LAW OF CRIMES I

ORIGIN OF CRIMINAL LAW

- There was no criminal law in the uncivilized society(either succumb or overpower)
- Tooth for a tooth & eye for an eye – was the forerunner of criminal justice system(revenge/vengeance)
- As time passed, the concept of compensation for the victim arose along with prohibition on killing the adversary.
- The birth of Archaic Criminal Law – initially people framed their own rules, later State took over.

HINDU CONCEPTS OF CRIMINAL JURISPRUDENCE – ORIGIN FROM MANU

- Sir William Jones translated Manus criminal law. As per Manu's code, gravity of the offence was dependent on caste & creed.
- Manu recognized

✓ Assault
✓ Theft
✓ Robbery
✓ False evidence
✓ Slander
✓ Criminal breach of trust

- ✓ Cheating
- ✓ Adultery
- ✓ Rape
- Under the Ancient law, the King protected the subjects (Administered Justice) & in return the subjects owed allegiance & gave revenue to the King. But the fine imposed went to the treasury & not to the victim

WESTERN JURISPRUDENCE

- This was mainly based on the Roman Law.
- Framework from the state punishment of wrongdoers & thereby preserve social order by way of:

(conviction+ punishment)

MUSLIM PERIOD

- Islamic law/Sharia (divine)was based on the principles enunciated by the Quran
- Punishments were of 3 kinds:

✓ Hadd – fixed punishment as laid down in the Shariat (offences like theft, robbery, whoredom, defamation, drunkenness)

✓ Tazir – prohibition including all crimes not classified under Hadd.(counterfeiting of coins, gambling, forgery, sodomy)

✓ Qisas – 'blood fine' paid by the offender(murder) & (treason i.e., ghadr) mostly death penalty.

ELABORATION OF THE CRIMINAL LAW OF THE HINDU SYSTEM

- "A king who punishes those do not deserve to be condemned and fails to punish those who deserve punishment becomes infamous and is ultimately doomed to hell." Manu
- As regards the dispensing of justice, he says " as a hunter traces the lair of a wounded beast by the drops of blood, thus let a king investigate the true point of justice by deliberate argument; let him fully understand the nature of the brute, the mode and the times, adhering to all the rules of practice."

- Yajnavalkya lays down that the king should inflict punishment upon those who deserve it after taking into consideration
- ✓ The nature of the offence
- ✓ Time & place of the offence
- ✓ Strength, age, vocation & wealth of the accused
- ✓ Whether it was time offence or or was the accused a repeat offender
- ✓ Whether the offence was committed with or without deliberation
- Individualization of Punishment was followed in that society

ELABORATION OF THE CRIMINAL LAW OF THE MUSLIM SYSTEM

- The Ayeen-i-Akbari makes reference to the following in adjudicating criminal matters:

✓ It is the duty of the monarch to receive complaints & administer justice, yet it is necessary to delegate his powers to others for making diligent investigation

✓ The monarch shall begin with asking about the circumstances of the case, examine each witness separately & take down their respective evidence. If necessary the case can b tried again from the beginning & from the similarity & disagreement, truth can be ascertained.

- The monarch also created the office of the Kazi to act as judge & the person who passed the sentences of punishment was called Mir Abdul.
- The office of both the Kazi & Mir Abdul was hereditary.
- The punishment was three folds:
  - Retaliation (even personal retaliation was allowed in some cases)
  - Compensation
  - Deterrence
- According to Abu Hanifa the weapon used for murder should be taken into consideration for awarding punishment
- According to Aboo Yusuf & Abu Mohammad, emphasis should be on the intention behind the crime & not the weapon used.

DEVELOPMENT OF CRIMINAL LAW IN INDIA UNDER THE BRITISH RULE

- The Mohammedan system of administration of criminal justice was in force when the East India Company spread its dominion in India.
- The British judiciary was enjoined to preserve *status quo* in the matter of civil & criminal justice & their administration but later on they realized that Mohammedan criminal law was defective in many respects, it gave no weight to the testimony of unbelievers (non Muslims).

