming the victims (stigmatized and disadvantaged groups such as the poor) was shown to not only hide the effects of power and privilege but also to stifle recognition of a need to address social problems through sociopolitical change. Late-twentieth-century European social theories developed by such thinkers as Michel Foucault, Pierre Bourdieu, and others have brought issues of differential power and inequality to the fore. After continued world wars and the cold war as well as social movements advocating anti-colonial independence, socialism, feminism, and civil and human rights, these ideas have emerged and have led to reexamining the ideological uses of social pathology as a way of reinforcing current inequalities in the social order.

Anti Social Behavior

Anti-social behaviour is defined as acting in a manner that has "caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household" as the perpetrator.

Antisocial behaviors are disruptive acts characterized by covert and overt hostility and intentional aggression toward others. Antisocial behaviors exist along a severity continuum and include repeated violations of social rules, defiance of authority and of the rights of others, deceitfulness, theft, and reckless disregard for self and others. Antisocial behavior can be identified in children as young as three or four years of age. If left unchecked these coercive behavior patterns will persist and escalate in severity over time, becoming a chronic behavioral disorder.

Description

Antisocial behavior may be overt, involving aggressive actions against siblings, peers, parents, teachers, or other adults, such as verbal abuse, bullying and hitting; or covert, involving aggressive actions against property, such as theft, vandalism, and fire-setting. Covert antisocial behaviors in early childhood may include noncompliance, sneaking, lying, or secretly destroying another's property. Antisocial behaviors also include drug and alcohol abuse and high-risk activities involving self and others.

Demographics

These disruptive behaviors are one of the most common forms of psychopathology, accounting for half of all childhood mental health referrals. Gender differences in antisocial behavior patterns are evident as early as age three or four. There has been far less research into the nature and development pattern of antisocial behavior in girls. Pre-adolescent boys are far more likely to engage in overtly aggressive antisocial behaviors than girls. Boys exhibit more physical and verbal aggression, whereas antisocial behavior in girls is more indirect and relational, involving harmful social manipulation of others.

The gender differences in the way antisocial behavior is expressed may be related to the differing rate of maturity between girls and boys. Physical aggression is expressed at the earliest stages of

development, then direct verbal threats, and, last, indirect strategies for manipulating the existing social structure.

Antisocial behaviors may have an early onset, identifiable as soon as age four, or late onset, manifesting in middle or late adolescence. Some research indicates that girls are more likely than boys to exhibit late onset antisocial behavior. Late onset antisocial behaviors are less persistent and more likely to be discarded as a behavioral strategy than those that first appear in early childhood.

As many as half of all elementary school children who demonstrate antisocial behavior patterns continue these behaviors into adolescence, and as many as 75 percent of adolescents who demonstrate antisocial behaviors continue to do so into early adulthood.

Causes and symptoms

Antisocial behavior develops and is shaped in the context of coercive social interactions within the family, community, and educational environment. It is also influenced by the child's temperament and irritability, cognitive ability, the level of involvement with deviant peers, exposure to violence, and deficit of cooperative problem-solving skills.

Antisocial behavior is frequently accompanied by other behavioral and developmental problems such as hyperactivity, depression, learning disabilities, and impulsivity.

Multiple risk factors for development and persistence of antisocial behaviors include genetic, neurobiological, and environmental stressors beginning at the prenatal stage and often continuing throughout the childhood years. Genetic factors are thought to contribute substantially to the development of antisocial behaviors.

Genetic factors, including abnormalities in the structure of the prefrontal cortex of the brain, may play a role in an inherited predisposition to antisocial behaviors. Neurobiological risks include maternal drug use during pregnancy, birth complications, low birth weight, prenatal brain damage, traumatic head injury, and chronic illness.

High-risk factors in the family setting include the following

- Parental history of antisocial behaviors
- Parental alcohol and drug abuse
- Chaotic and unstable home life
- Absence of good parenting skills
- Use of coercive and corporal punishment
- Parental disruption due to divorce , death, or other separation
- Parental psychiatric disorders, especially maternal depression
- Economic distress due to poverty and unemployment

Heavy exposure to media violence through television, movies, Internet sites, video games, and even cartoons has long been associated with an increase in the likelihood that a child will become desensitized to violence and behave in aggressive and antisocial ways. However, research relating the use of violent video games with antisocial behavior is inconsistent and varies in design and quality, with findings of both increased and decreased aggression after exposure to violent video games.

Companions and peers are influential in the development of antisocial behaviors. Some studies of boys with antisocial behaviors have found that companions are mutually reinforcing with their talk of rule breaking in ways that predict later delinquency and substance abuse.

Diagnosis

Systematic diagnostic interviews with parents and children provide opportunity for a thorough assessment of individual risk factors and family and societal dynamics. Such assessment should include parent-adolescent relationships; peer characteristics; school, home, and community environment; and overall health of the individual.

Various diagnostic instruments have been developed for evidence-based identification of antisocial behavior in children. The onset, frequency, and severity of antisocial behaviors such as stealing, lying, cheating, sneaking, peer rejection, low academic achievement, negative attitude, and aggressive behaviors are accessed to determine appropriate intervention and treatment.

Treatment

Enhanced parent-teacher communications and the availability of school psychologists and counselors trained in family intervention within the school setting are basic requirements for successful intervention and treatment of childhood antisocial behaviors.

School-based programs from early childhood onward that teach conflict resolution, emotional literacy, and anger management skills have been shown to interrupt the development of antisocial behavior in low-risk students. Students who may be at higher risk because of difficult family and environmental circumstances will benefit from more individualized prevention efforts, including counseling, academic support, social-skills training, and behavior contracting.

Academic settings with the capacity to deliver professional parental support and provide feedback in a motivating way can help parents to develop and hone effective parenting skills that may interrupt further progression of antisocial behavior patterns in their children.

Access to written and video information on parenting skills and information about community family resources, as well as promotion of parent-support groups, are effective intervention strategies for changing family dynamics that shape antisocial behavior in the children.

Older students who already exhibit a persistent pattern of antisocial behavior can be helped with intensive individualized services that may involve community mental health agencies and other outside intervention.

Community-based programs, including youth centers and recreational programs with trained therapists, can provide additional support for at-risk children.

Prognosis

The longer antisocial behavior patterns persist, the more intractable they become. Early-onset conduct problems left untreated are more likely to result in the development of chronic antisocial behavior than if the disruptive behavior begins in adolescence. Though it is never too late to intervene, researchers warn that if by age eight a child has not learned ways other than coercion to meet his social goals, he has a high chance of continuing with antisocial behavior throughout his lifetime.

UNIT-II: CRIMINAL JUSTICE PROCESSES

Structure of Criminal Justice System in India

The Indian Legal System is one of the oldest legal systems in the entire history of the world. It has altered as well as developed over the past few centuries to absorb inferences from the legal systems across the world. The Constitution of India is the fountainhead of the Indian Legal System. It demonstrates the Anglo-Saxon character of judiciary which is basically drawn from the British Legal System. India is a land of diversified culture, local customs and various conventions which are not in opposition to the statue or ethics. People of different religions as well as traditions are regulated by all the different sets of personal laws in order to relate to family affairs.

The Criminal Justice System in India is designed based on Anglo-Indian (British) pattern were in adversarial (Accusatorial System) is followed in Juvenile Justice System and Inquisitorial system is followed with reference to Adult justice were accused is presumed to be innocent until he/she is proved beyond reasonable doubt of his criminal intent to commit the act of crime. While juvenile is a person- any human aged less than 18 years accused of crime is presumed to be alleged committed the act of crime, onus of burden remains with the individual he/she should prove he is innocent. While in adult case the onus of proof remains with state (prosecution). This system is reverse in American criminal justice. In India, the justice dispensation is left with judiciary while making of the law is left with the legislator in state and centre.

Table 1 Structure of Criminal Justice System may simply represented by a Table

Criminal Justice System
Legislator in State and Centre
Judiciary Magistrate/ Judge/ Justice Prosecution Defense Counsel
Law Enforcement and related agencies
Victim/ Offender/ Witness
Evidence/ Expert
Prison/ Correctional Institutions
Probation

The common features, duties and functions of the Criminal Justice System in all the aforementioned procedures may be roughly broken into the following distinct stages:

1. Framing of charge or giving of notice

This is the beginning of a trial. At this stage, the judge is required to weigh the evidence for the purpose of finding out whether or not a prima facie case against the accused has been made out. In case the material placed before the court discloses grave suspicion against the accused that has not been properly explained, the court frames the charge and proceeds with the trial. If, on the contrary, upon consideration of the record of the case and documents submitted and after hearing the accused person and the prosecution in this behalf, the judge considers that there is not sufficient ground for proceeding, the judge discharges the accused and records reasons for doing so.

The words “not sufficient ground for proceeding against the accused" means that the judge is required to apply a judicial mind in order to determine whether a case for trial has been made out by the prosecution. It may be better understood by the proposition that whereas a strong suspicion may not take the place of proof at the trial stage, yet it may be sufficient for the satisfaction of the court in order to frame a charge against the accused person.

The charge is read over and explained to the accused. If pleading guilty, the judge shall record the plea and may, with discretion convict him however if the accused pleads not guilty and claims trial, then trial begins. Trial starts after the charge has been framed and the stage preceding it is called inquiry. After the inquiry, the charge is prepared and after the formulation of the charge the trial of the accused starts. A charge is nothing but formulation of the accusation made against a person who is to face trial for a specified offence. It sets out the offence that was allegedly committed.

2. Recording of prosecution evidence

After the charge is framed, the prosecution is asked to examine its witnesses before the court. The statement of witnesses is on oath. This is called examination-in-chief. The accused has a right to cross-examine all the witnesses presented by the prosecution [8] .

Section 309 of the Crpc further provides that the proceeding shall be held as expeditiously as possible and in particular, when the examination of witnesses has once begun, the same shall be continued day-to-day until all the witnesses in attendance have been examined.

3. Statement of accused

The court has powers to examine the accused at any stage of inquiry or trial for the purpose of eliciting any explanation against incriminating circumstances appearing before it. However, it is mandatory for the court to question the accused after examining the evidence of the prosecution if it incriminates the accused. This examination is without oath and before the accused enters a

defence. The purpose of this examination is to give the accused a reasonable opportunity to explain incriminating facts and circumstances in the case.

4. Defence evidence

If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and defence, the judge considers that there is no evidence that the accused has committed the offence, the judge is required to record the order of acquittal. However, when the accused is not acquitted for absence of evidence, a defence must be entered and evidence adduced in its support. The accused may produce witnesses who may be willing to depose in support of the defence. The accused person is also a competent witness under the law. The accused may apply for the issue of process for compelling attendance of any witness or the production of any document or thing. The witnesses produced by him are cross-examined by the prosecution.

The accused person is entitled to present evidence in case he so desires after recording of his statement. The witnesses produced by him are cross-examined by the prosecution. Most accused persons do not lead defence evidence. One of the major reasons for this is that India follows the common law system where the burden of proof is on the prosecution, and the degree of proof required in a criminal trial is beyond reasonable doubt.

5. Final arguments

This is the final stage of the trial. The provisions of the Crpc provide that when examination of the witnesses for the defence, if any, is complete, the prosecutor shall sum up the prosecution case and the accused is entitled to reply. The same is provided for under section 234 of the code.

6. Judgment

After conclusion of arguments by the prosecutor and defence, the judge pronounces his judgment in the trial. Here it is relevant to mention that the Crpc also contains detailed provisions for compounding of offences. It lists various compoundable offences under table 1 of the Indian Penal Code which may be compounded by the specified aggrieved party without the permission of the court and certain offences under table 2 that can be compounded only after securing the permission of the court compounding of offences also brings a trial to an end.

Under the CrPC an accused can also be withdrawn from prosecution at any stage of trial with the permission of the court. If the accused is allowed to be withdrawn from prosecution prior to framing of charge, this is a discharge, while in cases where such withdrawal is allowed after framing of charge, it is acquittal.

The above described is the process how a trial takes place for dispensation of a criminal case although this six stepped procedure looks plain and simple it suffers from many inherent lacunas which become the reasons for delay and hampers an expeditious trial and not to forget the option of appeal is again there where the state or the criminal has option to appeal to appellate court and

as well as seek a permission to file a special leave petition to the supreme court where in again all this process is repeated except for the fact that the supreme court only deals with cases where there is a question of law involved.

The following are some of the problems of our trial procedure which pose as hurdles to speedy dispensation of cases;

Investigation though is the foundation of the Criminal Justice System but is unfortunate that it is not trusted by the laws and the courts themselves the same can be explained by a perusal of sections 161 and 162 of the Criminal Procedure Code which provides that the statements of the witnesses examined during investigation are not admissible and that they can only be used by the defence to contradict the maker of the statement, the confession made by accused is also not admissible in evidence. The statements recorded at the earliest stage normally have greater probative value but can't be used in evidence.

It is common knowledge that police often use third degree methods during investigation and there are also allegations that in some cases they try to suppress truth and put forward falsehood before court for reasons such as corruption or extraneous influences political or otherwise. Unless the basic problem of strengthening the foundation is solved the guilty continue to escape conviction and sometimes even innocent persons may get implicated and punished.

Secondly the police officers face excessive work load due to lack of manpower and the public at large is non co-operative because of the public image of the police officers and there is lack of coordination with other sub-system of the Criminal Justice System in crime prevention to add to the agony there is a lot of misuse of bail and anticipatory bail provisions, more over due to Political and executive interference police is directed for other tasks which are not a part of police functions. It may be apt to point out that the rank of the IO investigating a case also has a bearing on the quality of investigation. The minimum rank of a station house officer (SHO) in the country is sub inspector (SI). However, some of the important police stations are headed by the officers of the rank of Inspector. It has been observed that investigations are mostly handled by lower level officers, namely, HC and ASI etc.

The senior officers of the police stations, particularly the SHOs generally do not conduct any investigations themselves. This results in deterioration of quality of investigations. It is therefore necessary to address ourselves to the problems and strengthen the investigation agency. Furthermore the common citizen is not aware of the distinction between cognizable and non-cognizable offences. There is a general feeling that if anyone is a victim of an offence the place he has to go for relief is the police station. It is very unreasonable and awkward if the police were to tell him that it is a non-cognizable offence and therefore he should approach the Magistrate as he cannot entertain such complaint.

Thirdly, the investigation of a criminal case, however good and painstaking it may be, will be rendered fruitless, if the prosecution machinery is indifferent or inefficient. One of the well-known causes for the failure of a large number of prosecutions is the poor performance of the prosecution. In practice, the accused on whom the burden is little engages a very competent

lawyer, while, the prosecution, on whom the burden is heavy to prove the case beyond reasonable doubt, is very often represented by persons of poor competence, and the natural outcome is that the defence succeeds in creating the reasonable doubt on the mind of the court.

Fourthly, the most notorious problem in the functioning of the courts, particularly in the trial courts is the granting of frequent adjournments on most flimsy grounds. This malady has considerably eroded the confidence of the people in the judiciary. Adjournments contribute to delays in the disposal of cases. They also contribute to hardship, inconvenience and expense to the parties and the witnesses. The witness has no stake in the case and comes to assist the court to dispense justice. He sacrifices his time and convenience for this. If the case is adjourned he is required to go to the court repeatedly. He is bound to feel unhappy and frustrated. This also gives an opportunity to the opposite party to threaten or induce him not to speak the truth therefore the right to speedy trial is thwarted by repeated adjournments.

