



**THE LAWWAY WITH LAWYERS JOURNAL**

**VOLUME:-6 ISSUE NO:- 6 , DECEMBER 1, 2023**

**ISSN (ONLINE):- 2584-1106**

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# **Understanding Criminal Law: Safeguarding Justice and Order**

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## **Abstract:**

Criminal law forms the bedrock of a society's legal framework, delineating norms and consequences for actions deemed harmful or threatening to societal well-being. This article aims to provide an insightful overview of criminal law, exploring its foundational principles, key elements, and the mechanisms that underpin justice systems worldwide. Through an analysis of the evolution of criminal law and its contemporary applications, this article delves into the intricate balance between individual rights and collective security.

## **Keywords:**

Criminal law, justice, legal framework, principles, rights, consequences, societal well-being.

## **Introduction:**

Criminal law is a multifaceted system designed to maintain social order, protect citizens, and uphold justice. It establishes a code of conduct, identifying behaviors that society deems unacceptable, and prescribes penalties for transgressions. Rooted in ethical and moral standards, criminal law aims to deter unlawful behavior while providing a framework for adjudicating disputes and reconciling conflicts.

## Main Content:

### • Foundations of Criminal Law:

- Historical evolution: Tracing the origins of criminal law from ancient civilizations to modern legal systems.
- Philosophical underpinnings: Exploring theories of punishment and the societal objectives of retribution, deterrence, rehabilitation, and incapacitation.
- Elements of criminal liability: Understanding the essential components such as mens rea (guilty mind) and actus reus (guilty act).

### • Key Principles and Concepts:

- Burden of proof and presumption of innocence: Analyzing the fundamental principles that guide fair trials and protect individuals accused of crimes.
- Classification of crimes: Differentiating between felonies, misdemeanors, and infractions, and their respective legal implications.
- Criminal procedure: Examining the stages of criminal proceedings, from investigation and arrest to trial and sentencing.

### • Contemporary Challenges and Developments:

Addressing the impact of digital spaces on criminal activities and the challenges in regulating cybercrimes.

#### ○ Intersectionality and justice:

Evaluating how factors such as race, gender, and socio-economic status influence the application of criminal law and access to justice.

#### ○ Global cooperation:

Highlighting the significance of international cooperation in combating transnational crimes and fostering mutual legal assistance.

#### ○ Principles of criminal law: -

The traditional approach to criminal law has been that a crime is an act that is morally wrong. The purpose of criminal sanctions was to make the offender give retribution for harm done and expiate his moral guilt; punishment was to be meted out in proportion to the guilt of the accused. In modern times more rationalistic and pragmatic views have predominated. Writers of the Enlightenment such as Cesare Beccaria in Italy, Montesquieu and Voltaire in France, Jeremy Bentham in Britain, and P.J.A. von Feuerbach in Germany considered the main purpose of criminal law to be the prevention of crime. With the development of the social sciences, there arose new concepts, such as those of the protection of the public and the reform of the offender. Such a purpose can be seen in the German criminal code of 1998, which admonished the courts that the “effects which the punishment will be expected to have on the perpetrator’s future life in society shall be considered.” In the United States a Model Penal Code proposed by the American Law Institute in 1962 states that an objective of criminal law should be “to give fair warning of the nature of the conduct declared to constitute an offense” and “to promote the correction and rehabilitation of offenders.” Since that time there has been renewed interest in the concept of general prevention, including both the deterrence of possible offenders and the stabilization and strengthening of social norms.

○ **Common law and code law: -**

Important differences exist between the criminal law of most English-speaking countries and that of other countries. The criminal law of England and the United States derives from the traditional English common law of crimes and has its origins in the judicial decisions embodied in reports of decided cases. England has consistently rejected all efforts toward comprehensive legislative codification of its criminal law; even now there is no statutory definition of murder in English law. Some Commonwealth countries, however, notably India, have enacted criminal codes that are based on the English common law of crimes.

The criminal law of the United States, derived from the English common law, has been adapted in some respects to American conditions. In most of the U.S. states, the common law of crimes has been repealed by legislation. The effect of such actions is that no person may be tried for any offense that is not specified in the statutory law of the state. But even in these states the common-law principles continue to exert influence, because the criminal statutes are often simply codifications of the common law, and their provisions are interpreted by reference to the common law. In the remaining states prosecutions for common-law offenses not specified in statutes do sometimes occur. In a few states and in the federal criminal code, the so-called penal, or criminal, codes are simply collections of individual provisions with little effort made to relate the parts to the whole or to define or implement any theory of control by penal measures.