- Under the Mughul rule, civil & revenue justice was administered under the authority known as Diwani, whereas military & criminal justice was under the Nizamat.
- Clive obtained from the emperor of Delhi, whose power was declining, a grant of the Diwani of Bengal, Bihar & Orissa in 1765. By another treaty the Company, in the same year acquired the Nizamat from his Subedar.
- In spite of this, the Naib Nazim & his Nizamat Adalat continued to administer criminal justice over the inhabitants of those provinces until 1790 when the Company dismissed the Naib Nazim & assumed the administration of Criminal justice directly.

- The 1st attempt to reform the criminal justice was made after the passing of the Regulating Act 1773, under which new courts were also set up.
- In each district, a criminal court was setup composed of a Kazi, a Mufti & two Molvis, who used to try criminal cases in presence of a collector, a European supervisor, who was deputed to see that the trial was fairly conducted.

- A superior court of revision was setup. It was composed of a Daroga, the Chief Kaqi, the Chief Mufti & 3 Molvis. They used to sit as a court of criminal revision as well as in capital cases, they used to confirm & approve the conviction.
- In 1793 another reform was made. Under this reform, in each district a court was set up composed of a European judge assisted by a Hindu law expert & a Mohammedan law expert.

- 4 appellate courts were setup at different towns: Calcutta, Deccan, Patna & Murshidabad. Each court consisted of 3 judges & 3 native experts of Hindu & Muslim law, manely a Kasi, a Mufti & a Pandit. Above the all was the Sudder Nizamat Adalat or Supreme Criminal Court at Calcutta.
- The Britishers began gradually to refer to the English law of crimes for their guidance & information.
- It maybe observed that Bombay was the 1st province in India in which a brief penal code was enacted in 1827 under the guidance of Elphinstone- the then Governor of Bombay- for the mufussils.

- When Punjab was annexed in 1844, a short code was drawn up for that province by the then Governor General as the Mohammedan criminal law which was in force in Bengal was not recognized in Punjab.
- In the province of Madras, Bengal, Bihar, Orissa & other territories acquired by the Britishers then known as North-West Provinces, the criminal law as introduced by Regulation was enforced.

- Then came the Charter Act of 1833, which introduced a single legislature for the whole of British India with jurisdiction to legislate for all persons & the Presidency towns as well as for the mufossil.
- Parliament while recognizing that a complete uniformity of laws was impossible, set up a commission to give India a Common Law, that is to provide a general law applicable prima facie to every one in British India.
- Under Sec. 40 of the Charter Act of 1833 the 1st Law Member T.B.Macaulay, was appointed who took charge of his office on June 27th, 1834.

- Sec. 53 of the Charter Act of 1833 also made provisions for the appointment of a law commission to enquire into the state of laws in force & to make reports thereon. Accordingly the First Law Commission was appointed in1834 with Macaulay & few others as Commissioners.
- They submitted their report on June 15, 1835 & a draft of the Penal Code on 2nd May 1837.
- No Indian was involved in the commission as a Law Commissioner, nor the existing Indian laws were used as a basis of the penal code. The Indian opinion of the times also resented the complex foreign laws in our country.

- The Court of Directors in London were anxious to see the penal code enacted as early as possible & held several meetings & finally came to the conclusion to recommend to the Legislative Council that the draft penal code proposed by the Law Commissioners under Macaulay should form the basis of the system of penal law to be enacted for India.
- The Indian Penal Code Bill was published in the Calcutta Supplementary Gazette on 21st , 24th & 28th January 1857.

- It was finally passed by the Legislative Council & received the assent of the Governor General on 6th Oct 1860. It was published in the Calcutta Gazette on October 13,17 & 20 1860 but came into force on 1st January 1862 in order to enable the people, judges & the administrators to know the provisions of the new penal code.