Fifthly, one of the major causes for delay even in the commencement of trial of a criminal case is service of summons on the accused. The Code of Criminal Procedure provides for various modes of service. Section 62 of the Code provides that summons shall be served by a Police Officer, or subject to such rules being framed by the State Government, by any officer of the Court or other public servant. Unfortunately rules have not been framed by many State Governments to enable service otherwise than through police officers. Since the Criminal Procedure Code itself provides for other means of service namely through registered post in the case of witnesses, it should also provide for service on accused through facilities of courier service, fax where available.

Lastly our country suffers from low judge population ratio because of which the pendency of work increases therefore the judges take a long time in delivering judgments this again adds to enlargement of the time frame of a case to be decided from its intuition point because of which the litigants feel that litigation is a time consuming and lengthy procedure the two areas which need special attention for improving the quality of justice are prescribing required qualifications for the judges and the quality of training being imparted in the judicial academics.

Police

The role, function, duties and their involvement in justice dispensation is enlisted in Criminal Procedure Code, while their rank, hierarchy and other mandates are enlisted in The Police Act and manual. Being enforcers of law they are very important part of the judiciary. More detail is available in the course material on Police Science and Crime Prevention.
Roles and responsibilities of police

Laws should state that the primary duties of police are to protect victims and potential victims and promote offender accountability by consistently enforcing laws and procedures so that all “honour” crimes and killings are investigated and addressed by the criminal justice system. To give effect to this goal, laws should authorize police, by judicial authorization where appropriate, to enter premises, conduct arrest of the primary aggressor(s), and confiscate weapons or dangerous substances in cases involving “honour”. Laws should charge police to work in coordination on the response to “honour”-based violence with advocates, health care providers,

criminal justice actors, including prosecutors, child protection services, local businesses, the media, employers, religious leaders, health care providers, clergy and organizations working with victims and immigrant communities. (See: Coordinated Community Response, Stop VAW, The Advocates for Human Rights) In countries where "honour" crimes tend to be more prevalent in certain immigrant communities, law enforcement should collaborate with community leaders and women's organizations in those communities to formulate an effective response to "honour" crimes.

Example: An example of intersectoral collaboration to assist domestic violence victims involves the municipality, police and NGOs in Bulgaria. In Sofia, these three bodies provide a consultation center. The purpose is to provide multiple resources for victims in one independent location. Interviewers reported that victims of domestic violence are using the center to seek help where a police officer, lawyer and social worker are available to meet with victims of domestic violence.

Drafters should require the appropriate ministerial branch or department to consult with police, prosecutors, judges, and health and education professionals to develop regulations, guidelines and other protocols for implementation of laws on "honour" crimes within a specified timeframe of the law's' entry into force. (See: UN Handbook for Legislation on Violence against Women, Section 3.2.6) The promulgating body should consult and work closely with non-governmental organizations and victims' advocates. These policies should provide for a collaborative, coordinated response among the various relevant sectors. For example, in the Netherlands, police, prosecutors, and a women's shelter have developed a joint protocol for combating "honour" crimes. (See: Combating Honour Crimes in Europe: Manual for Policy Makers, Institutions, and Civil Society, SURGIR Foundation, 2011-2012, p.25) Overall, these policies should seek to mainstream the police response, so that all law enforcement uses the same trainings, educational materials and risk assessment model. Laws should require police protocols, regulations and guidelines to include the following minimum elements:

A common definition of "honour" crimes and killings that comports with a national definition. Where there is no national definition, policies may define "honour" crimes and killings as "any form of violence against women and girls, in the name of traditional codes of so-called honour." (See: Section on Defining "Honour" Crimes and "Honour" Killings).

The establishment of a data collection, monitoring and information sharing system on violence against women, including "honour" crimes and killings. The system should include specific categories for "honour" crimes and killings, as well as a mechanism for local police to report "honour"-based violence statistics to a national umbrella authority. Information sharing systems should also provide information on issued protection and restraining orders so that police can determine whether such an order is in force.

Define the structural handling of cases involving "honour", ensuring that responsibility for "honour" crimes and killings lies at the senior rank. Policies should develop specialized expertise within police units and, if resources permit, police units solely dedicated to "honour" crimes

should be established. Policies should also ensure that all police undergo appropriate trainings on violence against women and girls.

Policies should seek to increase the presence of women in the police forces, including operational rank, and provide victims of or at-risk of "honour"-based violence the option of speaking with a female officer. In some communities, victims may be reluctant to report "honour" crimes to male police officers. (See: A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan, UN Assistance Mission in Afghanistan and OHCHR, November 2011, p. 20) Drafters should consider providing for the establishment of all-female police units that specialize in violence against women, including "honour" crimes.

Facilitation of cross-communications among police units in different areas, particularly with regard to receiving victims who are transferred.
Trainings for police that provide information on women's human rights, violence against women, cultural sensitivities, and "honour"-based violence, including its prevalence, defining characteristics, risk factors, and consequences. Trainings should seek to dispel harmful stereotypes about women and girls and emphasize that police are obligated to respond to cases involving "honour" with the same professionalism and effectiveness applied in other cases. Trainings should seek to improve police response at identifying, investigating and prosecuting cases involving "honour" and should educate police about laws applicable to "honour" crimes. (See: Improving Law Enforcement Investigation Techniques Training, Stop VAW, The Advocates for Human Rights)

Targeted outreach to communities with an elevated risk of "honour" crimes and killings.
Collaboration between police and school officials to enable students to report "honour" crimes to law enforcement in a safe and comfortable setting. Development of a police response to "honour" crimes and killings that involves a comprehensive, multi-sectoral and coordinated response. Guidelines should state that the overall objective of effective police response is to promote the safety of the victim or person at-risk, accomplish the arrest, prosecution and conviction of the perpetrator, and prevent repetition of the crime. Police response should be guided by the need to incorporate the needs of "honour" crime victims, respect their dignity and personal integrity, minimize intrusion into their lives, and maintain high standards for collection of evidence. Law enforcement should contextualize their response to "honour" crimes and killinsg, and the police response should include:

- Responding in a language understood by the complainant/survivor;
- Conducting a coordinated risk assessment of the scene;
- Interviewing parties, witnesses, including children, separately;
- Using an authorized interpreter and not rely on family members, neighbors, friends or community members to act as an interpreter;
- Recording the complaint in detail and filing an official report;
- Informing the victim of her rights;
- Ensuring transport for the victim to obtain medical treatment if needed or requested;
- Providing protection to the person who reported the violence;

- Avoiding serving as a mediator between the victim and the offenders.

(See: UN Handbook, Section 3.8.1; Resolution Adopted by the General Assembly, Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women, U.N. Doc. A/Res/52/86, 1998; Text of the revised Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, Report of the Intergovernmental Expert Group Meeting to review and update the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, Bangkok, 23 - 25 March 2009, Commission on Crime Prevention and Criminal Justice, 2010)

Laws should direct law enforcement authorities to review relevant policies to ensure their effective application to cases involving "honour". Police authorities should review domestic violence policies to ensure they take into account the particular issues associated with "honour" crimes, including the following: "honour"-based violence often targets women and girls; it may particularly involve immigrant or ethnic populations; it often involves multiple perpetrators within or outside of the family; and it involves more subtle, coercive indicators, such as restrictions on freedom of movement, association and communications, that may not be reflected in a domestic violence law that focuses on physical harm. Law enforcement should develop procedures for identifying "honour" crimes and performing risk assessments in cases of threatened "honour"-related violence and should provide officers with regular training on such procedures. Police protocols also should mandate the investigation of all reported "honour" crimes or threats of such crimes.

Law enforcement authorities should also review witness and victim protection policies to ensure they are appropriately protecting victims in "honour" cases. Given the often communal nature of "honour" crimes, information about such crimes is often widely known within the community. Witness reports of threatened or committed "honour" crimes can be useful in preventing or prosecuting these crimes. Legislation therefore should include measures aimed at encouraging witnesses or those who have reasonable grounds to believe that an "honour" crime may be committed to report such information to the authorities. (See: Council of Europe Convention on preventing and combating violence against women and domestic violence, Art. 27) Laws should also recognize the risk of reprisals against those who report "honour" crimes, both victims and witnesses, and should provide for a long-term witness/victim protection program for those individuals. Further, relocation to another region or even another country is sometimes the only option available to a woman threatened with "honour"-based violence, and laws should provide resources and support to facilitate such relocation. (See: Combating Honour Crimes in Europe: Manual for Policy Makers, Institutions, and Civil Society, SURGIR Foundation, 2011-2012, pp. 9 & 30).

Laws should prohibit police from requiring victims to submit to a virginity test and from transferring a victim to a detention facility for protection. Police should only transfer a victim to a shelter with her consent, and should advise but never force the victim into a decision. However, law enforcement protocols should require police to provide victims with information about how and where to obtain assistance if desired (including victim counseling, legal aid, and safe houses).

Prosecution

Prosecution in criminal case is entrusted with state, hence it becomes the responsibility of the state to recruit, train and equip them with the power, role, duties and functions in justice dispensation organised, maintained and funded by the state. In case were central government is involved government in does the same to its prosecution department. More detail is available in the course on Police Science and Crime Prevention.

Duty of the Public Prosecutor In The Criminal Justice System

An ideal Prosecutor must consider herself/himself as an agent of justice. In India, we have a public prosecutor who acts in accordance with the directions of the judge. Normally, the control of entire trial is in the hands of the trial judge. Investigation is the prerogative of the police. However, it is generally believed that traditional right of nulle prosequi is available to the prosecutor. The public prosecutor in India does not seem to be an advocate of the state in the sense that the prosecutor has to seek conviction at any cost. The prosecutor must be impartial, fair and truthful, not only as a public executive but also because the prosecutor belongs to the honourable profession of law, the ethics of which demand these qualities.

In India, the criminal justice system should function within the framework of the Indian Constitution. Succinctly speaking, the principles enunciated in the Constitution are as infra:

- Presumption of innocence: Accused presumed to be innocent 4. Deprivation of life / personal liberty only in accordance with procedure established by law (See Article 21 of the Indian Constitution)
- Equality: The guarantee of equality before the law.
- Equal Protection: Equal protection of the laws.
- Beyond all reasonable doubt: The guilt must be proved beyond all reasonable doubt
- Double jeopardy: Protection against double jeopardy
- Non-retrospective punishment
- Prohibition of discrimination: Prohibition of discrimination imposed upon the State
- The right of the accused to remain silent
- Arrest/detention must be in accordance with law and judicial guidelines.
- Speedy trial.

Directorate of Prosecution is concerned, the objective behind establishing the Directorate of Prosecutions was to exercise close supervision and scrutiny of work relating to various prosecuting agencies at Sessions and Assistant Sessions levels except at the High Court level. The Directorate of Prosecutions in the State of Andhra Pradesh was created vide G.O.Ms.No. 323, Home (Courts-C), Department, dated: 26-5-1986 wherein all the Prosecuting Officers were brought under the supervisory control of the Director of Prosecutions. This Directorate is headed by a Director assisted by other subordinate rank officials and ministerial staff. The major functions are:

Assistant Public Prosecutors - Assistant Public Prosecutor Officers scrutinise charge sheets prepared by the investigating agency and submit discharge/ acquittal. They evaluate the evidence

in each case and make their recommendations for filing revision petitions or appeals against impugned orders and judgments, as well as conduct cases in Courts of MetropolitanMagistrates.

Additional Prosecutors - Additional Public Prosecutors conduct cases in Sessions Courts

Chief Prosecutors - Chief Prosecutors supervise the work of Assistant Public Prosecutors in the Courts of Metropolitan Magistrates

Public Prosecutor - Public Prosecutor is responsible for supervision of prosecution work conducted by Additional Public Prosecutors in the Sessions Courts

Director of Prosecution – The Director of Prosecution is the Head of Office. The Director of Prosecution looks after the Establishment and Accounts Branches and exercises overall control over officers of the Directorate.

The Role of the Prosecutor

The role of the Prosecutor is not to single-mindedly seek a conviction regardless of the evidence but his/her fundamental duty is to ensure that justice is delivered. The Indian judiciary interpreted role, responsibilities and duties of prosecution as follows:

1) The ideal Public Prosecutor is not concerned with securing convictions, or with satisfying departments of the State Governments with which she/he has been in contact. He must consider herself/himself as an agent of justice. The Allahabad High Court had ruled that it is the duty of the Public Prosecutor to see that justice is vindicated and that he should not obtain an unrighteous conviction.

2) There should not be on part of a Public Prosecutor a seemly eagerness for, or grasping at a conviction" The purpose of a criminal trial being to determine the guilt or innocence of the accused person, the duty of a Public Prosecutor is not to represent any particular party, but the State. The prosecution of the accused persons has to be conducted with the utmost fairness. In undertaking the prosecution, the State is not actuated by any motives of revenge but seeks only to protect the community. There should not therefore be "a seemly eagerness for, or grasping at a conviction.

3) A Public Prosecutor should not by statement aggravate the case against the accused, or keep back a witness because her/his evidence may weaken the case for prosecution. The only aim of a Public Prosecutor should be to aid the court in discovering truth. A Public Prosecutor should avoid any proceedings likely to intimidate or unduly influence witnesses on either side.

4) A Public Prosecutor should place before the Court whatever evidence is in her/his possession. The duty of a public Prosecutor is not merely to secure the conviction of the accused at all costs but to place before the court whatever evidence is in the possession of the prosecution, whether it be in favour of or against the accused and to leave the court to decide upon all such evidence, whether the accused had or had not committed the offence with which he stood charged. It is as

much the duty of the Prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

5). The duty of the Public Prosecutor is to represent the State and not the police. A Public Prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure, 1973. She/he is not a part of the investigating agency. She/he is an independent statutory authority. She/he is neither the post office of the investigating agency, nor its forwarding agency; but is charged with a statutory duty.

6). The purpose of a criminal trial is not to support at all cost a theory, but to investigate the offence and to determine the guilt or innocence of the accused and the duty of the Public Prosecutor is to represent not the police, but the State and her/his duty should be discharged by her/him fairly and fearlessly and with a full sense of responsibility that attaches to her/his position. There can be no manner of doubt that Parliament intended that Public Prosecutors should be free from the control of the police department.

7). A Public Prosecutor should discharge her/his duties fairly and fearlessly and with full sense of responsibility that attaches to her/his position The Patna High Court held that purpose of a criminal trial is not to support a given theory at all costs but to investigate the offence and to determine the fault or innocence of the accused and the duty of the Public Prosecutor is to represent not the police but the Crown and her/his duty should be discharged by her/him fairly and fearlessly and with full sense of responsibility that attaches to her/his position.

8). The Andhra Pradesh High Court had ruled that prosecution should not mean persecution and the Prosecutor should be scrupulously fair to the accused and should not strive for conviction in all these cases. It further stated that the courts should be zealous to see that the prosecution of an offender should not be given to a private party. The Court also said that if there is no one to control the situation when there was a possibility of things going wrong, it would amount to a legalised manner of causing vengeance.

9). A Public Prosecutor cannot appear on behalf of the accused .It is inconsistent with the ethics of legal profession and fair play in the administration of justice for the Public Prosecutor to appear on behalf of the accused.

