
UNIT 1 CONCEPT OF DEVIANCE AND CRIME

Structure

- 1.1 Introduction
- 1.2 Objectives
- 1.3 Defining 'Deviance' and 'Crime'
- 1.4 Technical Connotations of 'Crime' and their Essential Components under Substantive and Procedural Laws
 - 1.4.1 Essential Elements of Crime
 - 1.4.2 Crime, "Offence" and its Variants
- 1.5 Typologies and Patterns of Crime
- 1.6 Functions of Deviationism and Criminalisation
- 1.7 Summary
- 1.8 Terminal Questions
- 1.9 Answers and Hints
- 1.10 References and Suggested Readings

1.1 INTRODUCTION

The concept of 'Deviance' and 'Crime' are central to the understanding of criminal justice in any society. All societies that are constituted by the individual members – men and women – lay down certain ground rules for guiding and regulating the freedoms of thought and actions of its members. Thus, a liberal and permissive society may accord to its members greater freedom, while as a conservative and authoritarian society may concede limited freedom to its members in matters of thought and action. As a consequence human behaviour and action is routinely labeled as 'deviant' or a kind of deviation from the expected or normal behavioural standards. What constitutes 'deviation' is in turn influenced by the nature of the society (primitive, traditional or modern), stages of its development (underdeveloped, developing or developed), evolution of systems for dealing with deviations and regressiveness and progressiveness of its outlook etc. 'Crime' constitutes a distinct kind of deviation that is backed by the dominant political power that has far reaching consequences like serious stigmatisation, formal prosecution and punishment etc. This makes deviance and crime a multi-faceted and multi issue enquiry. The foregoing pages are devoted to an issue-wise discussion of the core theme with a view to giving to the readers a comprehensive understanding of the complex and inter-disciplinary theme.

1.2 OBJECTIVES

After reading the unit, you should be able to:

- know the concept of "Deviance" and "Crime";
- know the essential components under substantive as well as procedure laws; and
- the different functions of deviationism and criminalization.

1.3 DEFINING 'DEVIANCE' AND 'CRIME'

Sociologists define human behaviour in terms of infraction of some agreed upon rule. Thus, according to Cohen (1966) deviant behaviour is:

Behaviour which violates institutionalised expectations, that is, expectations, which are shared and recognised as legitimate within a social system [p. 1]

The same normative conceptualisation is followed by Clinard (1963) who describes deviant behaviour as:

Behaviour in a disapproved direction from the norms and sufficient in degree to exceed the tolerance limit of the community, [p. 22]

Sociologists, whose main concern is to capture the social reality as closely as possible, remain pre-occupied with an analysis of institutionalised expectations of normative standards of the community, which tends to bring an element of non-criticality in their approach. Unlike this the lawyer's concern with 'crime', a special form of deviation, has been subjected to much greater analysis that is reflected in the wideness of crime discourse itself. The distinctively of crime type deviation lies in:

- a) involvement in acts or omissions which are proscribed by law, and
- b) infraction of norm entailed by imposition of penal sanction or punishment.

Thus, involvement in Crime leads triggering a set of consequences, ultimately leading to imposition of punishment. An authority on Criminal Law, Kenny (*Outlines of Criminal Law*), identifies the following three characteristics of Crime:

- i) that it is a harm brought about by human conduct which the sovereign power in the State desires to prevent;
- ii) that among the measures of prevention selected is the threat of punishment;
- iii) that legal proceedings of a special kind are employed to determine the guilt of the accused before being punished.

This way both the Sociologists' and Lawyers' conception of deviance and crime have two common features. First, both treat institutionalised expectations or community norms and Law as a "good thing" or a desirable social entity that is assumedly for the larger happiness of the society. However, while emphasizing the fact of normative fidelity one has to be aware of emerging, though held by a few, trend of those who perceive norms or law "neutrally" as a set of "power resource" that can be used for bad or repressive purposes as well. Second, deviance and crime are premised on an implicit subscription to a consensus model in regard to 'harmful' behaviour. The consensus model constitutes the strongest basis for legitimisation of the criminal justice systems in the modern societies. However, the consensus view is also critiqued by a few who subscribe to a conflict model that views deviance and crime in terms of conflictual relations between the dominant and subservient sections in the society. The conflict view is best reflected in the ideas of left wing sociologists and criminologists such as Chambliss (1975) Richard Quinney etc.

