

## CIVIL AND CRIMINAL LAW

Various types of law exist in any legal system. Some consist of the rules which regulate the offences and infringement of rights of others. On this basis, law may be broadly divided into two categories: Civil Law and Criminal Law. These two categories are the two broad and separate entities of law with separate sets of rules to deal with civil wrongs and criminal wrongs respectively. Thus it is important to understand the nature of the division, because there are fundamental differences in the purpose, procedure and terminology of each branch of law. Whereas Civil Law deals with the body of rules which defines civil rights and obligations and its remedies, whereas criminal law defines the rules relating to public rights and the liabilities for any infringements. That is why Civil Law is quite distinct from criminal law. In this chapter, you will understand the nature of civil and criminal law and the basic differences between the two.



### OBJECTIVES

After studying this lesson, you will be able to:

- know the definition and nature of Civil Law and Criminal Law;
- to understand the need and importance of these laws in the society;
- be aware of the rights covered under Civil Law and Criminal Law as well as the remedy available for their violation;
- know about the Forums available for the redressal of grievances relating to Civil and Criminal matters;
- know the different types of relief to be granted for violation of these laws; and
- make a distinction between Civil and Criminal Law.

### 10.1 CIVIL LAW – DEFINITION AND NATURE

**Civil Law** is nothing but the Law of the State or Law of the land. It is the area of laws and justice which affect individual's legal status. The term 'Civil Law' is derived from Roman language "*jus civili*", which means that it is the Law of

*the Civitas i.e., the State.* This branch of law deals with rights, duties and obligations of individual members of the society among themselves. Sometimes it is also called as municipal law. The jurists of medieval period call Civil Law as “*jus positivum*”, means the Positive Law made by human beings against the law made by God. It is considered as positive law because it deals with law in its present context. Civil Law includes various aspects such as laws relating to property, contract, tort, family, trade, intellectual property and environment etc.

The objective of Civil Law is to rectify the wrongs, or to settle the disputes in an amicable manner rather than in a stringent way. If there is a damage, the party is to get compensation from the wrong door. In Civil Law, a dispute commences when the injured party files a complaint against the opposite party. Under Civil Law, the victim/injured is awarded compensation for the injury caused to him/her. For instance, if an accident victim/injured claims damages against the driver for loss or injury sustained to him/her in the accident, this will be a matter regulated by Civil Law.

Civil Law not only deals with the disputes between private parties, but also with the negligent acts of the individuals that cause harm to others. For example, when there is a disagreement between two parties regarding the terms of a contract or regarding the ownership or possession of a property, or wrongful dismissal of a person from his employment, the aggrieved party may get relief under Civil Law by approaching the Court to decide the matter. Similarly, when somebody fails to exercise the degree of caution that an ordinarily prudent person would take in any situation to avoid any kind of negligent act, the other party may approach the court to get remedy under Civil Law. The basic principle is that if there is a violation of a legal right of a person, the same is actionable, irrespective of the fact whether the plaintiff has suffered any actual loss or not. Taking into consideration the circumstances and the seriousness of the matter, a person may be held responsible for any damages or injury that was caused as a result of his wrongful act. Disputes relating to family matters such matters involving marriage, divorce, maintenance, inheritance, succession, division of property between spouses also represent a large portion of the cases covered under civil law. The complainant in a civil case is called as ‘plaintiff’ or applicant and the party against whom the case is filed, is known as the defendant or ‘respondent’. The Courts has discretion either to dismiss a case if it is found to have no merit, or may order the losing party to pay compensation to the aggrieved party for the harm suffered by him or her. The State has no role to play in civil matters, unless the government itself is the party in it.

### 10.1.1 Contributory Negligence

The ‘Contributory Negligence’ means such negligence to which the ‘plaintiff’ and also the ‘defendant’ contribute. The ‘plaintiff’ and the ‘defendant’ are both responsible for such negligence. But it is to be found out who is more responsible for the harm caused by such negligence.

For example, the plaintiff tied the fore feet of his donkey with a rope and left it on the highway to graze. The defendant injured the donkey while driving negligently. The defendant had the opportunity of avoiding the accident. Had he driven his car carefully, the accident would not have occurred. So the defendant was liable for the injury caused to the plaintiff's donkey although the plaintiff was also negligent to some extent.