PURPOSES OF CRIMINAL LAW

- What is the criminal law for?
- If people are not in agreement on what the criminal law is for, it is unrealistic to expect them to agree on what behaviors should & should not be criminal.
- The criminal law might be seen as one barometer of social norms. It is an expression of society's views on what constitutes acceptable & unacceptable behavior.
- There may be behaviors that people think to be unacceptable yet which they might not wish to criminalize.

- So when does the criminal law get involved?
  - Criminal law is a public matter, it articulates social norms. So for the criminal law to get involved, the wrongful behavior would seem to have to be of the level of seriousness to warrant the intervention of the state.
  - E.g., everybody would surely agree that there should be a law against murder. Murder is a crime because it is viewed as sufficiently serious & damaging, not merely to the individuals involved but also to society that it should be prohibited. Yet at the same time, many people view infidelity as wrongful yet we do not criminalize it universally.

- What is the extent to which the criminal law should prohibit behavior that might be considered immoral?
- One view is that the criminal law should correspond with moral values.
- Another view states that even if a behavior is morally wrong it is not a sufficient reason to for criminalizing it.
- The liberal view states that people should be at liberty to do as they wish unless there is a strong enough reason for saying that a particular behavior should not be permitted. There should be as little criminal law as is necessary & the use of criminal law as a device to regulate human behavior should be a last resort.

- Criminal is public law & when it is used, it is being used by the state against the individual. So if a behavior actually cases harm, there is a strong case for criminalizing it.
- What constitutes “harm”?
- E.g., murder constitutes a clear breach of a clear social rule, a rule which not only recognises the intrinsic moral value of life but which also enables society to function more smoothly, in the knowledge that there is a rule which says that murder is wrong.

- That murder is a crime suggests also that the criminal law has a protective function. Not only does it seek to protect the society at large, but it also protects recognized individual interests. So there is criminal law against certain forms of interference with the bodily integrity of others & there are offences against certain forms of offences relating to interference with property. Where the interference with the person or property is sufficiently serious, the criminal law can intervene.

- The criminal law seeks to protect relevant social & individual interests not merely after the event, by providing for the punishment of offenders, but also before the event by seeking to deter potential offenders from committing crimes in the first place.
- By making particular conduct criminal & by providing for punishment for those engaged in such conduct, the criminal law has a deterrent function.
- The criminal law through its identification of offences, differentiates between offenders, differentiate between behaviors which are crimes & those which are not crimes. It differentiates between crimes of greater & lesser seriousness.

- By identifying between behavior which is criminal & distinguishing it from behavior which is not criminal, the criminal law allows citizens to regulate their own behavior with fair warning that if they behave in a particular way, they will commit a crime & leave themselves open to the consequences.
- The principle of “fair warning” is an important aspect of the criminal law in a democratic society. It indicates that the law cannot be made or applied either arbitrarily or retrospectively.

- The criminal law also adheres to the principle of “fair labeling.”

➢ E.g., A causes the death of B.

1st situation: A deliberately killed B with a knife

2nd situation: A pushed B in the course of an argument, B fell & hit his head & died.

- In the 1st situation A’s conduct is much more serious than in the 2nd thought A has committed an offence in both the cases. The society might want to label A’s behavior differently in the 1st situation from the 2nd.

- The criminal law responds to this by labeling the 1st offence as murder & the 2nd as culpable homicide not amounting to murder.

WHAT IS PUNISHMENT?

- It is a suffering in person or property inflicted by the society on the offender who has been adjudged guilty of crime under the law.
- It is the retribution due for the violation of the rules of the society, which are made for its preservation & peace.
- Administration of punishment always involves the intention to produce some kind of pain which may be partly physical or to cause mental suffering, as in imprisonment where there is a loss of freedom, reputation & at times property.