David Matza (1969) provides a reconciliation between consensus and conflict models by suggesting a dynamic frame for conceptualising deviance. He conceives deviance in terms of the problematic empirical complexity of the society; for there inevitably exists, particularly in industrial societies, not one commonly shared and consensually agreed-to-culture, but plurality of cultures, which do not co-exist without considerable tensions and conflict. The competing cultural entities constantly strive to *legalise* and transform their cultures into dominant culture. But despite legalisation of culture, legitimisation may still be lacking and non-dominant cultural groups may continue to follow their own cultural practices and standards. This makes the issue of *legitimation* a source of constant tension: because some groups press for their cultural practices to be recognised by law and turned into crimes, while as other cultural groups press for abolition from the legal code certain behaviour patterns, thereby to resort to be decriminalisation. Certain interesting examples of positive and negative *legitimation* demands can be found in current Indian Social controversies as well. The first relates to legitimisation demands of fundamentalist religious groups that demand according primacy to religious sensibilities and press for creation of a stern law against blasphemy in India, (former Union Law Minister Mr. Arun Jetley and Mr. Chandan Mitra, a Rajya Sabha MP. subscribe to this view). In a recent ‘test-run’ this religious cultural group slapped five criminal cases against the veteran art icon Mr. M. F. Hussain for his surrealistic nude paintings of various Hindu Gods and goddesses. The Delhi High Court found no justification the criminal proceedings and quashed them by its Order in 2006. The Supreme Court recently dismissed the appeal of the petitioner; finding that the artist is fully within freedom of artistic creativity and there is no justification to accord primary to religious sensibility as espoused by the particular religious group.

As against this the legislative and judicial initiatives to abolish out dated crimes of attempt to commit suicide (Section 309) and sex against natural order (Section 377) are instances of certain progressive groups pressing for decriminalisation in these areas. In respect of suicide offence both the Law Commission of India (42nd Law Commission Report) and the Supreme Court of India (*Rathinam v. Union of India* (1994) 3SCC 394) have categorically opined for a change in the law. But some-how the conservative views underlying the otiose law continues to prevail. Some what similar trend is visible in respect to a crime that criminalises all forms of homosexuality and bestiality mainly with a view to enforcing the Victorian morality of recognising only heterosexual relationship and limited sexual freedom. The constitutionality of S. 377 is under challenge and the Court has still to lay down the law on the point.

Self Assessment Questions

- 1) Why is it necessary for the societies to carve-out institutionalised expectations or community norms?

.....
.....
.....
.....
.....

2) Why consensus model fails to provide complete explanation of deviance or crime for every society?

.....
.....
.....
.....
.....
.....

3) In what way crime can be treated as superior to other forms of deviance?

.....
.....
.....
.....
.....

4) Do you agree with Matza's conceptualisation of deviance?

.....
.....
.....
.....
.....

1.4 TECHNICAL CONNOTATIONS OF 'CRIME' AND THEIR ESSENTIAL COMPONENTS UNDER SUBSTANTIVE AND PROCEDURAL LAWS

Under the codified criminal law system crime means an act punishable by the Indian Penal Code, 1860 or other penal statutes. We shall now, endeavour to explain the elementary ideas involved in the concept of Crime and its peculiarities that distinguish it from other civil wrongs. Austin distinguishes civil injury from crimes in terms of the party that initiates action and has the discretion in the matter. In civil injury the injured party has the privilege and discretion to pursue action while as in crimes the action against wrongs is pursued by the sovereign or his subordinates. According to Blackstone crimes are public wrongs that affect the whole community. But in fact public and private wrongs are not exclusive of one another.

In civil wrongs the normative transgressions are visited by restitutive compensation to the victim party. But in cases of crimes, punishment alone is considered as the adequate restoration of transgressions. In these cases full restitution to the wronged

individual and to the society is often impossible and the law instead of proceeding on remedial lines punishes the offender partly as a measure of prevention and partly out of retribution. Punishment, however, to be effective as a measure of prevention deals with deliberate acts directed by an evil mind and thereby aims at eradication of evil will.