In western Europe the criminal law of modern times has emerged from various codifications. By far the most important were the two Napoleonic codes, the *Code d'instruction criminelle* of 1808 and the *Code penal* of 1810. The latter constituted the leading model for European criminal legislation throughout the first half of the 19th century, after which, although its influence in Europe waned, it continued to play an important role in the legislation of certain Latin American and Middle Eastern countries. The German codes of 1871 (penal code) and 1877 (procedure) provided the models for other European countries and have had significant influence in Japan and South Korea, although after World War II the U.S. laws of criminal procedure were the predominant influence in the latter countries. The Italian codes of 1930 represent one of the most technically developed legislative efforts in the modern period. English criminal law has strongly influenced the law of Israel and that of the English-speaking African states. French criminal law has predominated in the French-speaking African states. Italian criminal law and theory have been influential in Latin America.

Since the mid-20th century, the movement for codification and law reform has made considerable progress everywhere. The American Law Institute's Model Penal Code stimulated a thorough reexamination of both federal and state criminal law, and new codes were enacted in most of the states. England enacted several important reform laws (including those on theft, sexual offenses, and homicide), as well as modern legislation on imprisonment, probation, suspended sentences, and community service. Sweden enacted a new, strongly progressive penal code in 1962. In Germany a criminal code was adopted in 1998 following the reunification of East and West Germany. In 1975 a new criminal code came into force in Austria. New criminal codes were also published in Portugal (1982) and Brazil (1984). France enacted important reform laws in 1958, 1970, 1975, and 1982, as did Italy in 1981 and Spain in 1983. Other reforms have

been under way in Finland, the Netherlands, Belgium, Switzerland, and Japan. The republics formerly under the control of the Soviet Union also have actively revised their criminal codes, including Hungary (1961), Bulgaria (1968), Uzbekistan (1994), Russia (1996), Poland (1997), Kazakhstan (1997), Ukraine (2001), and Romania (2004).

Comparisons between the systems of penal law developed in the western European countries, and those having their historical origins in the English common law must be stated cautiously. Substantial variations exist even among the nations that adhere generally to the Anglo-American system or to the law derived from the French, Italian, and German codes. In many respects, however, the similarities of the criminal law in all states are more important than the differences. Certain forms of behaviour are everywhere condemned by law. In matters of mitigation and justification, the continental law tends to be more explicit and articulate than the Anglo American law, although modern legislation in countries adhering to the latter has reduced these differences. Contrasts can be drawn between the procedures of the two systems, yet even here there is a common effort to provide fair proceedings for the accused and protection for basic social interests.

○ **Legality: -**

The principle of legality is recognized in almost all legal systems throughout the world as the keystone of criminal law. It is employed in four senses. The first is that there can be no crime without a rule of law; thus, immoral or antisocial conduct not forbidden and punished by law is not criminal. The law may be customary, as in some common-law countries; in most countries, however, the only source of criminal law is a statute (*nullum crimen sine Lege*, “no crime without a law”).

Second, the principle of legality directs that criminal statutes be interpreted strictly and that they are not applied by analogical extension. If a criminal statute is ambiguous in its meaning or application, it is often given a narrow interpretation favorable to the accused. This does not mean that the law must be interpreted literally if to do so would defeat the clear purpose of the statute. The Model Penal Code incorporates a provision that was enacted in some U.S. state laws. The code recommends that its provisions be construed “according to the fair import of their terms,” which comes closer to the European practice.

Third, the principle of legality forbids the application of the law retroactively. In order that a person may be convicted, a law must have been in effect at the time the act was committed. This aspect of the principle is embodied in the ex post facto provisions of the U.S. Constitution and such international treaties as the European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 1950) and the International Covenant on Civil and Political Rights (entered into force 1976). It is also embodied in the Rome Statute creating the International Criminal Court (ICC; ratified 2002).

Fourth, the language of criminal statutes must be as clear and unambiguous as possible in order to provide fair warning to the potential lawbreaker. In some countries statutes may even be considered inapplicable if they are vague.

○ **Protection against double jeopardy:-**

Legal systems generally include some restriction against prosecuting a person more than once for the same offense. In Anglo-American law the most difficult problems of double jeopardy involve the question of whether the second prosecution is for the “same” or a “different” offense. It is held that acquittal or conviction of an offense prohibits subsequent prosecution of a lesser offense that was included in the first. According to the U.S. Supreme Court in *Blockburger v. United States*, 284 U.S. 299, 304 (1932), the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact that the other does not. In continental European law, on the other hand, the question is whether the second prosecution concerns the same “material fact” or “historical event,” and the state cannot subject a person to a second trial for any offense arising out of the same factual situation.