10). No fair trial when the Prosecutor acts in a manner as if he was defending the accused, It is the Public Prosecutors duty to present the truth before the court. Fair trial means a trial before an impartial Judge, a fair Prosecutor and atmosphere of judicial calm. The Prosecutor who does not act fairly and acts more like a counsel for the defense is a liability to the fair judicial system.

11). The statutory responsibility for deciding upon withdrawal squarely vests unwavering with the Public Prosecutor and should be guided by the Criminal Procedure Code The statutory responsibility for deciding upon withdrawal squarely vests on the Public Prosecutor and is entirely within the discretion of the Public Prosecutor. It is non-negotiable and cannot be bartered away in favour of those who may be above her/him on the administrative side. The Criminal Procedure Code is the only master of the Public Prosecutor and he has to guide

herself/himself with reference to Criminal Procedure Code only. So guided, the consideration which must weigh with her/him is, whether the broader cause of public justice will be advanced or retarded by the withdrawal or continuance of the prosecution. The sole consideration for the Public Prosecutor when she/he decides a withdrawal from a prosecution is the larger factor of administration of justice, not political favours nor party pressures nor like concerns.

12). District Magistrate or the Superintendent of Police cannot order the Public Prosecutor to move for the withdrawal The District Magistrate or the Superintendent of Police cannot order the Public Prosecutor to move for the withdrawal, although it may be open to the District Magistrate to bring to the notice of the Public Prosecutor materials and suggest to her/him to consider whether the prosecution should be withdrawn or not. But, the District Magistrate cannot command and can only recommend.

13). If there is some issue that the defense could have raised, but has failed to do so, then that should be brought to the attention of the court by the Public Prosecutor The Supreme Court stated that the duty of the Public Prosecutor is to ensure that justice is done. It stated that if there is some issue that the defense could have raised, but has failed to do so, then that should be brought to the attention of the court by the Public Prosecutor. Hence, she/he functions as an officer of the court and not as the counsel of the State, with the intention of obtaining a conviction. The District Magistrate or the Superintendent of Police cannot order the Public Prosecutor to move for the withdrawal, although it may be open to the District Magistrate to bring to the notice of the Public Prosecutor materials and suggest to her/him to consider whether the prosecution should be withdrawn or not. But, the District Magistrate cannot command and can only recommend. The Supreme Court stated that the duty of the Public Prosecutor is to ensure that justice is done. It stated that if there is some issue that the defense could have raised, but has failed to do so, then that should be brought to the attention of the court by the Public Prosecutor. Hence, she/he functions as an officer of the court and not as the counsel of the State, with the intention of obtaining a conviction.

Section 24 of Cr.P.C deals with ‘ Public Prosecutors’

Section 24 of the CrPC says as to appointment of public prosecutors in the High Courts and the district by the central government or state government. Sub-section 3 says down that for every district, the state government shall appoint a public prosecutor and may also appoint one or more additional public prosecutors for the district. Sub-section 4 requires the district magistrate to prepare a panel of names of persons considered fit for such appointment, in consultation with the sessions judge. Sub-section 5 explains an embargo against appointment of any person as the public prosecutor or additional public prosecutor in the district by the state government unless his name appears in the panel prepared under sub-section 4. Sub-section 6 provides for such appointment wherein a state has a local cadre of prosecuting officers, but if no suitable person is available in such cadre, then the appointment has to be made from the panel prepared under subsection 4. Subsection 4 says that a person shall be eligible for such appointment only after he has been in practice as an advocate for not less than seven years.

Section 25 deals with the appointment of an assistant public prosecutor in the district for conducting prosecution in the courts of magistrate. In the case of a public prosecutor also known as district government counsel (criminal) there can be no doubt about the statutory element attached to such appointment by virtue of this provision in the CrPC 1973.

In this context, section 321 of the CrPC is also relevant. As already mentioned, it permits withdrawal from prosecution by the public prosecutor or assistant public prosecutor in charge of a case with the consent of the court at any time before the judgment is pronounced. This power of the public prosecutor in charge of case is derived from the statute and must be exercised in the interest of the administration of justice. There can be no doubt that this function of the public prosecutor relates to a public purpose entrusting the officer with the responsibility of so acting only in the interest of administration of justice.

Judicial response of role of prosecutors

Zahira Habibullah vs State of Gujarat, where the conduct of the '' BEST BAKERY '' case in the Hon'ble Gujrat High Court , involving the burning down of an establishment in Vadodara which caused the death of 14 persons, came up for consideration before the Hon'ble Supreme Court, leading to what Rajeeva Dhavan has described as '' The severest indictment evr of the Jusitce and governance system any State''. The Hon'ble Supreme Court ordered retrial of the matter in The Hon'ble High Court of Maharastra, and observed that in Gujarat, '' The Public Prpsecutor appears to have acted more as a defence counsel than one whose duty was to present the truth before the Court''.

In R K Jain's case (AIR 1980 SC 1510), the Hon'ble Supreme Court held quoting Shamsher Singh v. State of Punjab [(1974) 2 SCC 831), as regards the meaning and content of executive powers tends to treat the public prosecutor¡¦s office as executive. But the conclusions of some courts create doubt as to its exact nature. To the suggestion that the public prosecutor should be impartial (a judicial quality), the Kerala High Court equated the public prosecutor with any other counsel and responded thus: Every counsel appearing in a case before the court is expected to be fair and truthful. He must of course, champion the cause of his client as efficiently and effectively as possible, but fairly truthfully. He is not expected to be impartial but only fair and truthful. [Aziz v. State of Kerala (1984) Cri. LJ 1060 (Ker)]

In Thakur Ram vs. State of Bihar AIR 1996 SC 911, the Hon'ble Apex Court held: "Barring a few exceptions, in criminal matters the party who is treated as aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all steps necessary for bringing the person who has acted against the social interests of the community to book" The rationale behind the State undertaking prosecutions appears to be that no private person uses the legal apparatus to wreak private vengeance on anyone.

In Vineet Narain vs Union of India, when the court focused that the CBI failed to investigate properly offence involving high political dignitaries. The Hon'ble Court emphased the need to ensure that '' there are no arbitrary restrictions to the initiation of Investigations or launching of prosecutions''.

In Jitendra Kumar@ Ajju vs. State (NCT of Delhi) Crl. W.P. 216/99, Delhi High Court, it was observed that In the Criminal Justice System this role is performed by the Public Prosecutor on behalf of the State. The Public Prosecutor has been described as a Minister of Justice who plays a critical role in maintaining purity and impartiality in the field of administration of criminal justice.

In The Malimath Committee Report (2003), it is acknowledged that there is a crisis in the Indian Criminal Justice System. But its analysis of the crisis is disturbing. Rather than focusing on key issues that plague the Criminal Justice System, the Committee recommended changes that amounted to a complete departure from jurisprudential norms.

In R K Jain v. State (AIR 1980 SC 1510), the Supreme Court sketched out the contours of the public prosecutor¡¦s power for withdrawal of cases. In Shonandan Paswan v. State of Bihar [(1987) 1 SCC 288] and in Mohd. Mumtaz v. Nandini Satpathy [1987 Cri. L.J. 778 (SC)], the Supreme Court ruled that the public prosecutor can withdraw a prosecution at any stage and that the only limitation is the requirement of the consent of the court.

The Punjab & Haryana High Court in Krishan Singh Kundu v. State of Haryana [1989 Cri. LJ 1309 (P&H)] has ruled that the very idea of appointing a police officer to be in charge of a prosecution agency is abhorrent to the letter and spirit of sections 24 and 25 of the Code. In the same vein the ruling from the Supreme Court in SB Sahana v. State of Maharashtra [(1995) SCC (Cri) 787] found that irrespective of the executive or judicial nature of the office of the public prosecutor, it is certain that one expects impartiality and fairness from it in criminal prosecution. The Supreme Court in Mukul Dalal v. Union of India (1988 3 SCC 144) also categorically ruled that the office of the public prosecutor is a public one and the primacy given to the public prosecutor under the scheme of the court has a social purpose. But the malpractice of some public prosecutors has eroded this value and purpose.

Judiciary

Most **criminal justice** systems have five components-law enforcement, prosecution, defense attorneys, courts, and corrections, each playing a key **role** in the **criminal justice** process. Law Enforcement: Law enforcement officers take reports for **crimes** that happen in their areas. The final authority in justice dispensation is entrusted with the judiciary. Where these agencies are funded, facilitated and mostly under the home department of either state or central government. Judiciary is either accusatorial or inquisitorial justice system. Adult is trailed by the courts of India, juvenile cases are dealt by Juvenile Justice Board, cases pertaining to the women crimes by Mahila courts and Economic crime are dealt by special economic crimes court and many other special and more happening crimes are dealt by the specialized court set up by the state or central government as per the special requirements. More detail is available in the course on Police Science and Crime Prevention.

Drafters should seek to ensure that the criminal justice system effectively addresses all “honour” crimes and killings to ensure accountability for the perpetrator(s) and promote the safety of the

victims. Laws should charge the court system to work in coordination with police, advocates, health care providers, criminal justice actors, child protection services, local businesses, the media, employers, religious leaders, health care providers, clergy and organizations working with victims and immigrant communities. See: Coordinated Community Response, StopVAW, The Advocates for Human Rights.

Judicial Discretion

Laws should limit judicial discretion to reduce sentences, reduce the charge or exculpate the defendant in "honour" crimes and killings. Specifically, laws should prohibit judges from using the following factors as mitigating evidence in cases involving "honour":

Private settlements, reconciliation and forgiveness among the perpetrators and the victim or her family;

- The level of perceived dishonour to the family and perpetrator;
- The victim's past behavior, including sexual behavior, that supposedly violated the traditional code of "honour";
- The morality or ethics of the victim's behavior that motivated the perpetrator to commit the "honour" crime or killing;
- The perpetrator's status as the household's primary wage earner;
- Defenses in cases of "honour" crimes, "honour" killings, and domestic femicides, including:
- Crimes of passion defense
- Provocation or "fit of fury" defenses
- Defenses of "honour", morality or ethics
- Defenses in cases of adultery, whether witnessed or not

Laws should require judges to undergo trainings on "honour" crimes and domestic violence to dispel misperceptions they may hold. Trainings for judges should provide information on women's human rights, violence against women, cultural sensitivities, "honour"-based violence, including its prevalence, defining characteristics, risk factors, and consequences, the needs of victims, victim experiences in court, and the impact of judicial demeanour on perpetrators and should seek to dispel harmful stereotypes about women and girls. Where specific "honour" crimes legislation or violence against women legislation has been enacted, judges should be educated about such laws.. Drafters should work closely with civil society to ensure effective civilian and independent oversight of the court system and to ensure the availability of procedures complaints about judicial misconduct to an independent investigatory body. They should also instruct judges on evaluating safety risks in cases involving "honour" in sentencing.

The United Nations Handbook for legislation on violence against women recommends that laws require the appropriate ministerial branch to consult with police, prosecutors, judges and health and education professionals to develop regulations, guidelines and other protocols for implementation of laws on "honour" crimes within a specified timeframe of the law's entry into force (p. 20-21). Guidelines should instruct judges to treat "honour" crimes and killings as a serious crime and advise them on the limits in applying the aforementioned defenses, mitigating

factors, or considerations to "honour" crimes, "honour" killings and domestic femicides. Guidelines should also address sentencing and direct judges to impose penalties that are commensurate with other crimes of violence, promote accountability for the perpetrator and promote victim safety. Guidelines should direct judges to exercise caution or even prohibit them from suspending sentences, granting bail or granting parole or probation in "honour" crimes and killings. A judicial decision on custodial sentencing and pretrial release should always prioritize the safety risk to the victim if the perpetrator is released, and guidelines should direct judges to deny release, impose conditions on the release that will ensure the victim's safety, and/or impose a no contact order paired with a verbal warning about the consequences of breach. Guidelines should discourage, or even prohibit, judges from ordering mediation in cases involving "honour" because of the power imbalance within the "honour" context.

Prison System in Criminal Justice

The prisons in India are managed by the central government and are called central prisons. While state maintain these prisons under the auspices of the central funds. The state creates and maintains Sub-jails for imprisonment of punishment less or three years terms funded purely by the state. Juvenile institution and women prisons are created and maintained by the state.

Prison is an important and integral part of the criminal justice system in every country. Used appropriately it plays a crucial role in upholding the rule of law by helping to ensuring that alleged offenders are brought to justice and by providing a sanction for serious wrongdoing. At best prisons should be able to offer a humane experience with opportunities for prisoners to obtain assistance and help with rehabilitation.

At their worst prisons can be sites of appalling suffering, incubators of disease or mere warehouses from which prisoners return to society poorly equipped to lead a law abiding life.
There is enormous variation in the way the world's ten million prisoners are treated. Some young men do drill in military style boot camps while others are counselled in therapeutic communities. Prisoners deemed dangerous may be held in almost total isolation in the highest "supermax" conditions of security; low risk prisoners approaching their date of release go out to work during the day from open establishments. Some convicted prisoners can spend years in remote labour colonies, pre trial detainees a few weeks in city centre lock ups or many years beyond legal guarantees and amongst sentenced prisoners.

The experience of very many prisoners- perhaps the majority – continues routinely to involve often gross violations of basic human rights and seemingly makes scant contribution to either the rule of law or to the creation of safer communities. The failings of prisons often reflect chronic problems of maladministration, chiefly under resourcing in terms of buildings and staff, compounded by often severe overcrowding and weak management and accountability. In principle these are matters that can be put right. But there is an often unspoken question: How much are the obvious failings of imprisonment due to inherent flaws in the nature of institution itself rather than weaknesses in its practical elaboration?
While much more attention needs to be paid to finding new ways of preventing and responding to crime, in the short term priorities would seem to include ensuring prison is used as a last resort

and for the shortest possible time; minimising the use of pre trial detention especially in Africa, South Asia and Latin America; modernising national prison laws and rules which sometimes date from colonial times; and while applying existing international standards and working towards an updated and comprehensive framework of norms across the globe.

For prison administrations, the collation, flow and analysis of information are key for policy development, budgeting and resource allocation, sentence management, ensuring access to justice and provision of appropriate specialised services. While there is much to gained by the use of information management systems, these will only facilitate good practice based on the collation and use of valid, reliable data and work best in locations where there is suitable infrastructure and adequately trained staff.

Prison services and line ministries need to have a clear understanding of the 'stock and flow' of the prison population to enable them to plan and budget for their operations. Furthermore, sentence planning and the provision of appropriate services, educational, recreational, health and legal are very much more likely to happen where reception and record procedures are sound, confidential where necessary, sustained and used efficiently.

In southern Sudan the prison service operates with almost no reliable information on the prison population or its own staff. A priority for a UNODC Prison project there has been to enhance the ability of the Prison Service to collect, retain and use prison data to effectively manage the prison system.

Process of Law Making

The entire process of law making is left with the state and central laws as recommended by the supreme court of India. State makes law of their requirements. Some special recommendations are made by central government to the state on concurrence of the central and state governments. For a law to be recognized in India, it must first be introduced in the form of a "Bill" in either House of the Parliament, then passed by both houses and then finally the President of India must assent to it before it becomes an "Act of Parliament". Law Making Process in Indian Parliament

The Indian constitution gives the law making procedure in Indian Parliament. The primary function of the Indian Parliament is to make, fresh laws and to revise or abrogate existing laws. Bills passed by the Parliament falls into two categories:

(a) money bills and
(b) non-money or, ordinary or, public bills.