Therefore, crimes are comparatively graver wrongs than civil injuries. They are graver because they constitute greater interference with the happiness of others and affect the well being not only of a particular individual but of the whole community. They are graver because the impulse to commit them is often very strong or because the advantage to be gained by the wrongful act and the facility with which it can be accomplished are often great. They are also grave because they are ordinarily deliberate act directed by an evil mind and hurtful to society by the bad example they set. Thus crime is an act done with malice or criminal intent. This is called the condition of criminality or the state of imputability, which may include both positive and negative states of mind such as intention, knowledge, likelihood, rashness or heedlessness and even negligence.

1.4.1 Essential Elements of Crime

After understanding the exclusion of many forms of injuries from the ambit of crime, it may be useful to identify the peculiarities of crimes in terms of its basic elements such as:

- a) A willed human action that results in evil consequences that is known as *actus-reus* element.
- b) Guilty mind on the part of the wrong doer to indulge in a proscribed act or omission leading to harmful consequence to an individual or to the society that is known as *mens-rea* element.
- c) Requirement of prohibited act being done with the proscribed guilty mind that is known as the *concurrence* element.

The elements of each specific crime are elaborately provided for in the codified law of crime, the Indian Penal Code, 1860 and other special and Local Laws relating to crimes. The Penal Code spells out the exact nature of *actus-reus* (prohibited act or omission) and *mens-rea* of each offence as the positive requirement to establish criminality. There is also an enumeration of liability exempting conditions by virtue of Section 6 of the Penal Code. In this way the dominant judgment relating to crime is subject to pre-determined elemental framework that ensures uniformity and minimum moral content in the law of crimes.

1.4.2 Crime, “Offence” and its Variants

The Penal Code and the Code of Criminal Procedure, 1973 have used the term offence instead of crime. The rationale for such a change of terms is that: First, crime is a generic term and “Offence” relates to specific proscribed conduct covered by each offence, and Second, establishment of the elemental requirement of a specific offence leads to justifications for imposing the proscribed punishment. Section 40 Penal Code lays down: Except in the [chapters] and sections mentioned in clauses 2 and 3 of this section the word “offence” denotes a thing made punishable by this code. In a similar vein Section 2 (n) of the code of criminal

procedure lays down: “Offence” means “an act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle-Trespass Act 1871”. The Criminal Procedure Code further classifies offences for the purposes of different criminal justice processes, as follows:

a) For the purposes of arrest and investigation “cognisable-offence” (Section 2 (c) CrPC) and “non-cognisable offence” (Section 2 (b) CrPC)- cognisable offence are generally more serious offences as per the First Schedule of the CrPC. In view of their seriousness the Code provides for distinct first information, investigation and arrest procedure in regard to them. Non-cognisable offences are less serious and therefore investigation and arrest in regard to them requires a direction from the appropriate judicial authority.

b) For the purposes of Bail

“bailable offence” and “non-bailable offence” (Section 2 (a) like cognisable offence and non-cognisable offence, use the categorisation conveying the seriousness of the offence in terms of the scheme of the First Schedule of the Code. In bailable offence bail is a matter of right, but in cases of non-bailable offence it is a matter of judicial discretion.

c) For the purposes of “compounding” Proceedings

Section 320 of the Code provides an elaborate scheme for the compoundable offence, which are treated more like civil wrongs that can be compromised with the permission of the court.

d) For the purposes of Plea-bargaining and sentencing

Though the Code does not explicitly use the terms “Petty offence” and “Serious offence”, but there are several provisions in the Code which implicitly categories offences into two these categories, namely (a) offences punishable with less than seven years imprisonment, and (b) those that are punishable with more than seven years imprisonment. Such a classification is relevant for the purposes of claiming Plea-Bargaining (Section 365A) and reformatory sentencing (Section 360 and the Probation of Offenders Act, 1958) benefits.