THEORIES OF PUNISHMENT

- **Retribution** – the adherents of retributive theory states that the punishment satisfies the feeling of revenge. Since the formulation of the Hammurabi's Code (about 1875 B.C.) "an aye for an eye & a tooth for a tooth" has been accepted by the general public, that a criminal deserve to suffer.
- "the act which is today described as a crime was then looked upon as a private wrong. The wronged party, not the state or that which stood for the state, brought suit." Professor Gillin

- Conception of retributive justice still retains a prominent place in popular thought. It flourishes also in the writings of the theologians & of those imbued with theological modes of thought & even among the philosophers it does not lack advocates. Kant expresses the opinion that punishment cannot rightly be inflicted for the sake of any benefit to be derived from it either by the criminal himself or by the society & that the sole & sufficient reason & justification of it lies in the fact that evil has been done by him who suffers it.

Salmond

- Retribution is used in more than one sense in the modern society:
- In the 1st sense the idea is that of satisfaction by the state of the wronged individual's desire to be avenged
- In the 2nd sense it is that of the state's marking its disapproval of the breaking of its laws by a punishment proportionate to the gravity of the offence.
- In the 3rd sense the offender must undergo some evil for his own sake so that he may come to realize the justice of his punishment. This acts as atonement for the wrongdoer.

- **Expiatory** – Hindu jurists of ancient India maintained that expiation or penance washes away the sin.

  if in the presence of priest & others the convicted persons give themselves up to him for desire of protection & swear saying "oh Brahman, we shall never again commit sin," they should be discharged without any punishment.

  The Mahabharata

- <u>According to the adherents of this theory, the expiation/punishment should be equal to the guilt in order to wipe it out. But is it possible to award punishment equal to the guilt?</u>
- J. Homes states that the

✓ Criminal's upbringing

✓ His material & social circumstances

✓ His physical & mental conditions

✓ His weakness & strength of will

✓ The accidental incidents which are so decisive in determining human action

- ✓ The degree of temptation

  how can even the wisest of us measure these various elements? As to steal for personal gain is one thing & to steal for an ailing mother is another!!
- The 2nd difficulty with regard to this theory is that suffering cannot be standardized. The same punishment may vary in effect upon 2 different accused- to one it may come as a child's play & the other may receive it like a torture.
- External conduct that led to the crime can never be measured so this theory is defective.

- **<u>Deterrent / Preventive</u>** – this theory aims at the punishment of offender with a view that other prospective criminals may be deterred from committing the crime for which he was convicted.
- The offender is punished so that he will be held up as an example of what happens to those who violate the law., the assumption being that this will curb the criminal activities of the prospective offenders.
- The term deterrence is used in 2 senses:

- In the 1st sense, the punishment of the offender will deter others from committing the crime for which he was convicted. If the intending criminals are to be deterred by the threat of punishment it is essential to the efficacy of the threat that they should be made to realize that it would be carried out if the offence is committed.
- 2ndly, deterrence means that it deters the person found guilty of an offence from committing further crimes by physically preventing him from doing so.

- **Reformative** – reformation is defined as “the effort to restore a man to society as a better & wiser man & a good citizen.”
- The advocates of this theory maintain that an endeavour should be made to make the criminal harmless, to supply him those things which he lacks & to cure him of those drawbacks which made him to commit crimes.
- punishment to be a physical measure adopted to excite in the soul of the guilty true repentance, respect for justice, sympathy for the fellow creatures & love of mankind.

Oppenheimer

KIND OF PUNISHMENT UNDER THE CODE

- The IPC provides under Sec. 53 six kinds of punishment to be inflicted on the offender, namely
- Death
- Transportation (abolished in 1955 & substituted by imprisonment for life)
- Penal servitude (compulsory hard labour, abolished in 1949)
- Imprisonment : rigorous/ simple
- Forfeiture of property
- fine

- Under the IPC, capital punishment must be awarded for the offence of murder or its attempt by a person who is undergoing a sentence for imprisonment for life.
- Sentence for imprisonment for life:

- Waging/attempting war against the Govt. of India
- Abetting mutiny by an officer, soldier, sailor or airman in the Army(death is an alternative punishment with imprisonment for life/ imprisonment for 10yrs + fine
- perjury as a result of which an innocent person suffers death.