The procedures prescribed by the constitution for passing the two categories of bills are different. Procedure of passing ordinary or public bills-An ordinary bill has to pass through different stages before becoming an Act. An ordinary bill may be introduced in either House of the Parliament.

The first stage is the introduction or the firstly reading of the bill. Most such bills are introduced by ministers. They are drafted by technical experts and approved by the Council of Ministers.

Ordinary members of the Parliament may also introduce bills. One month's notice has to be given to the speaker or, the chairman of the Rajya Sabha before the introduction of the bill. Then on a date fixed by the speaker or the chairman, the mover rises on his seat to move the bill. This is the introduction or the first reading of the bill which is a formal affair. No debate usually takes place at this stage. But on an unusual bill, for example the bill on Preventive Detention in 1954 may be opposed by the opposition at its very introduction. After introduction, the bill is published in the Gazette of India. The speaker or, the chairman may allow some bills to be gazette even before the first reading. Such hills do not require formal introduction in the Parliament.

The next stage in the life of a bill is the Second Reading which usually takes place after an interval of two days after the first reading. At this stage, any of the four courses are adopted.

- The bill may be taken for consideration by the House at once.
- It may be sent to a select committee of the House.
- It may be sent to a joint select committee of the two Houses and
- It may be circulated for eliciting public opinion. Very rarely bills are taken up for consideration straight way.

When the 4th course is adopted, the secretariat of the House concerned request the State Governments to publish the bill in the State Gazettes inviting opinions from local bodies and recognized associations. Such opinions are circulated among the members of the House.

Committee stage

If the bill is referred to a select committee, the mover selects the members of the committee, the Speaker or the Chairman appoints one member of the committee, the chairman of the committee. The committee makes a careful study of the bill and reports back to the House.

Report Stage

The original bill along with the report of the Select committee is circulated among the members. It is at this stage that the bill is debated clause by clause. At two stages in the career of a bill debates take place. In the Second Reading when the bill is debated in principle and at the report stage, when it is debated clause by clause. The Second Reading is most crucial in the life of the bill while the Report stage is most important as giving final shape to the bill. After the bill is passed by a majority vote, it is submitted for the Third Reading.

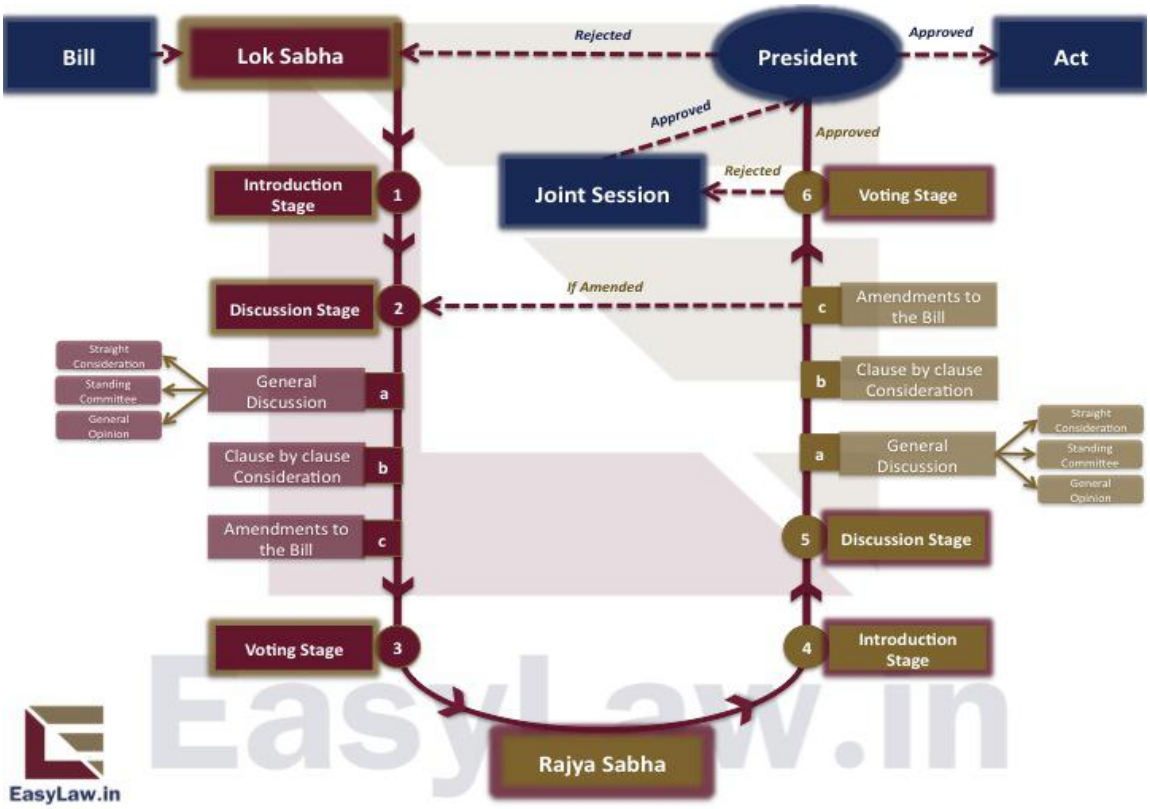
The Third Reading like the First Reading is only formal. No debate takes place and no bill is rejected at this stage.

After the bill is adopted at the Third Reading, it's transmitted to the other House where it goes through all the stages as in the originating House. The other House may accept the bill. In that case it is sent to the President for his assent. The other House also may reject the bill or, may introduce amendments not acceptable to the original House or, may not return the bill within six

months. In any of such case, a constitutional deadlock develops between the two Houses. The President may call a joint session of the two Houses to resolve the deadlock. The Speaker or in his absence the Deputy Speaker presides over such joint sessions. The deadlock is dissolved by majority vote.

Finally the bill passed by both Houses goes to the President for his assent. If the President assents to the bill, it becomes a law. The President may return the bill for reconsideration. If the bill is sent back to the President with or, without amendments, the President cannot withhold his assent. This complicated and time consuming procedure is adopted to prevent hasty legislation.

Figure 1 Process of Law making in India



Role of Victims in the Criminal Justice Process

The victims need for justice put them on other side of the bar spend their vein in fighting for the justice in an adversarial justice system. Victim remains a spectator in the justice system looking for the justice. Although, victims are positioned the least in the criminal justice, while the fact remain that they are prime party to the crime still are given least importance by the justice system however they are simply in to system and make justice for them. In many cases they vanish after a sometime believing that justice is expensive troll for them. In democracy victims of crime and abuse of power are still not given due importance. More of it is they are abused in several ways. Coming to the role of victims in the Indian Criminal Justice System, we should

understand the nature of the system. In India, though the criminal justice system is elaborate and expensive, it aims almost entirely to protect the accused but not the accuser/victim. The adoption by the General Assembly of the United Nations at its 96th plenary on 29 November 1985 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power constituted an important recognition of the need to set norms and minimum standards in international law for the protection of victims of crime. The U.N. declaration recognized four major components of the rights of victims of crime i.e. access to justice and fair treatment, restitution, compensation and lastly assistance. The legislation concerning victims' rights are still insufficient and not in harmony with this declaration. However, the provisions enshrined in Indian Judicial System are supplemented by judicial decisions which take form of laws. The various provisions of Indian Legal system are a step in the direction of upliftment of victim rights.

Initially, the criminal justice system in India focused on punishment as part of the crime without much attention on the suffering of victims of crime. The rights of prisoners were protected even after their conviction whereas little concern was shown for the rights of the victim of crime. However, with the emergence of public interest litigation the higher courts attention was drawn to this lacunae in the existing criminal justice system by social activists, and the courts started granting compensatory relief to victims of crime, but a comprehensive legislation on this aspect of criminal justice system was still awaited.

Concern was expressed for the plight of the victims of crime by Justice V. R. Krishna Iyer when he commented:

"*The criminal law in India is not victim oriented and the suffering of the victim, often immeasurable is entirely overlooked in misplaced sympathy for the criminal. Though our modern criminal law is designed to punish as well as reform the criminals, yet it overlooks the by-product of crime i.e. the victims*".

Victim Protection and Access to Justice

Laws should grant judges the power to take measures to protect victims and witnesses from retaliation and intimidation, such as issuing protection or restraining orders in domestic violence and "honour" cases against the perpetrator(s). Laws should criminalize a violation of these orders and authorize judges to impose an immediate and direct criminal penalty for any such violation. Laws should facilitate information sharing among courts, police, prosecutors and other criminal justice actors through a registration system of these orders.

Laws should require courts to evaluate procedures and structures to enhance victim and witness safety and minimize perpetrators' ability to intimidate or harass victims or witnesses at the court through measures such as:

- Establishing a separate waiting area for the victim and witnesses potentially at risk of retaliatory violence;
- Delaying the perpetrator's departure so he cannot follow or attack the victim;
- Send a court personnel to accompany the victim to her transport;

- Use a metal detector or search procedures for weapons or harmful substances;
- Requiring issuance of a judicial order to notify the victim and witnesses potentially at risk of retaliatory violence upon the perpetrator's release from prison;
- GPS monitoring.

Courts should take steps to increase victims' access to justice, such as offering emergency hours, multiple locations such as police units for filing a complaint, authorized and trained interpreter services, disability access, and template forms and checklists. Courts should establish systems that enable a victim to testify in court proceedings in a way that protects her privacy and confidentiality, ensures her safety during and after proceedings, and prevents re-victimization. Victim refusal to testify should not be considered an offense. Courts should also make available to victims of "honour" crimes trained advocates who can provide victims with advocacy and support services throughout the proceedings and assist victims in navigating the criminal justice process. (See: UN Resolution Adopted by the General Assembly, "Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women," U.N. Doc. A/Res/65/228, 2011, Annex: Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, Art. VI)

Also, drafters should "ensure that all victims of violence are able to institute proceedings as well as, where appropriate, public or private organisations with legal personality acting in their defence, either together with the victims or on their behalf" in cases of "honour" crimes and killings. (See: Council of Europe, Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence, 2002, Article 38) Legislation should provide for a registration or other system for organizations wishing to intervene on behalf of victims of honour killings to acquire the necessary legal standing. While Article 237(1) of the Turkish Criminal Procedure Code provides that victims, real persons and legal entities, that have been damaged by the crime, are entitled to intervene in the public prosecution during the prosecution phase, this has not been the case in Turkey. In cases where women's NGOs have filed an application on behalf of a victim of "honour" crimes or killings to intervene in the public prosecution, the court has refused their application on the grounds that they are not directly affected by the crime.

Example: While Article 237(1) of the Turkish Criminal Procedure Code provides that "the victims, real persons and legal entities, who have been damaged by the crime, are entitled to intervene in the public prosecution during the prosecution phase," this has not been the case in Turkey. In cases in Turkey where women's NGOs have filed an application on behalf of a victim of an "honour" killings to intervene in the public prosecution, the court has refused their application on the grounds that they are not directly affected by the crime.

UNIT-III: SOCIOLOGICAL AND LEGAL PERSPECTIVES OF CRIME

Sociological definitions: Deviance

Deviance is any behavior that violates social norms, and is usually of sufficient severity to warrant disapproval from the majority of society. Deviance can be criminal or non-criminal. The sociological discipline that deals with crime (behavior that violates laws) is criminology (also known as criminal justice).

Deviance is any behavior that violates social norms, and is usually of sufficient severity to warrant disapproval from the majority of society. Deviance can be criminal or non-criminal. The sociological discipline that deals with crime (behavior that violates laws) is criminology (also known as criminal justice). Today, Americans consider such activities as alcoholism, excessive gambling, being nude in public places, playing with fire, stealing, lying, refusing to bathe, purchasing the services of prostitutes, and cross-dressing—to name only a few—as deviant.

People who engage in deviant behavior are referred to as deviants. The concept of deviance is complex because norms vary considerably across groups, times, and places. In other words, what one group may consider acceptable, another may consider deviant. For example, in some parts of Indonesia, Malaysia, and Muslim Africa, women are circumcised. Termed clitoridectomy and infibulations, this process involves cutting off the clitoris and/or sewing shut the labia — usually without any anesthesia. In America, the thought of female circumcision, or female genital mutilation as it is known in the United States, is unthinkable; female genital mutilation, usually done in unsanitary conditions that often lead to infections, is done as a blatantly oppressive tactic to prevent women from having sexual pleasure.

Sociological definitions of Crime

In Sociology, a normative definition views crime as deviant behavior that violates prevailing norms – cultural standards prescribing how humans ought to behave normally. ... Behaviour can be controlled and influenced by a society in many ways without having to resort to the criminal justice system.

Any discussion of deviance remains incomplete without a discussion of crime, which is any act that violates written criminal law. Society sees most crimes, such as robbery, assault, battery, rape, murder, burglary, and embezzlement, as deviant. But some crimes, such as those

committed in violation of laws against selling merchandise on Sundays, are not deviant at all. Moreover, not all deviant acts are criminal. For example, a person who hears voices that are not there is deviant but not criminal. A society's criminal justice system punishes crimes. Punishment becomes necessary when criminal acts are so disruptive as to interfere with society's normal functioning.

Differences between Deviance and Crime

The biggest difference between deviant behaviour and a crime is that a crime is against the law, while deviance is only against social norms. A crime has an added characteristic in that a law has been passed against it, making it a crime or criminal offence. Deviation is what is defined as not normal by norms, values, etc.

Man is a social animal and has been living in societies since the beginning of civilizations. Every society has its own culture made up of social norms and values that ensure peace and order among the people. Compliance to these norms by the people is a feature of a society. However, there have always been people who defy norms and exhibit behavior that is considered deviant or one that departs from the normal. To ensure compliance, there is also a written law to deal with criminal behavior that comes within deviance. However, despite similarities, there are differences between crime and deviance that will be highlighted in this article.

What is the difference between Crime and Deviance?

• Deviance is violation of social norms whereas crime is violation of laws of the land.
• Agents of control for deviance are societal pressure and fear of Gods whereas agents of control for crime are police and judiciary.
• Society has no coercive power to deal with deviance but governments have the power of punishment to tackle crime.
• Deviance can be criminal or non criminal, but crime is always criminal in nature.
• Many behaviors that were crimes earlier have today become deviant behaviors.
• Violation of law makes deviance a crime.
• Deviance is not considered as severe as a crime.

Vice

Vice Crimes: Legal Definition- Activities that are made illegal because they offend the moral standards of the community banning them. Gambling, pornography, and prostitution are the big three of vice crimes in most states and communities. A vice squad is a police division whose focus is stopping public-order crimes like gambling, narcotics, prostitution, and illegal sales of alcohol. Vice squad may also refer to: Vice Squad, an English punk band.

Sin

Sin is a moral definition used by the religions to describe a wide range of actions some of which are not illegal under most nation's legal systems. The word crime describes actions that are

illegal under a nation's legal system. Since the two could be mutually exclusive, attempting to link the two terms in a conversation or in logical thought may not be a rational exercise.

Torts

A tort, in common law jurisdictions, is a civil wrong that unfairly causes someone else to suffer loss or harm resulting in legal liability for the person who commits the tortuous act. The person who commits the act is called a tortfeasor. Tort Law: Three Types of Torts- Torts are wrongdoings that are done by one party against another. As a result of the wrongdoing, the injured person may take civil action against the other party. To simplify this, let's say while walking down the aisle of a grocery store, you slip on a banana that had fallen from a shelf. You become the plaintiff, or injured party, and the grocery store is considered the tortfeasor or defendant, the negligent party.