### INTEXT QUESTIONS 10.1

1. Define Civil Law.
2. Define the term 'Contributory Negligence'.

## 10.2 CRIMINAL LAW- DEFINITION AND NATURE

Criminal Law is defined as “a body of rules that defines the conduct prohibited by the State for being harmful to public safety and welfare and also prescribes punishment to be imposed for the commission of such acts”.

**More specifically, Criminal Law (also known as Penal Law)** deals with acts of intentional harm to individuals. In a larger sense, it can be said that it deals with offences against the State. Crime, in a Civilized Society, is considered to be a breach of duty, committed not only against a single individual, but also against the society at large. In other words, it is a breach of duty towards the public as a whole for which the offender is punished by the society or the State. A crime is a deliberate or reckless act that causes harm to another either to his/her person or to his/her property. Moreover, it is also a crime to neglect a duty to protect others from harm. Criminal Law refers to the body of laws which deal with crimes and their consequences.

In Criminal Law, an individual may report a crime but can never file a case against another individual, only the government can file the case against the offender. Criminal Law defines the various offences caused to human body and property and also prescribes punishments for them. The objective of Criminal Law is to punish the wrongdoer and to deter him/her from repeating the commission of the crime again. Crime and punishment are two sides of the same coin. Every act that endangers social harmony is a crime. In fact, crime is an act forbidden by law, and thus any person committing crime is liable to punishment.

The basic concept of Criminal Law is based on the maxim “*actus non facit reum, nisi mens sit rea*”, which means that an act itself does not constitute a crime, unless it is accompanied with a guilty intention. Thus, a crime cannot be committed unless it is accompanied with a guilty mind. Similarly, mere guilty mind also does not constitute a crime unless it is accompanied with a wrongful act. For example, if a person merely thinks of committing an act of kidnapping, he/she will not be called a kidnapper. This guilty intention must be accompanied

by the wrongful act of kidnapping to constitute the crime. Similarly, when somebody strikes another person, it is the crime of assault but the person will only be liable if the blow was intentional.

This clearly indicates that mental factor is the most important thing necessary to constitute a crime. Whenever a person accused of committing a crime is brought before the Court, first of all his or her mental condition is studied carefully to ascertain that whether he or she was aware of the fact that the act committed by him or her was wrongful. Thus, a person of unsound mind or an intoxicated person is considered to have done the wrongful act without any guilty intention and hence may not be punished.

Criminal Law deals mostly with two kinds of laws- the Substantive and the Procedural Laws. The Substantive Law prescribes the offences and the punishments for these offences, whereas the Procedural Law enshrines the procedures to be followed to inflict such punishments upon the wrongdoer.

The Criminal Law of India is codified in the Indian Penal Code, 1860, Criminal Procedure Code, 1973 and Indian Evidence Act, 1872. These are known as Major Criminal Acts. Besides these Criminal Acts, there are some other minor Criminal Acts also such as Narcotics and Psychotropic Substances Act, Arms Act, Drugs and Cosmetics Act, Dowry Prohibition Act, etc.

Indian Penal Code is the Substantive Law as it defines several offences and also lays down punishment for such offences. But the Criminal Procedure Code and the Indian Evidence Act are Procedural Laws, as the former deals with the rules of investigation of a crime, methods of conducting trials, provisions for appeal etc and the latter is concerned with the mode of proving whether a particular person has committed the offences or not.

As the nature of crime changes according to changing social and political scenario, various new laws are also enacted to tackle the situations. For example, crimes relating to terrorism are a comparatively recent phenomenon, which gives rise to a serious threat to the very foundation of human civilization. As no stringent provision under any law was there to tackle this crime, the Prevention of Terrorism Act (POTA), 2002 was passed to deal with the terrorist activities effectively, under which some of the crimes are even tagged with imprisonment for life or capital punishment. Subsequently, this law was repealed and replaced by the Unlawful Activities (Prevention) Amendment Act, 2004. The new Act has retained all the operational teeth of POTA, but has made only some cosmetic changes.