(here also the punishment of death is alternative with imprisonment for life + fine

- Murder (death sentence is alternative with imprisonment for life + fine)
- Abetment of suicide of a minor, an insane/ an intoxicated person(death sentence is alternative with imprisonment for life/imprisonment not exceeding 10yrs + fine

- Transportation – the sentence for transportation for life used to come next after death in order of gravity. It is another name for banishment. Under the British rule, ordinary man in India feared very much the "black waters" & going beyond the seas. The transported prisoners were sent to the Andaman Islands. But now by the Amending Act of 1955, transportation has been abolished & substituted by imprisonment for life.

- Penal Servitude – It meant keeping of an offender in confinement & compelling him to labour. But now with the exit of the Britishers, this differential treatment awarded to Europeans & Americans was abolished by the Criminal Law (Removal of Racial Discriminations) Act 1949.

- Imprisonment – imprisonment is confining a person in a jail by way of punishment. It is of 2 kinds: rigorous & simple.
- In rigorous imprisonment, the prisoner is subjected to hard labour such as braking of metal, construction works etc.
- Under simple imprisonment, either lighter work is involved or most of the time no work is involved.
- The IPC has prescribed 2 cases of offences where rigorous imprisonment is to be awarded:

1. Offences of giving/ fabricating false evidence with intent to procure conviction for a capital offence
2. House trespass in order to commit an offence punishable with death.

- Solitary confinement – this involves isolating the prisoner from any kind of interaction with the outside world. It is inflicted in order that a feeling of loneliness may reform the criminal.

➢ Section 73 provides that a court may order that the offender may be kept in solitary confinement for any portion of the imprisonment to which he is sentenced

but not exceeding 3 months on the whole.

- Since solitary confinement has an oppressive effect on the mind of the offender, certain safeguards have been provided:

- 1st safeguard - Solitary confinement should not exceed 1 month if the total imprisonment doesn't exceed 6 months
- It should not exceed 2 months if the term of imprisonment doesn't exceed 1 year
- It shall not exceed 3 months if the term of imprisonment exceeds 1 yr.

- 2nd safeguard – this is done for providing limit of period of solitary confinement for medical reasons as continuous solitary confinement results in physical deterioration & mental derangement.. Sec. 74 regulates the execution of sentence of solitary confinement.
- If substantive imprisonment exceeds 3 months, then solitary imprisonment must be worked out in smaller installments. It shall not exceed 7 days in any 1 month of the whole imprisonment awarded with intervals between the period of solitary confinement of not less than 7 days.

- In case the imprisonment is less than 3 months, solitary confinement shall not exceed 14 days at a time & the interval between the periods of solitary confinement shall not be less than 14 days.
- Solitary confinements can be awarded for the offences under the IPC only
- Solitary confinement cannot be awarded as a part of imprisonment in default of fine.
- Solitary confinement is a sentence reserved for only cases in which a person is sentenced to rigorous imprisonment, in most exceptional cases of brutality.

- Forfeiture of Property

“ to inflict only on persons guilty of high political offences. Territorial possession of such persons often enable them to disturb the public peace & to make head against the Government; & it seems reasonable that they should be deprived of so dangerous a power.”

➢ Under the IPC forfeiture of property was provided for:

✓ Sec. 126 for committing depredation on territories of power at peace with the Govt. of India.

- ✓ Sec. 127, for receiving property taken by war/ depredation under Secs. 125 & 126.
- ✓ Sec. 169, a public servant unlawfully buys/bids for property which he is legally prohibited from doing by virtue of his office.