Simply said, you would probably take civil action against the grocery store to recoup compensation for pain, suffering, medical bills and expenses incurred as a result of the fall. Negligence is just one tort category. There are three general categories of torts. Regardless of the tort action, three elements must be present:

- Tortfeasor, or defendant, had a duty to act or behave in a certain way.
- Plaintiff must prove that the behavior demonstrated by the tortfeasor did not conform to the duty owed to the plaintiff.
- The plaintiff suffered an injury or loss as a result.

Because torts are a civil action involving private parties, punishment does not include a fine or incarceration. The punishment for tortious acts usually involves restoring the injured party monetarily. Sometimes a court order may force the tortfeasor to either do or not do something. Think trespassing, defamation or slander. Let's explore the three types of torts:

- **Intentional torts**
- **Negligence torts**
- **Strict liability torts**

Elements of Crime

Crimes can be broken down into elements, which the prosecution must prove beyond a reasonable doubt. Criminal elements are set forth in criminal statutes, or cases in jurisdictions that allow for common-law crimes. With exceptions, *every* crime has at least three elements: a criminal act, also called actus reus; a criminal **intent**, also called mens rea; and **concurrence** of the two. The term conduct is often used to reflect the criminal act and intent elements. Following are the common included elements of crime, absence of one would not constitute an act of Crime.

- **Mens Rea**
- **Actus Reus**
- **Law**

- **Offender/ Victim.**

Basic principles – Mens Rea and Actus Reus

Mens Rea

The term ***mens rea*** refers to the mental element in the definition of a crime. This is not some abstract mental process; it refers to specific words in the charge or indictment.
The physical act represents one element in the commission of a criminal act while the guilty mind represents the second key element. The guilty mind refers to the intention, knowledge or recklessness of the accused. Essentially the law states that we must mean to cause a wrongful consequence.

Intention is commonly used in the *Criminal Code* to establish a type of guilty mind. Words like "willfully," "mean to" or "intentionally" are used to describe a state of mind. There are two basic types of intention-specific and general. Specific intent offences frequently use the phrase 'with intent' or 'for the purpose of' to demonstrate a specific purpose behind the crime. General intent crimes are those that do not require a further purpose or intention and are often crimes committed in moments of uncontrolled passion or aggression.

The knowledge form of a guilty mind means that the accused must have knowledge of the specific circumstances of the crime. The phrases "knowingly" or "knowing" are commonly used here to indicate a specific type of knowledge. For example, to knowingly lie to a judge or jury is called perjury and is a criminal offence but to give false evidence unknowingly is not a criminal offence.

The third kind of intent is recklessness. This is type of intent is found in crimes like dangerous driving causing death. It means that the accused has been unduly careless in their actions by not exercising good judgment and foresight. If one drives 100km/h through a school zone in the daytime, with no intention of killing or harming a child, and hits a child crossing the street and that child dies, the law would use recklessness to establish the guilty mind. Contrary to TV law, it is not necessary for the Crown to establish why an accused has committed an offence (the motive). Motive may be used to establish intention and can be used in sentencing to mitigate or aggravate the sentence depending on the reason for committing the crime.

Actus Reus

There is no punishment for thinking about a criminal act. A crime must have an *actus reus*, Latin literally for a bad act. A defendant has committed the *actus reus* of an offense if he has done some act that is an action prohibited by law. Most crimes consist of a defined set of actions that together are prohibited.

It is not a crime to carry an item around a store. It is not a crime to walk out of a store. It may be a crime to walk out of a store, with an item, and not pay for it. The act of walking out of the store

without paying for an item is the *actus reus*. For it to be a crime, it must be done knowingly. The *actus reus* and the *mens rea* must take place together.

The physical act of committing an offence (actus reus) is more than an act, it can be an omission to act or a "state of being." For example if one is in possession of an illegal narcotic, one is not acting or failing to act but merely in possession. This is a state of being. Omissions to act can also be crimes (a failure to act when required to do so by law). If a parent fails to provide the basic necessities for children's survival the failure to provide is an omission and a crime. The majority of crimes are acts or kinds of misconduct. Proof of the physical element requires more than simply determining an act, omission or state of being exists. It is necessary to consider the four C's-conduct, consequences, circumstances and causation. The conduct must be as described earlier an act, omission to act or a state of being as outlined in a specific section of the criminal charge. Of particular importance to the concept of conduct is that it be voluntary. The law will not hold someone criminally responsible for an involuntary act. Consequences refer to the outcome of a specific act. For a homicide the consequence would be the death of a human being.

The circumstances aspect of the actus reus refers to the relevant circumstances under which an act must occur to be criminal. In the case of the crime of trespassing at night the relevant circumstances would be that the act occurred at night, on someone's property other than your own and that you entered the property without consent or lawful excuse.

What is Criminal Responsibility?

Concept of Criminal Responsibility: A term in medical jurisprudence where an accuser's mental capacity to understand the charges against him and may have no knowledge of the crime.

For an illustration, Ravi is driving down a busy street when he strikes and kills a pedestrian. Is Carl guilty of a crime? The answer is: it depends. In order to convict Ravi of a crime, Ravi's state of mind at the time of the accident must be evaluated. The concept of criminal responsibility concerns the different mental states related to crimes, the ways in which those mental states are evaluated, and the variety of associated defenses. The term criminal responsibility refers to a person's ability to understand his or her conduct at the time a crime is committed. In other words, what a person is thinking when he commits a crime, or what result is anticipated or expected when a crime is committed. Laws define crimes in terms of an act or omission (*actus reas*) and a mental state (*mens reas*). Criminal responsibility relates to the mental state element of a crime.

Mental States

A culpable (guilty) mental state is a necessary element of every crime. In order to be convicted of a particular crime, there must be proof that the actor (the person engaged in the alleged criminal conduct) possessed the requisite state of mind when the crime was committed. The mental states covered in this lesson are: intentional, knowing, wanton (or reckless), and negligent. Keep in mind that these are general definitions that may vary slightly depending on the jurisdiction.

An **intentional** mental state means that the actor consciously engages in the conduct, or that the actor's conscious objective is to bring about a particular result. For example, if Ravi Criminal uses a hammer to break the window of Vinny Victim's home so that he can enter and take Vinny's valuables, Ravi has acted intentionally with respect to burglary. Intentional crimes are usually punished more severely than other crimes.

A **knowing** mental state means that the actor is aware that his or her conduct is criminal, or is aware that his or her conduct will bring about a particular result. So, if Ravi Criminal is aware that the tools he bought from Timothy Thief were stolen from the hardware store, Ravi has acted knowingly in respect to receiving stolen property.

A **wanton or reckless** mental state means that the actor consciously disregards a substantial risk that his or her conduct will bring about a particular result. For example, if Ravi Criminal, in a rush of excitement after his favorite football team kicks a winning field goal, fires a gun into a crowd of people and injures or kills someone, he has acted wantonly. Ravi never intended to hurt anyone, but he was aware that firing a gun into a crowd of people presented a substantial risk of injury or death, and yet he consciously disregarded that risk.

A **negligent** mental state means that the actor is unaware that his or her conduct is risky or dangerous, but a reasonable person in the same situation would appreciate the risk. An example of a negligent mental state is when Ravi Criminal, in a hurry to get to work, drives his car through the red light at a busy intersection and strikes another car. Ravi certainly didn't mean to hurt anyone; in fact, he didn't even see the light change from yellow to red! But nevertheless, his conduct was dangerous, and a reasonable person would have been aware of the risk.

Indian Penal Code – History – Structure

The draft of the **Indian Penal Code** was prepared by the **First Law Commission**, chaired by Thomas Babington Macaulay in 1835 and was submitted to Governor-General of **India** Council in 1837. Its basis is the **law** of England freed from superfluities, technicalities and local peculiarities. The Indian Penal Code in its basic structure is a document that consists of the list of all the punishments and cases that a person who commits any kind of a crime is to be held liable and charged with. It covers any Indian citizen or a person of Indian origin. The exception to this document is that any kind of military or armed forces crimes cannot be charged on the basis of Indian Penal Code. They have a different dedicated list of laws and the Indian Penal Code cannot supersede any part of it.

The Indian Penal Code IPC is the main criminal code of India. It extends to the whole of India except to the state of Jammu and Kashmir. The introductory draft of Indian Penal Code was formulated in the year 1860 and this was done under the supervision of the First Law Commission which was chaired by Lord Macaulay. The first Penal Code came into existence in the year 1862 and since then number of amendments have been made in the code. It is a comprehensive code that intends to cover all the substantive aspects of criminal law. In the Jammu and Kashmir the Indian Penal Code is known as Ranbir Penal Code (RPC). The total

number of sections enumerated in the Indian Penal Code is five hundred eleven. Every section defines different category of crimes committed by persons of Indian origin.

Objective of the Indian Penal Code

The objective of this Act is to provide a general Penal Code for India. Though this Code consolidates the whole of the law on the subject and is exhaustive on the matters in respect of which it declares the law, many more penal statutes governing various offences have been created in addition to this code. The Indian security system has been one that has gone through a lot of tests and examinations throughout the time. This is due to the political as well as the social situation of the country. India is a land of diverse cultures and traditions and it is a place where people from various religions as well as ethnic backgrounds live together.

Indian Penal Code Format

The Indian Penal code has a basic format, it's a document that lists all the cases and punishments that a person committing any crimes is liable to be charged. It covers any person of Indian origin. The exceptions are the military and other armed forces, they cannot be charged based on the Indian Penal Code. They have a different set of laws under the Indian Penal Code as well.

The Indian Penal Code has its roots I the times of the British rule in India, formulating in year 1860.Amendments have been made to it in order to incorporate a lot of changes and jurisdiction clauses. One such amendment is the inclusions of section 498-A.The total number of sections contained in the Indian Penal Code are five hundred eleven. All these sections pertain to a particular category of crimes committed by civilians of Indian origin. There are sections related to Dowry Laws and jurisdictions in India, as well as there are several sections that concern various types of criminal laws. The Indian Penal Code is thus the most fundamental document of all the law enforcer as well as the entire judiciary in India.

The Indian judicial system is one that has evolved into a stable and fair system of detention and penalizing, after being tested well for several years. The judiciary of the country is a body of people who are given the task of execution of the laws made by the government, that is, the judiciaries of a country are its law enforcers. However, the judicial representatives cannot assess the cases of crimes or misconduct on their own perceptions or rules.

There has to be a single system or a document that acts as a standard to all the decision making process and the penalizing norms. Such a document exists in all countries and in case of India; it is referred to as The Indian Penal Code. The Indian Penal Code is applicable to all the citizens of India who commit crimes or actions suggesting misconduct in the Indian Territory. The document is applicable to ships as well as aircrafts within the Indian seas or the airspace as well. Indian penal code is the skeleton of the Indian criminal justice system. There are certain questions that are frequently asked by a layperson for basic understanding of rights for example,

1. What exactly Indian Penal code is?

2. How and when did it originate?
3. What is its applicability?
4. How does it work?
5. To what extend it helps the law enforcement agencies?
6. What is modus operandi of judges while applying the relevant sections?

These questions are answered as follows; Indian Penal Code is a document that has been formulated to counter crimes of various natures and breach of law. IPC traces its roots to the British colonial rule in India.IPC covers any Indian citizen or a person of Indian origin with the exceptions to any kind of military or the armed forces crimes, which are handled by a dedicated list of armed force acts.

The most important feature of the Indian Penal Code is the impartial nature of judgments promoted by the document. The Indian Penal Code does not include any special favors for any special person at some position. Thus, the Indian Penal Code stands alike for government employees, as for a common man, and even for a judicial officer. This builds up the faith of the common citizens in the law making and enforcing bodies in the country and prevents any sort of corruption or misuse of power on the part of the people in power. All in all, the Indian Penal Code of the present day has done away with almost all its flaws and has evolved into a modern law enforcing document that takes into consideration the humane side of the personalities of culprits as well. This has escalated and improved the Indian system of Law to greater heights and has led to a firm respect for it in every citizen of the country.

Importance of the Indian Penal Code

Indian Penal Code is a very important set of regulation which is very important for the system to be operated in a proper way. It is the main criminal code of India. They are various offences that are made under this law. The Indian Penal Code includes all the relevant criminal offences dealing with offences against the state, offenses for public, offences for armed forces, kidnapping, murder, and rape. It deals with offense related to religion, offences against property and it has an important section for offences for marriage, cruelty from husband or relatives, defamation and so on so forth. This was an general over view of the structure of Indian Penal Code. It is not only important for India but every country should have an Penal Code in order for its system to be operated in a systematic way. This document majorly covers all the basic offences which are highlighted in the society.

Right of Private defense

The right of private defense of the body extends to the causing of death or any other harm to the assailant under the following circumstances: An assault causing reasonable apprehension of death. An assault causing reasonable apprehension of grievous hurt. An assault with the intention of committing rape.

General Exceptions under Indian Penal code

IPC- Chapter IV – General Exceptions

Section 76:- Act done by a person bound, or by mistake of fact believing himself bound, by law
Section 77:- Act of Judge when acting judicially
Section 78:- Act done pursuant to the judgment or order of Court
Section 79:- Act done by a person justified, or by mistake of fact believing himself, justified, by law
Section 80:- Accident in doing a lawful act

Section 81:- Act likely to cause harm, but done without criminal intent, and to prevent other harm
Section 82:- Act of a child under seven years of age
Section 83:- Act of a child above seven and under twelve of immature understanding
Section 84:- Act of a person of unsound mind
Section 85:- Act of a person incapable of judgment by reason of intoxication caused against his will
Section 86:- Offence requiring a particular intent or knowledge committed by one who is intoxicated
Section 87:- Act not intended and not known to be likely to cause death or grievous hurt, done by consent
Section 88:- Act not intended to cause death, done by consent in good faith for person's benefit
Section 89:- Act done in good faith for benefit of child or insane person, by or by consent of guardian
Section 90:- Consent known to be given under fear or misconception

Section 91:- Exclusion of acts which are offences independently of harm cause
Section 92:- Act done in good faith for benefit of a person without consent
Section 93:- Communication made in good faith
Section 94:- Act to which a person is compelled by threats
Section 95:- Act causing slight harm
Section 96:- Things done in private defence
Section 97:- Right of private defence of the body and of property
Section 98:- Right of private defence against the act of a person of unsound mind, etc.
Section 99:- Acts against which there is no right of private defence
Section 100:- When the right of private defence of the body extends to causing death

Section 101:- When such right extends to causing any harm other than death
Section 102:- Commencement and continuance of the right of private defence of the body
Section 103:- When the right of private defence of property extends to causing death
Section 104:- When such right to causing any harm other than death
Section 105:- Commencement and continuance of the right of private defence of property
Section 106:- Right of private defence against deadly assault when there is risk of harm to innocent person.

UNIT-IV: TYPOLOGY OF OFFENCES: INDIAN PENAL CODE

The offences under any law (mostly the Indian Penal Code) are classified as cognizable and non-cognizable, as bailable or non-bailable and by the lowest courts which can try them. These are given and defined in the First Schedule of the Code of Criminal Procedure, 1973.