1.5 TYPOLOGIES AND PATTERNS OF CRIME

Deviance and crime are broad categorisations to demarcate the ‘right’ from ‘wrong’ or normal from sub-standard behaviour at a macro level but within these broad categorisation are sub-sumed a wide range and diverse types of specific deviant behaviours, which are described as specific crimes or offences by diverse criminal statutes. The principal criminal code in India is the Indian Penal Code, 1860 that serves as an omnibus code for different categories of offences. The Penal Code provides for offences grouped into twenty-two clusters classified on the basis of invasion of a cherished social interest that are titled as ‘Offences Against the State’, ‘Offences Relating to Army, Navy and Air Force’, ‘Offences Against the Public Tranquility’, ‘Offences by and Relating to Public Servants’, ‘Offences Relating to Elections’, ‘Contempt of Lawful Authority of Public Servants’, ‘False Evidence and Offences Against Public Justice’, ‘Offences Relating to Weight and Measures’, ‘Offences Affecting Public Health, Safety,

Convenience, Decency and Morals' 'Offences Relating to Religion' 'Offences Affecting the Human Body', 'Offences Against Property', 'Offences Relating to Documents and Property Marks', 'Offences Relating to Marriage', 'Defamation', 'Criminal Intimidation, Insult and Annoyance', 'Abetment', 'Conspiracy' and 'Attempt to Commit Offence'. Within these broad clusters are grouped individual offences that are directed to protect a particular type of interest. For example, 'Offences Affecting the Human Body' (Ch. XII Penal Code) envisages eight diverse ways of invasion of human broadly interest such as 'Affecting Human Life', 'Causing Miscarriage etc', 'Causing Hurt', 'Wrongful Restraint and Confinement', 'Using Criminal Force and Assault', 'Kidnapping, Abduction, and Forced Labour', 'Sexual Offences and Unnatural Offences'. These eight sub-heads comprise individual offences like Murder, Culpable Homicide causing Death by Rash and Negligent act etc. At the operational level the lawyer to has be concerned with each specific offence or the has to smallest denominator of deviance. Apart from the Penal Code there are several other special and local criminal law statutes for dealing with proscribed behaviour on the basis of special interest group like the SC or ST, women and children etc. Also, at times, special crimes are created for the protection of vital economic interests of the society. There are also some special category of strict liability statutes that create crimes which do not require explicit proof of guilty mind element for the creation of liability.

Apart from the traditional crimes Offences classification provided by the Penal Code and special and Local Laws, deviance or crime are also identified by non-traditional labels such as 'Organised Crimes', 'White Collar Crimes', 'Privileged Class Deviance', 'Cyber Crimes', 'Terrorism' and 'Extremism' etc. These non-traditional patterns of criminality are posing greater threat to the individual and community interest in the contemporary societies.

The incidence of crime is measured through official and non-official statistics about crimes in the society. In India the National Crime Records Bureau has been coming out with an annual *Crime in India* report for over three decades now. The *Crime in India* categories the individual offence statistics under two broad heads, namely (a) IPC Crimes, and (b) Special and Local Law Crimes. The IPC crimes are further sub-classified into Violent Crime, Property Crime, Economic crime and Other miscellaneous crimes.

However, the official crime statistics often under states the actual magnitude of crime reality in a society, therefore, the true crime reality can be understood only by taking into account the hidden figure of crime that are contained in individual researchers and media crime surveys.

Self Assessment Questions

5) Why Penal Code/statutes use the term 'Offence' to define a crime?

.....
.....
.....
.....
.....

6) Try to re-capitulate the different variants of offence under the Code of Criminal Procedure?

.....
.....
.....
.....
.....
.....

7) Why the generic term crime is not good enough for operational purpose?

.....
.....
.....
.....
.....

8) Why is there a need to identify new patterns of criminality?

.....
.....
.....
.....
.....

9) How is the reality of crime estimated officially and unofficially?

.....
.....
.....
.....
.....