- Fine – it is forfeiture of a sum of money by way of penalty. The advantages of fine:

✓ Its advantage of being convertible to profit

✓ It can be regulated according to means of the offender

✓ It implies no infamy

Its disadvantages:

✓ It hits the family which is innocent

✓ It is not exemplary as at its execution no spectacle is made

- IPC provides 4 categories where fine is imposed:

1. Offences in which fine is the sole punishment & its amount is limited(Secs. 137, 155, 171-177, 278,283,294) (154 & 157 carry unlimited fines)
2. Offences in which fine is an alternative punishment
3. Offences in which fine is an additional punishment
4. offences in which it is both an imperative punishment & its amount is unlimited(Secs. 123-124,126-134,380,444 & 475)

- Limits of Punishment:

➢ At times the offence consists of a series of parts but same offence. Technically the offender is to be punished for each part of the offence, but in such a case the whole series will be considered as one offence & the punishment is prescribed under Sec. 71 which states : “where anything which is an offence is made up of parts, any of which part is itself an offence, the offender shall not be punished for more than one of such offences.

Measure of Punishment

- The measure of punishment is to be adopted in awarding the punishment to the offender.
- In criminal cases 2 things has to be considered :

✓ The heinousness of the crime

✓ Circumstances under which accused has committed it.

- Bentham in his *Principles of Penal Law* talks of the following considerations:

✓ Absence of bad intention

✓ Provocation

✓ Self-preservation

- ✓ Preservation of some near friend — general
- ✓ Transgression of limits of self defense — exceptions
- ✓ Submission to menaces
- ✓ Submission to authority
- ✓ Drunkenness — general
- ✓ Childhood — exceptions

- Aggravating circumstances go to aggravate the nature of the crime & deserve more punishment:

✓ Deliberate violence like robbery, rape

✓ Use of lethal weapons

✓ Wanton cruelty & malignity

✓ Treachery

✓ Nature of injury caused like stabbing

✓ Motive for the crime

- The Criminal

✓ Casual criminal might be the victim of circumstances so he deserves the sympathy of the court as he often is a 1st time offender. Sec.360 of the CrPC provides that 1st time offender should be dealt leniently, can be released with admonition.

✓ Habitual/professional criminal is a pest on the society. He is a criminal who repeats his crime & should meet with increased penalty. The object is to protect the society against recidivism by increasing the penalty for crime & by depriving judges of their discretionary powers in giving punishment.

- Blackstone – “ the age, education & character of the offender, the repetition of the offence, time, place, company, wherein it was committed, all these may aggravate the crime.”
- Salmond – “ In every crime there are three elements to be taken into consideration in determining the appropriate measure of punishment, which are (1)motives to commission of the offence(2)the magnitude of the offence(3)character of the offender.”

Executive Clemency

- Commutation of sentence – Sec. 54 of the IPC empowers the govt., to commute the sentence of death for any other punishment provided in the Code. Sec. 55 of the Code provides that the govt., may commute imprisonment for life for either description for a term not exceeding 14yrs.
- Art. 72 of the Constitution empowers the President to grant pardons, reprieves, respites / remission of punishment or suspend, remit, commute the sentence of any person convicted of any offence by any court.

Extradition Law in India

- Prior to the passing of this Act of 1962was passed there were two Acts passed by the Parliament in England; they were the **Extradition Acts of 1870 and 1873 and the Fugitive Offenders Act of 1881.** Prior to the Extradition Act, 1870 there was no general statute giving legal validity to extradition treaties concluded with Foreign States by His Majesty, the King and so a separate Act had to be passed on the occasion of each new treaty. This statute of 1870 is subsequently amended in 1873.
- the **Indian Extradition Act, 1903** declaring that it should be given effect to throughout His Majesty's dominions and on the high seas, as if it were part of the Fugitive Offenders Act, 1881.

- After Independence - **The Extradition Act, 1962** duly enacted by Parliament, received the assent of the President on September 15, 1962 and came into force on January 5, 196318. The Extradition Act, 1962 consolidated the law relating to the extradition of criminal fugitive from India to foreign states.