EXPLANATORY NOTES

(1)	In regard to offences under the Indian Penal Code, the entries in the second and third columns against a section the number of which is given in the first column are not intended as the definition of, and the punishment prescribed for, the offence in the Indian penal Code, but merely as indication of the substance of the section.	
(2)	In this Schedule,	
	(i)	the expression "Magistrate of the first class" and “Any Magistrate" include Metropolitan Magistrates but not Executive Magistrates;
	(ii)	the word "cognizable" stands for a "a police officer may arrest without warrant"; and
	(iii)	the word "non-cognizable" stands for "a police officer shall not arrest without warrant".
(3)	Herein	
	(i)	"bailable" means the person shall be offered to be released on suitable bail upon his arrest [by the police or the court] {informing about his right to be so released} and
	(ii)	"non-bailable" means shall not be automatically entitled to be released on bail [but does not mean that the court may not order him to be released on a suitable bail - with or without any conditions]

Offences against Human Body

The offences under any law (mostly the Indian Penal Code) are classified as cognizable and non-cognizable, as bailable or non-bailable and by the lowest courts which can try them. These are given and defined in the First Schedule of the Code of Criminal Procedure, 1973.

Culpable Homicide (Section 299)

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations
(a) *A* lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. *Z* believing the ground to be firm, treads on it, falls in and is killed. *A* has committed the offence of culpable homicide.

(b) *A* knows *Z* to be behind a bush. *B* does not know it *A*, intending to cause, or knowing it to be likely to cause *Z's* death, induces *B* to fire at the bush. *B* fires and kills *Z*. Here *B* may be guilty of no offence; but *A* has committed the offence of culpable homicide.
(c) *A*, by shooting at a fowl with intent to kill and steal it, kills *B* who is behind a bush; *A* not knowing that he was there. Here, although *A* was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill *B*, or to cause death by doing an act that he knew was likely to cause death.

Explanation I — A person who causes bodily injury to another who is laboring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.
Explanation 2 — Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.
Explanation 3 — The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

COMMENTS
(i) "**Culpable homicide**" is genus, and "murder" is the specie. All "murder" is culpable homicide but not *vice-versa*; *Narasingh Challan* v. *State of Orissa*, (1997) 2 Crimes 78 (Ori).
(ii) The assault for murder cannot be said to be sudden and without meditation as the deceased was not armed; *State of Maharashtra* v. *Krishna Murti Lazmipatti Naidu*, AIR 1981 SC 617 : (1981) SC Cr R 398 (1981) Cr LJ 9 : (1981) SCC (Cr) 354.
Murder- OF OFFENCES AFFECTING THE HUMAN BODY
Of Offences affecting Life

Section 299. Culpable homicide
Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(a) *A* lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. *Z* believing the ground to be firm, treads on it, falls in and is killed. *A* has committed the offence of culpable homicide.
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2 Crimes 78 (Ori).
(ii) The assault for murder cannot be said to be sudden and without meditation as the deceased was not armed; *State of Maharashtra* v. *Krishna Murti Lazmipatti Naidu*, AIR 1981 SC 617 : (1981) SC Cr R 398 (1981) Cr LJ 9 : (1981) SCC (Cr) 354.

Murder (Section 300)

Firstly- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) *A* shoots *Z* with the intention of killing him. *Z* dies in consequence. *A* commits murder.
(b) *A*, knowing that *Z* is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. *Z* dies in consequence of the blow. *A* is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if *A*, not knowing that *Z* is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here *A*, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.
(c) *A* intentionally gives *Z* a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. *Z* dies in consequence. Here, *A* is guilty of murder, although he may not have intended to cause *Z*'s death.
(d) *A* without any excuse fires a loaded cannon into a crowd of persons and kills one of them. *A* is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1 —**When culpable homicide is not murder.—**Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

First — That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly — That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly — That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation — Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

(a) *A*, under the influence of passion excited by a provocation given by *Z*, intentionally kills. *Y, Z*'s child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.
(b) *Y* gives grave and sudden provocation to *A*. *A*, on this provocation, fires a pistol at *Y*, neither intending nor knowing himself to be likely to kill *Z,* who is near him, but out of sight. *A* kills *Z*. Here *A* has not committed murder, but merely culpable homicide.

(c) *A* is lawfully arrested by *Z*, a bailiff. *A* is excited to sudden and violent passion by the arrest, and kills *Z*. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.
(d) *A* appears as witness before *Z*, a Magistrate, *Z* says that he does not believe a word of *A*'s deposition, and that *A* has perjured himself. *A* is moved to sudden passion by these words, and kills *Z*. This is murder.
(e) *A* attempts to pull *Z*'s nose, *Z*, in the exercise of the right of private defence, lays hold of *A* to prevent him from doing so. *A* is moved to sudden and violent passion in consequence, and kills *Z*. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.
(f) *Z* strikes *B*. *B* is by this provocation excited to violent rage. *A*, a bystander, intending to take advantage of *B's* rage, and to cause him to kill *Z*, puts a knife into *B's* hand for that purpose. *B* kills *Z* with the knife. Here *B* may have committed only culpable homicide, but *A* is guilty of murder.
Exception 2 — Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip *A*, not in such a manner as to cause grievous hurt to *A*. *A*draws out a pistol. *Z* persists in the assault. *A* believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots *Z* dead. *A* has not committed murder, but only culpable homicide.

Exception 3 — Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused
Exception 4 — Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.
Explanation — It is immaterial in such cases which party offers the provocation or commits the first assault.
Exception 5 — Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

301. Culpable homicide by causing death of person other than person whose death was intended
If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the

description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

COMMENTS

Accused is punishable for murder under doctrine of transfer of malice under section 301 of the Code when he aimed at one and killed another person;

Jagpal Singh v. *State of Punjab*, (1991) Cr LJ 597 (SC).

Section 302. Punishment for Murder

Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Death, or imprisonment for life, and fine—Cognizable—Nonbailable—Triable by Court of Session—Non-compoundable.

COMMENTS

(i) When ocular evidence in murder case is unreliable benefit of doubt to be given to all accused; *Chandu Bhai Shana Bhai Parmar* v. *State of Gujarat*, AIR 1982 SC 1022 : (1981) SCC (Cr) 682.
(ii) The facts taken cumulatively form a chain so complete that there is no escape from the conclusion that within all human probability the murder was committed by the appellant and none else; *Daya Ram* v. *The State (Delhi Administration*, (1988) Cr LJ 865: AIR 1988 SC 615.
(iii) Provisions of death sentence being an alternative punishment for murder is not unreasonable; *Bachhan Singh* v. *State of Punjab*, AIR 1980 SC 898: (1980) 2 SCC 864: (1980) Cr LJ 636 : (1980) Cr LR (SC) 388: 1980 (2) SCJ 475.
(iv) In case where facts and circumstances from which conclusion of guilt was sought to be drawn by prosecution was not established beyond reasonable doubt the conviction under section 302 read with section 34 and under section 392 had to be quashed; *Hardyal and Prem* v. *State of Rajasthan*, (1991) Cr LJ 345 (SC).
(v) Accused committed murder in professional manner with planned motivation, accused deserved no sympathy even when the accused had no personal motive; *Kuljeet Singh* v. *Union of India*, AIR 1981 SC 1572: (1981) Cr LJ 1045: (1981) Cr LR (SC) 328.
(vi) In dowry deaths motive for murder exists and what is required of Courts is to examine as to who translated it into action as motive *viz.,* whether individual or family; *Ashok Kumar* v. *State of Rajasthan*, (1991) 1 Crimes 116 (SC).
(vii) Crime of murder committed against public servant doing official duties must be discouraged and dealt with firm hand; *Gayasi* v. *State of Uttar Pradesh*, AIR 1981 SC 1160: (1981) ALJ 441: (1981) Cr LJ 883: (1981) SCC (Cr) 590: (1981) Cr App. R (SC) 385: (1981) 2 SCC 713.
(viii) Fatal injury caused by the accused in broad day light, evidence of the eye witness and medical evidence being corroborative, conviction under section 302, held, sustainable; *Wazir Singh* v. *State of Haryana*, AIR 1992 SC 1429.

(ix) It is well settled that if the evidence of the eye-witnesses are held to be reliable and inspire confidence then the accused cannot be acquitted solely on the ground that some superficial injuries found on the person of the accused concerned, had not been explained by the prosecution; *A.M. Kunnikoya* v. *State of Kerala*, 1993 (1) Crimes 1192 (SC).
(x) Conviction can be based on testimony of a single eye witness provided his testimony is found reliable and inspires confidence; *Anil Phukan* v. *State of Assam*, 1993 (1) Crimes 1180 (SC).
(xi) When the appellant dealt a severe knife blow on the stomach of deceased without provocation and when deceased was unarmed and had already been injured by co-accused the appellant cannot be held that he had no intention to cause a murderous assault by mere fact that only one blow was inflicted; *Nashik* v. *State of Maharashtra*, 1993(1) Crimes 1197 (SC).

Section 303. Punishment for murder by life-convict

Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death.

CLASSIFICATION OF OFFENCE

Punishment—Death—Cognizable—Non-bailable—Triable by Court of Session— Non-compoundable.

Section 304. Punishment for culpable homicide not amounting to murder

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Imprisonment for life, or imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.
Para II: Punishment—Imprisonment for 10 years, or fine, or both—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Section 304B. Dowry death

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation —For the purpose of this sub-section, "**dowry**" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Rape and other unnatural sexual offences (Section 375-377)

Section 375. Rape

A man is said to commit "**rape**" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

First — Against her will.
Secondly — Without her consent.
Thirdly — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
Fourthly — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
Fifthly — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
Sixthly — With or without her consent, when she is under sixteen years of age.

Explanation — Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception — Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

STATE AMENDMENT

Union Territory of Manipur:

(a) in clause sixthly, for the word "sixteen" substitute the word "fourteen"; and
(b) in the Exception, for the word "fifteen" substitute the word "thirteen". *Vide* Act 30 of 1950.

COMMENTS

Mere absence of spermatozoa cannot cast a doubt on the correctness of the prosecution case; *Prithi Chand* v. *State of Himachal Pradesh*, (1989) Cr LJ 841: AIR 1989 SC 702.

Section 376. Punishment for rape

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,
(a) being a police officer commits rape—
(i) within the limits of the police station to which he is appointed; or
(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or
(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or
(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or
(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or
(e) commits rape on a woman knowing her to be pregnant; or
(f) commits rape on a woman when she is under twelve years of age; or
(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1 — Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.
Explanation 2 — "**Women's or children's institution**" means an institution, whether called an orphanage or a home for neglected woman or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children.
Explanation 3 — "**Hospital**" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

Hurt and Grievous Hurt (Sec.319-320)

Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

Section 319. Hurt

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

Section 320. Grievous hurt

The following kinds of hurt only are designated as "**grievous**":

First — Emasculation.
Secondly — Permanent privation of the sight of either eye.
Thirdly — Permanent privation of the hearing of either ear,
Fourthly — Privation of any member or joint.
Fifthly — Destruction or permanent impairing of the powers of any member or joint.
Sixthly — Permanent disfiguration of the head or face.
Seventhly — Fracture or dislocation of a bone or tooth.
Eighthly — Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

Force, Criminal Force and Assault (Sec.349-351)

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 years and fine—Cognizable—Bailable—Triable by any Magistrate—Non-compoundable.

Section 349. Force — A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First — By his own bodily power.
Secondly — By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.
Thirdly — By inducing any animal to move, to change its motion, or to cease to move.

Section 350. Criminal force

Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal
force to that other.

Section 351. Assault

Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.
Explanation — Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations
(a) *A* shakes his fist at *Z*, intending or knowing it to be likely that he may thereby cause *Z* to believe that *A* is about to strike *Z*, *A* has committed an assault.
(b) *A* begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause *Z* to believe that he is about to cause the dog to attack *Z*. *A* has committed an assault upon *Z*.
(c) *A* takes up a stick, saying to *Z*, "I will give you a beating". Here, though the words used by *A* could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

CHAPTER XVII - OF OFFENCES AGAINST PROPERTY Of Theft

CLASSIFICATION OF OFFENCE
Punishment—Imprisonment for life, or imprisonment for 10 years and fine— Cognizable—Non-Bailable—Triable by Magistrate of the first class—Non-compoundable.

Section 378. Theft

Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1 — A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2 — A moving effected by the same act which affects the severance may be a theft.

Explanation 3 — A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4 — A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5 —The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for the purpose authority either express or implied.

Illustrations

(a) *A* cuts down a tree on *Z*'s ground, with the intention of dishonestly taking the tree out of *Z*'s possession without *Z*'s consent. Here, as soon as *A* has severed the tree in order to such taking, he has committed theft.
(b) *A* puts a bait for dogs in his pocket, and thus induces *Z*'s dog to follow it. Here, if *A*'s intention be dishonestly to take the dog out of *Z*'s possession without *Z*'s consent. *A* has committed theft as soon as *Z*'s dog has begun to follow *A*.
(c) *A* meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, *A* has committed theft of the treasure.
(d) *A*, being *Z*'s servant, and entrusted by *Z* with the care of *Z*'s plate, dishonestly runs away with the plate, without *Z*'s consent. *A* has committed theft.
(e) *Z*, going on a journey, entrusts his plate to *A*, the keeper of the warehouse, till *Z* shall return. *A* carries the plate to a goldsmith and sells it. Here the plate was not in *Z*'s possession. It could not therefore be taken out of *Z*'s possession, and *A* has not committed theft, though he may have committed criminal breach of trust.
(f) *A* finds a ring belonging to *Z* on a table in the house which *Z* occupies. Here the ring is in *Z*'s possession, and if *A* dishonestly removes it, *A* commits theft.
(g) *A* finds a ring lying on the highroad, not in the possession of any person. *A* by taking it, commits no theft, though he may commit criminal misappropriation of property.
(h) *A* sees a ring belonging to *Z* lying on a table in *Z*'s house. Not venturing to misappropriate the ring immediately for fear of search and detection, *A* hides the ring in a place where it is highly improbable that it will ever be found by *Z*, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here *A*, at the time of first moving the ring, commits theft.
(i) *A* delivers his watch to *Z*, a jeweller, to be regulated. *Z* carries it to his shop. *A*, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of *Z*'s hand, and carries it away. Here *A*, though he may have committed criminal trespass and assault, has not committed theft, in as much as what he did was not done dishonestly.
(j) If *A* owes money to *Z* for repairing the watch, and if *Z* retains the watch lawfully as a security for the debt, and *A* takes the watch out of *Z*'s possession, with the intention of depriving *Z* of the property as a security for his debt, he commits theft, in as much as he takes it dishonestly.
(k) Again, if *A*, having pawned his watch to *Z*, takes it out of *Z*'s possession without *Z*'s consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property in as much as he takes it dishonestly.
(l) *A* takes an article belonging to *Z* out of *Z*'s possession, without *Z*'s consent, with the intention of keeping it until he obtains money from *Z* as a reward for its restoration. Here *A* takes dishonestly; *A* has therefore committed theft.

(m) *A*, being on friendly terms with *Z*, goes into *Z*'s library in *Z*'s absence, and takes away a book without *Z*'s express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that *A* may have conceived that he had *Z*'s implied consent to use *Z*'s book. If this was *A*'s impression, *A* has not committed theft.
(n) *A* asks charity from *Z*'s wife. She gives *A* money, food and clothes, which *A* knows to belong to *Z* her husband. Here it is probable that *A* may conceive that *Z*'s wife is authorised to give away alms. If this was *A*'s impression, *A* has not committed theft.
(o) *A* is the paramour of *Z*'s wife. She gives a valuable property, which *A* knows to belong to her husband *Z*, and to be such property as she has no authority from *Z* to give. If *A* takes the property dishonestly, he commits theft.
(p) *A*, in good faith, believing property belonging to *Z* to be *A*'s own property, takes that property out of *B*'s possession. Here, as *A* does not take dishonestly, he does not commit theft.