1.6 FUNCTIONS OF DEVIATIONISM AND CRIMINALISATION

Social contract thinkers such as Thomas Hobbes had envisaged long back that to get away from the state of nature in which men lived a life that ‘was nasty, short, brutish, solitary and poor’, the *Leviathan* had to enact strict rules of behaviour for its members. The same kind of unquestioning faith in rules is reflected in the writings of later thinkers like Beccaria and Jermy Bentham for whom behavioural rule making’ became an essential attribute of a good sovereign. Sociologists and

researchers on deviance have analysed the diverse functions/dysfunctions of rule making or 'deviationism' and criminalization in the contemporary societies as follows:

i) As a measure of Solidarity and Stability

Durkheim in his work *Division of Labor in Society* (1893) considered the social integrative abilities of crime in these terms:

Crime brings together upright consciences and concentrates them. We have only to notice what happens, particularly in a small town, when some moral scandal has been committed. They stop each other on the street, they visit each other, they seek to come together to talk of the event and wax indignant in common. (1947; p. 102)

Writing in the same vein Durkheim (1938) advocated the idea of normality of crime by showing its presence in every society and by underscoring the functions it performed for the society in these words:

Crime, we have shown elsewhere, consists of an act that offends certain very strong collective sentiments. In a society in which criminal acts are no longer committed the sentiments they offend would have to be found without exception in all individual consciousnesses and they must be found to exist with the same degree as sentiments contrary to them. Crime is then, necessary; it is bound up with the fundamental conditions of all social life, and by that very fact it is useful, because these conditions of which it is a part are themselves indispensable to the normal evolution of morality and law.

Like Durkheim, Karl Marx also subscribed to the functionalist view of crime and deviance. But for Marx crime aroused the pro-capitalist society moral and aesthetic sentiments of the public.

ii) As a measure of Social Defence

According to those who subscribe to the views of Hobbes that emphasize the disfunctions of deviance and crime, individual who break the law need to be controlled and punished for they threaten the security and stability of the society. There is a whole school of new-classicalist or conservative revivalist thinkers who emphasise on a more law-and-order society. Wilson (1975) prefers to clearly demarcate between wicked and non-wicked people this way:

Some persons will shun crime even if we do nothing to deter them, while others will seek it out even if we do every thing to reform them. Wicked people exist. Nothing avails except to set them apart from innocent people. And many people, neither wicked nor innocent, but watchful dissembling and calculating of their opportunities ponder our reaction to wickedness as a cue to what they might profitably do. We have trifled with the wicked, made sport of the innocent and encouraged the calculators. Justice suffers, and so do we all. (pp. 21-22)

According to those who argue for social defence the rise of crime beyond historically recorded levels, can create-a break-down of community ties, and a rise in informal, vigilante-type protective responses which further tear a community apart (this is almost opposite of what Durkheim or Marx thought about crime). Such functional measure assumes special significance in the wake of rise in crime of terrorism that demands that the society needs to be protected

and secured at any cost, both by stringent anti-terror laws and rigorous implementation of interrogation, arrest and preventive detention measures.

iii) As a measure of Social Ranking and Exclusion

Deviance and crime often serve the function of stigmatizing and social exclusion of the lower caste, low-ranked professional groups. During British rule the labeling of certain tribal population as criminal tribes and depriving them from land and other property rights is a case on point. Garland (1985) has made the following observation in the context of special section of population for penalty as follows:

When we talk of the population of criminals dealt with by penalty, we should not mistake for a drivers amalgam of individuals randomly distributed throughout the general population. *Penalty deals, and has always dealt, with a population overwhelmingly drawn from the working classes.*

Foucault (1979) has expressed similar function performed by the disciplinary rules within prisons. Alan Norrie (1993) has rationalised the function performed by prisons this way:

They cannot be deterred but they can be removed from circulation for a period of time. The prison thereby acts as a *cordan sanitaire*, between the relatively law abiding and the rest. While containing the one group it acts as a symbol to the other of the dangers of crossing the line between criminality and respectability, (p. 202)

Steven Box (1983) views the ‘problem population’ comprising of able bodied unemployed and unemployable as those who can create a legitimacy crisis by distancing themselves from consent to be governed.

iv) As a measure to preserve ideological and social hegemony

According to Steven Box: “For too long too many people have been socialised to see crime and criminals through the eyes of the state, the crime problem defined by the state is not the only crime problem, or that criminals are not only those processed by the state. There is more to crime and criminals than what the state reveals. But most people cannot see it.” (pp. 14-15). The aforesaid makes it abundantly clear that deviance and crime are meant to convey a particular ideology or to maintain the hegemony of the dominant sections of the society. This explains why the concept of crime undergoes changes with the ideological positioning of the state itself.

Self Assessment Questions

10) Why do Durkheim and Karl Marx consider deviance and crime as normal and ‘useful’?