- The provisions of the Extradition Act, 1962, may be grouped into four headings:
- (A) General conditions of extradition.
- (B) Certain restrictions on surrender.
- (C) Procedure regarding extradition of fugitive criminals.
- (D) Miscellaneous provisions

- **General Conditions of Extradition:**

➢ (a) **The Principle of Double Criminality** - It is an accepted principle of international law that the fugitive's act must constitute an offence according to the laws of both countries—commonly known as the principle of "**double criminality**". In the Indian Extradition Act, 1903, in addition to the words " Extradition Offence " defined in section 2 (b), the word "**offence**" was also defined by section 2 (e) as " **including any act where so ever committed which would, if committed in the States, constitute an offence,**" thus providing for the rule of double criminality in that enactment. But **this word has been deleted in the Indian Extradition Act, 1962 and only "extradition offence " has been defined in section 2 (c).**

***b. <u>Extraditable Offence</u>*:**

- Extradition is granted when a person has committed an offence, it must be ascertained that the 'offence' is an 'extraditable offence.' There are generally three ways in which an "extraditable offence" or what is commonly known as an 'extradition offence,' may be incorporated into the domestic law of extradition:

1. The domestic law may leave the list of extraditable crimes to be provided for in the extradition treaty with a foreign State. This was the method adopted by France, Great Britain and the United States in the eighteenth and nineteenth centuries and this practice developed greatly in the world during the nineteenth century. It has been adopted by the Indian Extradition Act, 1962 under Section 2 (c) (i), and has been made use of in the extradition treaty with Nepal.

2. The domestic laws often enumerate the offences. The Extradition Act, 1870, of Great Britain, and the Belgian law concerning extradition may be quoted as examples. The Indian extradition Act, 1962 adopts this method in relation to a foreign State other than a treaty State, or in relation to a Commonwealth country and the Second Schedule gives a list of such offences.

- 3. Some domestic laws define “extraditable offences” according to the term of imprisonment. The extradition law of France (March 1927) has made such a provision. Art. 4: "The acts which may give rise to extradition whether it is a question of requesting it or granting it, are the following: (1) All acts punished by a criminal penalty under the law of the requesting State. (2) Acts punished by a correctional penalty under the law of the requesting State, when the maximum penalty inclined is, by the terms of that law. two years or more ..."

c. ***Extradition Treaty***

- Today it is firmly recognized that, unless a State is bound by an extradition treaty, it can refuse extradition for any crime. The present Act in its clause 2 (d), however, defines "**extradition treaty**" as meaning "a treaty or agreement made by India with a foreign State relating to the extradition of fugitive criminals, and includes any treaty or agreement relating to the extradition of criminals made before August 15, 1947, which extends to, and is binding on, India."

- **Certain Restrictions on Surrender**

➢ The following conditions of extradition are usually incorporated in Extradition Acts and

Treaties these days:

(a) Extradition shall not be granted for political offences.

(b) The request for extradition should not be time-barred

(c) The rule of specialty

(d) Non Bis in idem

a. Political offence:

It is a recognized principle of international law that political offenders should not be extradited. This principle has been incorporated in section 31 (a) of the 1962

Extradition Act which runs as follows:

"A fugitive criminal shall not be surrendered or returned to a foreign State or Commonwealth country, if the offence in respect of which his surrender is sought is of a political character or if he proves to the satisfaction of the magistrate or court before whom he may be produced or of the Central Government that the requisition or warrant for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character."

b. Lapse of time

The (Indian) Extradition Act, 1962, in its section 31 (6) provides: " A fugitive criminal shall not be surrendered or returned to a foreign State or Commonwealth country, if prosecution for the offence in respect of which his surrender is sought is according to the law of that State or country barred by time." But there is no agreement as to whether the law of limitation of the requested State should apply or that of the requesting State."The present trend, however, seems to favour the view that extradition may be refused when the offence has become time- barred under the law of either the requesting or the requested State.

c. Rule of specialty

The principle of specialty, according to which extradition is granted only on the condition that the person extradited will not be tried or sentenced for any offence other than that for which extradition is granted.

d. Non bis in idem

The rule *non bis in idem* is a rule of general application, which opposes itself to all practices, both municipal and international, which would subject a person to repeated harassment for the same act or acts. This provides against double jeopardy for the same act, extradition may be refused if the offender has already been tried and discharged or punished, or is still under trial in the requested State, for the offence for which extradition is demanded.