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**INTEXT QUESTIONS 10.2**

1. Define Criminal Law.
2. Define the 'principle of Joint Liability'.

**10.3 THEORIES OF PUNISHMENT****10.3.1 Deterrent Theory**

Deterrent theory of punishment is commensurate with the gravity or serious nature of the offence. As per this theory, punishment is given to an accused who has been found guilty of committing an offence with a view to warn other criminals that the same type of punishment will be given to them if they commit the same type of offences. The object of such punishment is to deter people from committing crimes. Severe punishment is given to persons committing serious offences. This theory of punishment is not very successful as most crimes are committed on the spur of the moment. For example, imposition of capital punishment on a person.

**10.3.2 Preventive Theory**

As per the preventive theory, punishment is given to the offender with a view to prevent the repetition of the offence by the offender by such punishments as imprisonment or death sentence. For example, punishment for restraint of child marriage.

**10.3.3 Retributive theory**

This type of punishment is based on the principle of retribution, i.e. life for life, eye for eye, tooth for tooth etc. it is a sort of barbaric punishment. Such type of punishment does not cure the disease scientifically and deals with criminality without studying causes of criminal tendencies or crimes.

**10.3.4 Reformatory theory**

This theory aims at reforming the criminals so that they may be prevented from committing crimes again. Their attitude towards life is changed gradually and scientifically and they are gradually transformed into persons acceptable to the society. For example, the treatment of the juvenile offenders in the child care homes.

The commission of a crime consists of four stages- Intention, Preparation, Attempt, and Commission. A person can only be convicted if he or she has gone through all these four stages.



- (i) The person in whom the right is vested is the owner of that right.
- (ii) The person against whom this right exists, has the corresponding duties.
- (iii) The act or forbearance which the person is entitled to get.
- (iv) The subject matter of the right.

In order to be successful in an action under Civil Law, the 'plaintiff' has to prove that there has been a legal damage caused to him/her due to violation of his/her legal right. Unless there has been violation of a legal right, there can be no action under Civil Law even though the plaintiff has suffered any loss. This is explained by the maxim '*damnum sine injuria*'. On the other hand, if the plaintiff has suffered no loss and yet his/her legal right is violated, then such wrongful act is actionable and the plaintiff can be awarded compensation for that. This is explained by the maxim '*injuria sine damno*'.

Civil Law mostly includes rights covered under Law of Contract, Torts, Family Law and Law of Property–

#### 10.4.1 Law of Contract

The Law of Contract is the most important branch of Mercantile law. Contracts are made to be performed but if either of the parties fails to perform his part of the contract, the aggrieved party can have the suitable remedy or remedies as mentioned in the Act.

Thousands of Contracts are made daily and therefore, the Indian Contract Act, 1872 is an Act of tremendous importance. All the rules regarding valid agreements are mentioned in the Act. The main object of the Act is to see that agreements made in everyday life in accordance with the Act are performed in the interest of the concerned parties and that in case of breach of contract the aggrieved party may have proper remedy in accordance with the Act through the Court of Law.

#### 10.4.2 Law of Torts

The Law of Torts is a branch of the Law of obligations. It is that law, where you have the legal obligation to refrain from inflicting harm to another and if harm is done, to repair it or compensate for it, are imposed not by agreement, but independently of agreement by force of the general law. Socially the function of 'Tort' is to shift loss sustained by one to the person who is deemed to have caused it or been responsible for its happening and in some measure to spread the loss over an enterprise or even the whole community. 'Tort' is that kind of 'Civil Wrong', which is not exclusively any other kind of 'Civil Wrong' like breach of contract or breach of trust. Thus it is said that all Torts are Civil Wrong, but all Civil Wrongs are not 'Torts'.