.....
.....
.....
.....
.....
.....

11) Do you agree with those who consider deviance and crime as a measure of social defence?
.....
.....
.....
.....
.....
.....

12) Why most of the deviance and crime judgments directed against the poor and powerless sections only?
.....
.....
.....
.....
.....

13) How deviance and crime become a powerful tool of social education?
.....
.....
.....
.....
.....

1.7 SUMMARY

- This unit elaborates the concept of “deviance” and “crime”, the various elements of crime, typologies and patterns of crime and functions of rule making.
- What constitutes “deviant behaviour” and “crime” in any particular society depends on various underlying factors in any given society like nature of society, stages of its development, evolution of system for dealing with deviations etc. Crime and deviance are multifaceted and multiissue discipline. Sociologists have defined these two concepts in term of infractions of some agreed upon rule. Sociologists as well as lawyers’ conception depend on two basic premises that firstly law is desirably social entity that is assumed for the larger happiness of the society and secondly, deviance and crime are impliedly based on consensus model in respect of “harmful” behaviour.
- David Matza envisages deviance in term of legitimisation demand of competing cultural entities e.g. the case in India, cultural clashes occurred between the religious sentiment of a particular group of people and artistic

Basic Issues

expression (M.F. Hussain case) more progressive cultural clash can be traced in the whole debate relating to Section 377IPC (sex against natural order), Section 309 (attempt to commit suicide).

The basic elements have been discussed in this unit, which are as:

- Human being who is under legal obligation
- Mens rea or guilty mind on the part of the wrong doer
- Act committed or omitted in accordance of intention
- Injury to one man or to society.
- Further light has been thrown on the classification of crime depending on the various purposes it serves, e.g. for the purpose of arrest and investigation, for the purpose of bail, for the purpose of compounding proceedings etc.
- Various sociologists like Bentham, Durkheim, and Hobbes have studied the diverse functions/dysfunctions of rule making or “deviationism”. Durkheim commented on the social integrative abilities of crime. Some other social thinkers had observed that deviance and crime often serve the functions of stigmatizing and social exclusion of the lower caste, lower ranked professional groups this aspect has been discussed at the last part of the unit.

1.8 TERMINAL QUESTIONS

- 1) Describe the essential elements of crime
- 2) Discuss the functions of deviationism and criminalization in detail.

1.9 ANSWERS AND HINTS

Self Assessment Questions

- 1) Refer to Section 1.2
- 2) Refer to Section 1.2
- 3) Refer to Section 1.2
- 4) Refer to Section 1.2
- 5) Refer to Section 1.3
- 6) Refer to Section 1.3
- 7) Refer to Section 1.3
- 8) Refer to Section 1.3
- 9) Refer to Section 1.3
- 10) Refer to Section 1.4
- 11) Refer to Section 1.4
- 12) Refer to Section 1.4
- 13) Refer to Section 1.4

Terminal Questions

- 1) Refer to Sub-section 1.2.1
- 2) Refer to Section 1.4

1.10 REFERENCES AND SUGGESTED READINGS

- 1) Box, Steven, (1983), *Power, Crime and Mystification*, Tavistock Studies in Sociology, N. Y.
- 2) Chamibliss, W. J., (1995), *Whose Law? What Order?* , Wiley, N. Y.
- 3) Clinard, M. B., (1963), *Sociology of Deviant Behavior*, Holt, Rinehart and Winston N. Y.
- 4) Cohen, A. K., (1966), *Deviance and Control*, Prentice Hall, New Jersey.
- 5) Durkheim, E., (1947), *Division of Labour in Society*, Free Press, N. Y.
- 6) Foucault, M., (1949), *Discipline and Punish*, Harmondsworth, Peregrine.
- 7) Garland, D., (1985), *Punishment and Welfare*, Aldershot, Gover.
- 4) Matza, D., (1969), *Becoming Deviant*, Prentice Hall, New Jersey.
- 8) Norrie, Alan, (1973), *Crime, Reason and History*, Weidenteld and Nicholson, London.
- 9) Wilson, J. Q., (1975), *Thinking About Crime*, Basic Books, N. Y.



ignou
THE PEOPLE'S
UNIVERSITY