- **Procedure regarding Extradition of Fugitive Criminals:**

➢ ***Procedure under Chapter II***

✓ When a requisition is made to the Central Government under Chapter II by a foreign State or a Commonwealth country, for the surrender of a fugitive criminal, the Central Government may, if it thinks fit, issue an order to any magistrate. directing him to inquire into the case. The magistrate then shall issue a warrant for the arrest of the fugitive criminal and when the latter appears before him, the magistrate shall, as required under section 7 of the Act, inquire into the case.

- ***Procedure under Chapter III***
- When a warrant issued for the apprehension of a fugitive criminal in a Commonwealth country to which this Chapter applies is received by the Government of India, it may indorse such a warrant, if satisfied that the warrant was issued by a person having lawful authority to issue the same. This indorsed warrant shall be sufficient authority to apprehend the person named in the warrant and to bring him before any magistrate in India.

- If, when the fugitive offender is placed before him, the magistrate is satisfied on inquiry that the indorsed warrant for the apprehension of the fugitive criminal is duly authenticated and that the offence of which the person is accused or has been convicted is an extradition offence, he shall commit the offender to prison to await his return and shall send a certificate of the committal to the Central Government.

- On the other hand, if he is not satisfied as to either of these questions, he may detain the person in custody or release him on bail, pending the receipt of the orders of the Central Government. In both cases the magistrate shall report the result of his inquiry to the Central Government and forward together with such report any written statement which the fugitive criminal may desire to submit for the consideration of the Government. The matter will then rest with the Central Government.

OFFENCES AGAINST BODY

Sec. 312 – Causing Miscarriage

Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment extending up to 3yrs; if the woman be quick with child, shall be punished with imprisonment up to 7yrs.

A woman who causes herself to miscarry fall within this section

Sec. 3 of Medical Termination of Pregnancy Act

- In the event of injury to the physical & mental health of the pregnant woman [**Therapeutic Indication**]
- When there is substantial risk that if the child is born it would suffer from such physical & mental abnormalities as to make the child seriously handicapped [**Eugenic Indication**]
- Pregnancy caused by rape [**Humanitarian Indication**]
- Pregnancy caused as a result of failure of contraceptive method used by a married woman or by her husband for the purpose of limiting the no. of children [**Social Indication**]
- To prevent risk of injury to the physical N mental health of the pregnant woman which may arise by reason of her actual reasonably foreseeable environment [**Environmental Indication**]

- **Woman with child** – the moment a woman conceives & the pregnancy starts.
- **Woman quick with child** – more advanced stage of pregnancy where the movement of the foetus has taken place. Causing miscarriage in this case is considered to be a much graver offence as it comes from the notion that a foetus becomes endowed with life when the movements are felt by the mother.

- **Abortion** – when an ovum is expelled within the first month of pregnancy, before the placenta is formed.
- **Miscarriage** – foetus is expelled from the 4^{th} to 7^{th} month of pregnancy
- **Premature labour** – delivery of a viable child, possibly capable of being reared, before it has become fully mature.

In Re Malayara Seethu

In The High Court of Mysore

AIR 1955 KAR 27

- Sec 312 – Causing Miscarriage
- Sec 315 – Prevent Child Being Born Alive Or To Cause It To Die After Birth

State of Maharastra v. Flora Santuno Kutino & ors

2007 (109) Bom LR 652, 2007 CriLJ 2233

Telenga Munda v. State of Bihar

2001 CrLJ 3094 (Pat)

Sec 312 – Causing Miscarriage

Sec 314 - Death caused by act done with intent to cause miscarriage