#### 10.4.3 Family Law

India is a country with variety in culture and religions. Each religion is guided by its own personal law relating to marriage, divorce, maintenance, partition,

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- (ii) Loss suffered by the plaintiff without any violation of his legal right is actionable.
- 3. Which of the following rights are covered under the Civil Law?
  - (i) Rights of a person under a Contract
  - (ii) Voting rights
  - (iii) Right of a woman to get 'Maintenance' on 'Divorce'

### 10.5 DIFFERENCE BETWEEN CRIMINAL LAW AND CIVIL LAW

- Civil law deals with the disputes between individuals, organizations etc., whereas Criminal Law is the body of law that deals with crime and the legal punishment for criminal offenses.
- In Civil law, the initiation of a case starts with the filing of a complaint by the aggrieved party against the wrongdoer, whereas in Criminal Law, the case is filed by the Government against the accused.
- A Civil Litigation is less serious than a Criminal Litigation.
- Burden of proving the evidence in Civil Law lies on the plaintiff, whereas in Criminal Law it always lies on the State.
- In Civil Law, the punishment is given in terms of compensation whereby the wrongdoer reimburses the other party the amount of loss sustained by him as decided by the court, for example, in case of a breach of contract, the aggrieved party has to approach the court for damages, whereas in Criminal Law the guilty is punished by incarceration with or without fine, or in some rarest of the rare cases with death penalty.
- Broadly speaking, Civil Law aims at protecting individual interests against one another, whereas Criminal Law protects public interests against the wrongdoer.
- Civil Law includes disputes relating to property, contract, torts, family arrangements etc., whereas Criminal Law includes offences affecting human body and property and the corresponding punishments for those offences.
- In Criminal cases more evidence is needed to find the accused at fault than to find the 'defendant' at fault in civil ones.
- In Criminal Law, question of probability does not arise, it has to be always certain, and in contrast civil case can be proved on a balance of probabilities.

are mostly based upon the English Law System. The family law regulates the rights and duties of individuals under family arrangements, whereas the Hindu Law regulates the Hindus, the Muslims are guided by the Mohammedan Law, the Christians under the Christian Law, the Parsies by the Parsi Law and so on.

- Criminal law mostly deals with two kinds of laws- the substantive and the procedural laws. The substantive law prescribes the offences and the punishments for these offences, whereas the procedural law enshrines the procedures to be followed to inflict such punishments upon the wrongdoer.

The objective of Civil Law is to rectify the wrongs or to settle the disputes in an amicable manner rather than in a stringent way.

2. The 'Contributory Negligence' means such negligence to which the 'Plaintiff' and also the 'defendant' contribute. The 'Plaintiff' and the 'defendant' are both responsible for such negligence.

## **10.2**

1. Criminal Law is defined as "a body of Rules that defines the conduct prohibited by the state for being harmful to public safety and welfare and also prescribes punishment to be imposed for the commission of such acts. "Criminal Law refers to the body of Laws which deals with crimes and their consequences.
2. The general 'Principle of Joint Liability' is that a person who commits an offence is to be held guilty and is punished accordingly. But there are certain offences for which a person is made jointly liable with others for some reasons.

## **10.3**

1. The various theories of punishment are:
  - (i) Deterrent Theory;
  - (ii) Preventive Theory;
  - (iii) Retributive Theory; and
  - (iv) Reformatory Theory
2. As per the Preventive Theory, punishment is given to the offender with a view to prevent the repetition of the offence by the offender by such punishments as imprisonment or death sentence.

## **10.4**

1. Legal Rights are the interests recognized and protected by Law. An interest becomes a right if it obtains legal protection as well as legal recognition. Legal Rights are the interests, the violation of which amounts to moral wrong. Respect for the legal rights of others is the legal duty of an individual. When somebody violates his legal duty towards others, he is punishable by law. Yes, there is always a correlation between legal right and legal duty. Because when somebody has a legal right, that means all others in this world have the corresponding duty to obey that right otherwise law will take its own recourse against the wrongdoer.
2. Of the Two Questions, (i) is true and (ii) is false. Because for taking a successful action, the only thing which has to be proved is that the plaintiff's

legal right has been violated, whether any actual loss has been caused or not, that is immaterial.

3. All these three rights are covered under Civil Law.

### 10.5

1. Civil Law mostly regulates the private rights of individuals, organizations etc., which are of less serious nature and for which the punishment is given in terms of compensation, whereas Criminal Law protects the interests of the public against the acts of the wrongdoer of more serious nature and for this the offender is to be punished with imprisonment or with fine or both.
2. No (i) and (iii) are covered under Civil Law and No. (ii) and (iv) under Criminal Law.
3. 'Mental Element' is the most important factor in commission of a crime. Unless a crime is committed with guilty intention, it is not punishable.