Section 379. Punishment for theft

Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 years, or fine, or both—Cognizable—Non-bailable—Triable by any Magistrate—Compoundable by the owner of the property stolen with the permission of the court.

Section 380. Theft in dwelling house, *etc*.

Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 7 years and fine—Cognizable—Non-bailable— Triable by any Magistrate—Non-compoundable.

STATE AMENDMENTS

State of Tamil Nadu:
Section 380 of the Indian Penal Code (Central Act XLV of 1860) (hereinafter in this Part referred to as the principal Act), shall be renumbered as sub-section (1) of that section and after sub-section.

(1) as so renumbered, the following sub-section shall be added, namely:

"(2) Whoever commits theft in respect of any idol or icon in any building used as a place of worship shall be punished with rigorous imprisonment for a term which shall not be less than two years but which may extend to three years and with fine which shall not be less than two

thousand rupees: Provided that the court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than two years." *Vide* Tamil Nadu Act 28 of 1993, sec. 2.

Section 381. Theft by clerk or servant of property in possession of master

Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 7 years and fine—Cognizable—Non-bailable— Triable by any Magistrate—Compounded by the owner of the property stolen with the permission of the court.

Section 382. Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft

Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) *A* commits theft on property in *Z*'s possession; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting *Z* in case *Z* should resist. *A* has committed the offence defined in this section.
(b) *A* picks *Z*'s pocket, having posted several of his companions near him, in order that they may restrain *Z*, if *Z* should perceive what is passing and should resist, or should attempt to apprehend *A*. *A* has committed the offence defined in this section.

Cheating (Section 420)

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 years, or fine, or both—Cognizable—Bailable— Triable by any Magistrate—Compoundable by the person cheated with the permission of the court.

Section 420. Cheating and dishonestly inducing delivery of property

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Robbery and Dacoity (Section 390-402)

CLASSIFICATION OF OFFENCE

Para I: Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

Para II: Punishment—Imprisonment for life—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

Section 390. Robbery

In all robbery there is either theft or extortion.

When theft is robbery —Theft is "**robbery**" if, in order to the committing of the theft, or in committing the theft, or in carving away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery —Extortion is "**robbery**" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation —The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations

(a) *A* holds *Z* down and fraudulently takes *Z's* money and jewels from *Z's* clothes without *Z's* consent. Here *A* has committed theft, and in order to the committing of that theft, has voluntarily caused wrongful restraint to *Z*. *A* has therefore committed robbery.
(b) *A* meets *Z* on the high roads, shows a pistol, and demands *Z's* purse. *Z* in consequence, surrenders his purse. Here *A* has extorted the purse from *Z* by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.
(c) *A* meets *Z* and *Z's* child on the high road. *A* takes the child and threatens to fling it down a precipice, unless *Z* delivers his purse. *Z*, in consequence delivers his purse. Here *A* has extorted the purse from *Z,* by causing *Z* to be in fear of instant hurt to the child who is there present. *A* has therefore committed robbery on *Z*.

(d) A obtains property from *Z* by saying— "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such; but it is not robbery, unless *Z* is put in fear of the instant death of his child.

COMMENTS

In order that theft may constitute robbery, prosecution has to establish—

(a) if in order to the committing of theft; or
(b) in committing the theft; or
(c) in carrying away or attempting to carry away property obtained by theft;
(d) the offender for that end *i.e.* any of the ends contemplated by (a) to (c).
(e) voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or instant wrongful restraint In other words, theft would only be robbery if for any of the ends mentioned in (a) to (c) the offender voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or instant wrongful restraint. If the ends does not fall within (a) to (c) but, the offender still causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or instant wrongful restraint, the offence would not be robbery. That (a) or (b) or (c) have to be read conjunctively with (d) and (e). It is only when (a) or (b) or (c) co-exist with (d) and (e) or there is a nexus between any of them and (d), (e) would amount to robbery; *State of Maharashtra* vs *Joseph Mingel Koli*, (1997) 2 Crimes 228 (Bom).

Section 391. Dacoity

When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "**dacoity**".

COMMENTS

When robbery is either committed or an attempt to commit it is made by five or more persons then all such persons, who are present or aiding in its commission or in an attempt to commit it, would commit the offence of dacoity; *State of Maharashtra* v. *Joseph Mingel Koli*, (1997) 2 Crimes 228 (Bom).

Section 392. Punishment for Robbery

Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

CLASSIFICATION OF OFFENCE

Para I: Punishment—Rigorous imprisonment for 10 years and fine—Cognizable— Non-bailable—Triable by Magistrate of the first class—Non-compoundable.
Para II: Punishment—Rigorous imprisonment for 14 years, and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

Section 393. Attempt to Commit Robbery

Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Rigorous imprisonment for 7 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

Section 394. Voluntarily Causing Hurt in Committing Robbery

If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for life, or rigorous imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

Comments

Not only the person who actually causes hurt but an associate of his/her would equally be liable for the mischief contemplated by this section; *Shravan Dashrath Darange* v. *State of Maharashtra*, (1997) 2 Crimes 47 (Bom).

Section 395. Punishment for Dacoity

Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for life, or rigorous imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Section 396. Dacoity with Murder

If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Death, imprisonment for life, or rigorous imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

COMMENTS

When prosecution failed to establish any nexus between death and commission of dacoity charge under section 396 will fail; *Wakil Singh* v. *State of Bihar*, (1981) BLJ 462.

Section 397. Robbery, or Dacoity, with Attempt to Cause Death or Grievous Hurt

If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

CLASSIFICATION OF OFFENCE

Punishment—Rigorous imprisonment for not less than 7 years—Cognizable— Non-bailable—Triable by Court of Session—Non-compoundable.

COMMENTS

(i) An act would only fall within the mischief of this section if at the time of committing robbery or dacoity the offender—

(a) uses any deadly weapon; or

(b) causes grievous hurt to any person; or

c) attempts to cause death or grievous hurt to any person; *Shravan Dashrath Datrange* v. *State of Maharashtra*, (1997) 2 Crimes 47 (Bom).

(ii) There can be no quarrel that knife is a deadly weapon within the meaning of section 397; *State of Maharashtra* v. *Vinayak Tukaram Utekar*, (1997) 2 Crimes 615 (Bom).

(iii) When identification of articles alleged to have been recovered from accused is not properly proved nor victim could identify accused in identification parade or in court accused cannot be convicted under section 397; *Bhurekhan* v. *State of Madhya Pradesh*, AIR 1982 SC 948 : (1982) Cr LJ 818: (1982) 1 SCC 174 : (1982) SCC (Cr) 128.

Section 398. **Attempt to Commit Robbery or Dacoity when Armed with Deadly Weapon**

If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

CLASSIFICATION OF OFFENCE

Punishment—Rigorous imprisonment for not less than 7 years—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Section 399. Making Preparation to Commit Dacoity

Whoever makes, any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Rigorous imprisonment for 10 years and fine—Cognizable— non-bailable—Triable by Court of Session—Non-compoundable.

Section 400. Punishment for Belonging to Gang of Dacoits

Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for life, or rigorous imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Section 401. Punishment for Belonging to Gang of Thieves

Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of *thugs* or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Rigorous imprisonment for 7 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

Section 402. Assembling for Purpose of Committing Dacoity

Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Criminal Misappropriation and Criminal Breach of Trust (Section 403, 405,409)

CLASSIFICATION OF OFFENCE

Punishment—Rigorous imprisonment for 7 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Section 403. Dishonest Misappropriation of Property

Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) *A* takes property belonging to *Z* out of *Z*'s possession, in good faith, believing, at any time when he takes it, that the property belongs to himself. *A* is not guilty of theft; but if *A*, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.
(b) *A*, being on friendly terms with *Z*, goes into *Z*'s library in *Z*'s absence, and takes away a book without *Z*'s express consent. Here, if *A* was under the impression that he had *Z*'s implied consent to take the book for the purpose of reading it, *A* has not committed theft. But, if *A* afterwards sells the book for his own benefit, he is guilty of an offence under this section.
(c) *A* and *B*, being joint owners of a horse, *A* takes the horse out of *B*'s possession, intending to use it. Here, as *A* has a right to use the horse, he does not dishonestly misappropriate it. But, if *A* sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation I —A dishonest misappropriation for a time only is a misappropriation with the meaning of this section.

Illustration

A finds a Government promissory note belonging to *Z*, bearing a blank endorsement. *A*, knowing that the note belongs to *Z*, pledges it with a banker as a security for a loan, intending at a future time to restore it to *Z*. *A* has committed an offence under this section.

Explanation 2 — A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting if for, or of restoring it to, the owner does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it. What are reasonable means or what is a reasonable time in such a case, is a question of fact. It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Illustrations

(a) *A* finds a rupee on the high road, not knowing to whom the rupee belongs. *A* picks up the rupee. Here *A* has not committed the offence defined in this section.
(b) *A* finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.
(c) *A* finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. *A* knows that this person can direct him to the person in whose favour the cheque was drawn. *A* appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) *A* sees *Z* drop his purse with money in it. *A* picks up the purse with the intention of restoring it to *Z*, but afterwards appropriates it to his own use. *A* has committed an offence under this section.
(e) *A* finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to *Z*, and appropriates it to his own use. *A* is guilty of an offence under this section.
(f) *A* finds a valuable ring, not knowing to whom it belongs. *A* sells it immediately without attempting to discover the owner. *A* is guilty of an offence under this section.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Non-cognizable—Bailable—Triable by any Magistrate—Compoundable by the owner of the property misappropriated with the permission of the court.

Section 405. **Criminal Breach of Trust**

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "**criminal breach of trust**".

Explanation 1 —A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2 — A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Illustrations

(a) *A*, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriate them to his own use. *A* has committed criminal breach of trust.

(b) *A* is a warehouse-keeper. *Z* going on a journey, entrusts his furniture to *A*, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. *A* dishonestly sells the goods. *A* has committed criminal breach of trust.
(c) *A*, residing in Calcutta, is agent for *Z*, residing at Delhi. There is an express or implied contract between *A* and *Z*, that all sums remitted by *Z* to *A* shall be invested by *A*, according to *Z*'s direction. *Z* remits a lakh of rupees to *A*, with directions to *A* to invest the same in Company's paper. *A* dishonestly disobeys the direction and employs the money in his own business. *A* has committed criminal breach of trust.
(d) But if *A*, in the last illustration, not dishonestly but in good faith, believing that it will be more for *Z*'s advantage to hold shares in the Bank of Bengal, disobeys *Z*'s directions, and buys shares in the Bank of Bengal, for *Z*, instead of buying Company's paper, here, though *Z* should suffer loss, and should be entitled to bring a civil action against *A*, on account of that loss, yet *A*, not having acted dishonestly, has not committed criminal breach of trust.
(e) *A*, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. *A* dishonestly appropriates the money. *A* has committed criminal breach of trust.
(f) *A*, a carrier, is entrusted by *Z* with property to be carried by land or by water. *A* dishonestly misappropriates the property. *A* has committed criminal breach of trust.

Section 409. Criminal Breach of Trust by Public Servant, or by Banker, Merchant or Agent

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 5 years and fine—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

Section 441. Criminal Trespass

441. Criminal Trespass

Whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy and person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains therewith intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, or, having entered into or upon such property, whether before or after the coming into force of the Criminal Law (U.P. Amendment) Act, 1961, with the intention of taking unauthorized possession or making unauthorised use of such property fails to withdraw from such property or its possession or use,

when called upon to do so by that another person by notice in writing, duly served upon him, by the date specified in the notice, is said to commit "**criminal tresspass**". *Vide* U.P. Act No. 31 of 1961, section 2.

Section 442. **House trespass**

Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "**house trespass**".

Explanation— The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Section 443. Lurking house-trespass

Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "**lurking house-trespass**".

Section 444. Lurking house-trespass by night

Whoever commits lurking house-trespass after sunset and before sunrise is said to commit "**lurking house-trespass by night**".

Section 445. House Breaking

A person is said to commit "**house-breaking**" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say: —

First—If he enters or quits through a passage by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.
Secondly—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.
Thirdly —If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house trespass by any means by which that passage was not intended by the occupier of the house to be opened.
Fourthly —If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.
Fifthly —If he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault.
Sixthly —If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been

unfastened by himself or by an abettor of the house-trespass.
Explanation—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations

(a) *A* commits house-trespass by making a hole through the wall of *Z*'s house, and putting his hand through the aperture. This is house-breaking.
(b) *A* commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.
(c) *A* commits house-trespass by entering *Z*'s house through a window. This is house-breaking.
(d) *A* commits house-trespass by entering *Z*'s house through the door, having opened a door which was fastened. This is house-breaking.
(e) *A* commits house-trespass by entering *Z*'s house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.
(f) *A* finds the key of *Z*'s house door, which *Z* had lost, and commits house trespass by entering *Z*'s house, having opened the door with that key. This is house-breaking.
(g) *Z* is standing in his doorway. *A* forces a passage by knocking *Z* down, and commits house-trespass by entering the house. This is house-breaking.
(h) *Z*, the door-keeper of *Y*, is standing in *Y*'s doorway. *A* commits house-trespass by entering the house, having deterred *Z* from opposing him by threatening to beat him. This is house-breaking.

Section 446. House-Breaking by Night

Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night".

447. Punishment for Criminal Trespass

Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, with fine or which may extend to five hundred rupees, or with both.

Unit-V: CONTEMPORARY FORMS OF CRIME

Organized crimes: Forms and Nature

Organized crime is a non-ideological enterprise involving a number of persons in close social interaction, organized on a hierarchical basis, with at least three levels/ranks, for the purpose of securing profit and power by engaging in illegal and legal activities. Positions in the hierarchy and positions involving functional specialization may be assigned on the basis of kinship or friendship, or rationally assigned according to skill. The positions are not dependent on the individuals occupying them at any particular time. Permanency is assumed by the members who strive to keep the enterprise integral and active in pursuit of its goals. It eschews competition and strives for monopoly on an industry or territorial basis. There is a willingness to use violence and/or bribery to achieve ends or to maintain discipline. Membership is restricted, although nonmembers may be involved on a contingency basis. There are explicit rules, oral or written, which are enforced by sanctions that include murder.