A problem under the federal system of the United States is whether an offender may be prosecuted under both state and federal law for the same conduct (the specific offenses being different). A number of state laws have prohibited state prosecutions after acquittals or convictions in a federal court or in the court of another state for offenses involving the same conduct. However, the U.S. Supreme Court has held that such multiple prosecutions by separate sovereigns are not prohibited by the double jeopardy clause of the Fifth Amendment to the U.S. Constitution.

systems of law have statutes restricting the time within which legal proceedings may be brought. The periods prescribed may vary according to the seriousness of the offense. In German law, for example, the periods range from 3 years for minor offenses to 30 years for crimes involving a life sentence. General statutes limiting the times within which prosecutions for crimes must be begun are common in continental Europe and the United States. In England there is no general statute of limitations applicable to criminal actions, although statutes for specific crimes frequently have included time limits.

In many countries there are no statutes of limitations for particularly heinous offenses, including capital felonies in the United States and genocide and murder in Germany. In 1968 the UN General Assembly adopted a Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. Similarly, there is no statute of limitations for prosecutions of the offenses of genocide, crimes against humanity, and war crimes under the Rome Statute creating the ICC.

○ **The elements of crime: -**

It is generally agreed that the essential ingredients of any crime are (1) a voluntary act or omission (actus reus), accompanied by (2) a certain state of mind (mens rea). An act may be any kind of voluntary human behaviour. Movements made in an epileptic seizure are not acts, nor are movements made by a somnambulist before awakening, even if they result in the death of another person. Criminal liability for the result also requires that the harm done must have been caused by the accused. The test of causal relationship between conduct and result is that the event would not have happened the same way without direct participation of the offender.

Criminal liability may also be predicated on a failure to act when the accused was under a legal duty to act and was reasonably capable of doing so. The legal duty to act may be imposed directly by statute, such as the requirement to file a income tax return, or it may arise out of the

relationship between the parties, as the obligation of parents to provide their child with food. ○

### **Liability without mens rea: -**

Some penal offenses do not require the demonstration of culpable mind on the part of the accused. These traditionally include statutory rape, in which knowledge that the child is below the age of consent is not necessary to liability. There is also a large class of “public welfare offenses,” involving such things as economic regulations or laws concerning public health and safety. The rationale for eliminating the mens rea requirement in such offenses is that to require the prosecution to establish the defendant’s intent, or even negligence, would render such regulatory legislation largely ineffective and unenforceable. Such cases are known in Anglo American law as strict liability offenses, and in French law as *infractions purement matérielles*. In German law they are excluded because the requirement of mens rea is considered a constitutional principle.

There has been considerable criticism of statutes that create liability without actual moral fault. To expose citizens to the condemnation of a criminal conviction without a showing of moral culpability raises issues of justice. In many instances the objectives of such legislation can more effectively be achieved by civil sanctions, such as, for example, suits for damages, injunctions, and the revocation of licenses.

#### ○ **Some offenses: -**

All advanced legal systems condemn as criminal the sorts of conduct described in the Anglo American law as treason, murder, aggravated assault, theft, robbery, burglary, arson, and rape. With respect to minor police regulations, however, substantial differences in the definition of criminal behavior occur even between jurisdictions of the Anglo-American system. Comparisons of the continental European criminal law with that based on the English common law of crimes also reveal significant differences in the definition of certain aspects of more serious crimes. Continental European law, for example, frequently articulates grounds for mitigation involving considerations that are considered in the Anglo-American countries only in the exercise of discretion by the sentencing authority or by lay juries. This may be illustrated with respect to so called mercy killings. The Anglo-American law of murder recognizes no formal grounds of defense or mitigation in the fact that the accused killed to relieve someone of suffering from an apparently incurable disease. Many continental European and Latin American codes, however, provide for mitigation of offenses prompted by such motives and sometimes even recognize in such motives a defense to the criminal charge.

### **Conclusion:**

Criminal law serves as a cornerstone in fostering a harmonious society by defining norms, establishing boundaries, and ensuring accountability. Its evolution reflects societal values and aspirations for justice. However, as societies evolve and challenges diversify, the adaptation of criminal law remains pivotal in addressing emerging threats while upholding fundamental rights and principles.

### **Footnotes:**

- Lon L. Fuller, "The Morality of Law" (Yale University Press, 1964).
- Anthony Duff, "Criminal Attempts" (Oxford University Press, 1996).
- United Nations Office on Drugs and Crime (UNODC), "Global Report on Trafficking in Persons."