Although there is no generally accepted definition of organized crime- indeed, the federal Organized Crime Control Act of 1970 fails to define organized crime- a number of attributes have been identified by law enforcement agencies and researchers as indicative of the phenomenon. Offering these attributes has a practical dimension: the attributes provide a basis for determining if a particular group of criminals constitutes organized crime and, therefore, needs to be approached in a way different from the way one would approach terrorists or groups of conventional criminals. Organized crime:

- Has no political goals
- Is hierarchical
- Has a limited or exclusive membership
- Constitutes a unique subculture
- Perpetuates itself
- Exhibits a willingness to use illegal violence
- Is monopolistic
- Is governed by explicit rules and regulations

Terrorism

Terrorism is as old as mankind. It has been part of mankind's evolution. But cultural perceptions of different periods gave it different labels. Terrorism is probably the most defined word –there are over 109 definitions for it. That should indicate what a misunderstood word it is. The religious persecutions of 15th and 16th centuries, the Jewish holocaust during Hitler's regime, the mindless violence of 9/11 and its aftermath may be called by different names. But all of them have one common feature that defines terrorism – most of the victims are innocent, unarmed civilians well away from the battlefields. Those who revel in precisely defining the word may dispute this point of view, but terrorism is no more a semantic exercise. It has become a life threatening feature of ordinary people's lives in more nations than ever before in human history. Terrorist acts or the threat of such action have been in existence for millennia. Despite having a history longer than the modern nation-state, the use of terror by governments and those that contest their power remains poorly understood. While the meaning of the word terror itself is clear, when it is applied to acts and actors in the real world it becomes confused. Part of this is due to the use of terror tactics by actors at all levels in the social and political environment. Is the Unabomber, with his solo campaign of terror, a criminal, terrorist, or revolutionary?

The very flexibility and adaptability of terror throughout the years has contributed to the confusion. Those seeking to disrupt, reorder or destroy the status quo have continuously sought new and creative ways to achieve their goals. Changes in the tactics and techniques of terrorists have been significant, but even more significant are the growth in the number of causes and social contexts where terrorism is used.

Over the past 20 years, terrorists have committed extremely violent acts for alleged political or religious reasons. Political ideology ranges from the far left to the far right. For example, the far left can consist of groups such as Marxists and Leninists who propose a revolution of workers led by revolutionary elite. On the far right, we find dictatorships that typically believe in a merging of state and business leadership.

Nationalism is the devotion to the interests or culture of a group of people or a nation. Typically, nationalists share a common ethnic background and wish to establish or regain a homeland. Religious extremists often reject the authority of secular governments and view legal systems that are not based on their religious beliefs as illegitimate. They often view modernization efforts as corrupting influences on traditional culture.

Special interest groups include people on the radical fringe of many legitimate causes; e.g., people who use terrorism to uphold antiabortion views, animal rights, radical environmentalism. These groups believe that violence is morally justifiable to achieve their goals.

Early History of Terrorism

The earliest known organization that exhibited aspects of a modern terrorist organization was the Zealots of Judea. Known to the Romans as sicarii, or dagger-men, they carried on an

underground campaign of assassination of Roman occupation forces, as well as any Jews they felt had collaborated with the Romans. Their motive was an uncompromising belief that they could not remain faithful to the dictates of Judaism while living as Roman subjects. Eventually, the Zealot revolt became open, and they were finally besieged and committed mass suicide at the fortification of Masada.

The Assassins were the next group to show recognizable characteristics of terrorism, as we know it today. A breakaway faction of Shia Islam called the Nizari Ismalis adopted the tactic of assassination of enemy leaders because the cult's limited manpower prevented open combat. Their leader, Hassam-I Sabbah, based the cult in the mountains of Northern Iran. Their tactic of sending a lone assassin to successfully kill a key enemy leader at the certain sacrifice of his own life (the killers waited next to their victims to be killed or captured) inspired fearful awe in their enemies. Even though both the Zealots and the Assassins operated in antiquity, they are relevant today: First as forerunners of modern terrorists in aspects of motivation, organization, targeting, and goals. Secondly, although both were ultimate failures, the fact that they are remembered hundreds of years later, demonstrates the deep psychological impact they caused.

What is Terrorism?

- Is an unlawful act of violence
- Intimidates governments or societies
- Its goal is to achieve political, religious or ideological objectives
- Uses Asymmetric Warfare - unexpected, unconventional destructive tactics as leverage against society.

Types of Terrorism

You will need to be familiar with the five types of terrorism.

- **State-Sponsored terrorism**, which consists of terrorist acts on a state or government by a state or government.
- **Dissent terrorism**, which are terrorist groups which have rebelled against their government.
- **Terrorists and the Left and Right**, which are groups rooted in political ideology.
- **Religious terrorism**, which are terrorist groups which are extremely religiously motivated and
- **Criminal Terrorism**, which are terrorists acts used to aid in crime and criminal profit.

Causes/ Ingredients are/were:

- Persecution and the killing of the unbelievers
- Plunder and ethnic cleansing
- Political assassination and revenge killing
- Gratuitous murder and unabated genocide
- Property grab and extreme lasciviousness
- Forced conversion/*Jizya*

- Sectarian persecution (destruction of Work ship places)
- Nationalism on the Rise
- Damaged Legitimacy
- Cold War Developments
- The Internationalization of Terror

Globalization and increasing international commerce supported by communication networks spanning national boundaries have created new paradigms in the very concept of national security. India is no exception to this sea change taking place the world over. So the traditional concept of national security as exercising military option only has given way to multilateral operations as exhibited by the global war on terrorism culminating in the attack on Afghanistan based on a UN resolution. Gen. V.P. Malik, former COAS, has described the diverse and multi-dimensional security challenge faced by countries as under:

Different forms of terrorism

- Economic under-development.
- Trade imbalances and disputes.
- Illegal migration of people.
- Uncontrolled population growth
- Human rights abuses.
- Drug trafficking.
- Environmental degradation
- Religious Fundamentalism

Cyber Crimes: Overview

In the information age the rapid development of computers, telecommunications and other technologies has led to the evolution of new forms of trans-national crimes known as "cyber crimes". Cyber crimes have virtually no boundaries and may affect every country in the world. They may be vaguely defined as "any crime with the help of computer and telecommunication technology", with the purpose of influencing the functioning of computer or the computer systems.

A generalized definition of cyber crime may be "unlawful acts wherein the computer is either a tool or target or both". Is one form White Collar Crime.

Forms of Cyber Crimes

The subject of cyber crime may be broadly classified under the following three groups.

1. Against Individuals the person & property of an individual
2. Against Organization Firm, Company, Group of Individuals
3. Against Society at large- Government

Major forms includes

Harassment via Emails	Phishing	Spam Attacks
Cyber-Stalking	Cyber Squatting	Computer Vandalism

Defamation
Intellectual Property Crimes
Intellectual Property Crimes
Dissemination of obscene material- Polluting through indecent exposure / Indecent exposure/ Child Pornography (which banned in most of the country)
Data Theft
Network Packet Sniffers
IP Spoofing
Password Attacks
Man in the Middle Attacks
Logic Bombs
Online Investment Newsletters
Bulletin Boards
Phreaking
Denial of Service
War Dialing
Credit Card Fraud
Online fraud
Dumpster Diving
Buffer Overflow
Cyber terrorism against the Government
Trafficking
Unauthorized control / access over computer system
Alteration and Destruction of Digital Information through transmission- Viruses- Worms- Trojan horses.

Prevention, detection and prosecution of cyber criminals

Detection and Investigation of Cyber Crimes

Crime Scene Techniques: Frequently, computer crime evidence will be seized by the execution of a search warrant- This warrant should include information about the computer, data storage devices and any peripherals that may be of concern to investigators, such as scanners- Digital Forensic Analysis- Digital forensic analysis is the science of acquiring, preserving, retrieving, and presenting data that has been processed electronically and stored on computer media

Preventing Cyber Crimes

- Protecting information, largely by making it inaccessible to unauthorized users, is a key element of preventing computer crimes
- Back-Ups and Redundant File Storage
- Backups are the single most important security measure a company or individual can take
- Install Original Anti-Virus
- Firewalls
- A firewall is a device or software that acts as a checkpoint between a network or stand-alone computer and the Internet

Information Technology Act 2000

In May 2000, both the houses of the Indian Parliament passed the Information Technology Bill. The Bill received the assent of the President in August 2000 and came to be known as the Information Technology Act, 2000. Cyber laws are contained in the IT Act, 2000. This Act aims to provide the legal infrastructure for e-commerce in India. And the cyber laws have a major impact for e-businesses and the new economy in India. The Information Technology Act, 2000 also aims to provide for the legal framework so that legal sanctity is accorded to all electronic records and other activities carried out by electronic means. The Act states that unless otherwise agreed, an acceptance of contract may be expressed by electronic means of communication and the same shall have legal validity and enforceability. Some highlights of the Act are listed below:

- Chapter-II of the Act specifically stipulates that any subscriber may authenticate an electronic record by affixing his digital signature. It further states that any person can verify an electronic record by use of a public key of the subscriber.

- Chapter-III of the Act details about Electronic Governance and provides inter alia amongst others that where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is - rendered or made available in an electronic form; and accessible so as to be usable for a subsequent reference.

- The said chapter also details the legal recognition of Digital Signatures.

- Chapter-IV of the said Act gives a scheme for Regulation of Certifying Authorities. The Act envisages a Controller of Certifying Authorities who shall perform the function of exercising supervision over the activities of the Certifying Authorities as also laying down standards and conditions governing the Certifying Authorities as also specifying the various forms and content of Digital Signature Certificates. The Act recognizes the need for recognizing foreign Certifying Authorities and it further details the various provisions for the issue of license to issue Digital Signature Certificates.

- Chapter-VII of the Act details about the scheme of things relating to Digital Signature Certificates. The duties of subscribers are also enshrined in the said Act.

- Chapter-IX of the said Act talks about penalties and adjudication for various offences. The penalties for damage to computer, computer systems etc. has been fixed as damages by way of compensation not exceeding Rs. 1,00,00,000 to affected persons. The Act talks of appointment of any officers not below the rank of a Director to the Government of India or an equivalent officer of state government as an Adjudicating Officer who shall adjudicate whether any person has made a contravention of any of the provisions of the said Act or rules framed there under. The said Adjudicating Officer has been given the powers of a Civil Court.

- Chapter-X of the Act talks of the establishment of the Cyber Regulations Appellate Tribunal, which shall be an appellate body where appeals against the orders passed by the Adjudicating Officers, shall be preferred.

- Chapter-XI of the Act talks about various offences and the said offences shall be investigated only by a Police Officer not below the rank of the Deputy Superintendent of Police. These offences include tampering with computer source documents, publishing of information, which is obscene in electronic form, and hacking.

- The Act also provides for the constitution of the Cyber Regulations Advisory Committee, which shall advice the government as regards any rules, or for any other purpose connected with the said act. The said Act also proposes to amend the Indian Penal Code, 1860, the Indian Evidence Act, 1872, The Bankers' Books Evidence Act, 1891, The Reserve Bank of India Act, 1934 to make them in tune with the provisions of the IT Act.

- As discussed in the first chapter, the Government of India enacted the Information Technology (I.T.) Act with some major objectives to deliver and facilitate lawful electronic, digital, and online transactions, and mitigate cyber-crimes.

Salient Features of I.T Act

The salient features of the I.T Act are as follows

- Digital signature has been replaced with electronic signature to make it a more technology neutral act.
- It elaborates on offenses, penalties, and breaches.
- It outlines the Justice Dispensation Systems for cyber-crimes.
- It defines in a new section that *cyber café is any facility from where the access to the internet is offered by any person in the ordinary course of business to the members of the public*.
- It provides for the constitution of the Cyber Regulations Advisory Committee.
- It is based on The Indian Penal Code, 1860, The Indian Evidence Act, 1872, The Bankers' Books Evidence Act, 1891, The Reserve Bank of India Act, 1934, etc.
- It adds a provision to Section 81, which states that the provisions of the Act shall have overriding effect. The provision states that *nothing contained in the Act shall restrict any person from exercising any right conferred under the Copyright Act, 1957*.

Advantages of Cyber Laws

The IT Act 2000 attempts to change outdated laws and provides ways to deal with cyber crimes. We need such laws so that people can perform purchase transactions over the Net through credit cards without fear of misuse. The Act offers the much-needed legal framework so that information is not denied legal effect, validity or enforceability, solely on the ground that it is in the form of electronic records.

- In view of the growth in transactions and communications carried out through electronic records, the Act seeks to empower government departments to accept filing, creating and retention of official documents in the digital format. The Act has also proposed a legal framework for the authentication and origin of electronic records / communications through digital signature.

- From the perspective of e-commerce in India, the IT Act 2000 and its provisions contain many positive aspects. Firstly, the implications of these provisions for the e-businesses would be that email would now be a valid and legal form of communication in our country that can be duly produced and approved in a court of law.

- Companies shall now be able to carry out electronic commerce using the legal infrastructure provided by the Act.

- Digital signatures have been given legal validity and sanction in the Act.

- The Act throws open the doors for the entry of corporate companies in the business of being Certifying Authorities for issuing Digital Signatures Certificates.
- The Act now allows Government to issue notification on the web thus heralding e-governance.

- The Act enables the companies to file any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in electronic form by means of such electronic form as may be prescribed by the appropriate Government.

- The IT Act also addresses the important issues of security, which are so critical to the success of electronic transactions. The Act has given a legal definition to the concept of secure digital signatures that would be required to have been passed through a system of a security procedure, as stipulated by the Government at a later date.
- Under the IT Act, 2000, it shall now be possible for corporates to have a statutory remedy in case if anyone breaks into their computer systems or network and causes damages or copies data. The remedy provided by the Act is in the form of monetary damages, not exceeding Rs. 1 crore.

Women and Child Trafficking

Human trafficking is growing regional, national, and global problems. This complex, webbed system of global crime violate fundamental human rights (Kofi Annan, 2007); threaten the security and welfare of national and international civil societies; and undermine the authority and capacity of national governments to protect their populations. This illicit activity damage and destroy millions of lives. Most vulnerable victims are women and children. Trafficking is more widespread than most people realize. Efforts to eradicate this blight appear to be losing ground to criminal elements. Statistics show that current trafficking efforts have increased steadily over the last 15 years, but the incidence of trafficked persons has also continued to increase, so that the traffickers have prevented counter-trafficking workers from bringing a decrease in human trafficking related statistics. Hence, author argues the continued increase results from the non-comprehensive strategy that has been employed by the international

Definition- Human trafficking

According to the protocol to prevent, suppress and punish trafficking in persons, especially women and children, who supplement the United Nations convention against transnational organized crime, trafficking in persons is defined as follows (UNGIFT, 2007, pp 7)

How are victims trafficked?

Basically, when we take any case were a human is trafficked they are likely to have experienced one of the following force, fraud and coercion are methods used by traffickers to press victims into lives of servitude or abused.

Force: Rape, kidnapping and abduction, beatings and confinement.
Fraud: Includes false and deceptive offers/ promise of employment, marriage & better life.

Coercion: Threats of serious harm to, or physical restraint of, any person; any scheme, plan or pattern intended to cause victims to believe that failure to perform an act would result in restraint against them; or the abuse or threatened abuse of the legal process.

Law Preventing: Immoral Traffic (Prevention) Act, 1956
[Act No. 104 of 1956 dated 30th. December, 1956]

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23	Power to make rules
24	Act not to be in derogation of certain other Acts
25	Repeal and savings
	The Schedule
	Footnotes

An Act to provide in pursuance of the International Convention signed at New York on the 9th day of May, 1950, for [the prevention of immoral traffic]. Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:

Comment: It would, therefore, be meaningful if rehabilitation programmes are launched and implementation machinery is set not only to eradicate the fertile source of prostitution but also for successful rehabilitation of the fallen women who are the victims of circumstances to regain their lost respect to the dignity of person to sustain equality of status, economic and their social empowerment. Gaurav Jain, Petitioner v. Union of India AIR 1997 SUPREME COURT 3021.

RECOMMENDED READINGS

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