



What is Crime?

A crime may, be an act of disobedience to such a law forbidding or commanding it. But then disobedience of all laws may not be a crime, for instance, disobedience of civil laws or laws of inheritance or contracts. Therefore, a crime would mean something more than a mere disobedience to a law, “it means an act which is both forbidden by law and revolting to the moral sentiments of the society.”

Thus robbery or murder would be a crime, because they are revolting to the moral sentiments of the society, but a disobedience of the revenue laws or the laws of contract would not constitute a crime. Then again, “the moral sentiments of a society” is a flexible term, because they may change, and they do change from time to time with the growth of the public opinion and the social necessities of the times. So also, the moral values of one country may be and often are quite contrary to the moral values of another country. To cite a few instances, here say was a crime at one time in most of the countries in, because in those days it offended the moral sentiments of the society. It was punished with burning. But nobody is punished nowadays for his religious beliefs, not even in a theocratic state. The reason is obvious. Now it does not offend the moral sentiments of the society.

Adultery is another such instance. It is a crime punishable under Indian Penal Code, but it is not so in some of the countries of the West. Then again sati, i.e., burning of a married woman on the funeral pyre of her deceased husband, was for a long time considered to be a virtue in our own country, but now it is a crime. Similarly, polygamy was not a crime in our country until it was made so by the Hindu Marriage Act, 1955. This Act, it may be stated, does not apply to Mohammedans or Christians. But Christians are forbidden to practice polygamy under their law of marriage, while Mohammedans are yet immune from punishment for polygamy. All these instances go to show that the content of crime changes from time to time in the same country and from country to country at the same time because it is conditioned by the moral value approved of by a particular society in a particular age in a particular country. A crime of yesterday may become a virtue tomorrow and so also a virtue of yesterday may become a crime tomorrow. Such being the content of crime, all attempts made from time to time beginning with Blackstone down to Kenny in modern times to define it have proved abortive. Therefore, the present writer agrees with Russell when he observes that “to define crime is a task which so far has not been satisfactorily accomplished by any writer. In fact, criminal offences are basically the creation of the criminal policy adopted from time to time by those sections of the community who are powerful or strict enough to safeguard their own security and comfort by causing the sovereign power in the state to



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repress conduct which they feel may endanger their position”.

- ☉ **Stephen:-** “Observed a crime is a violation of a right considered in reference to the evil tendency of such violation as regards the community at large.”
- ☉ **Black Stone:-** “Crime is an act committed or omitted in violation of a public law either forbidding or commanding it.”

What is Criminal Law?

Criminal law or Penal law is the body of law that relates to crime or concerns crimes and laws applied to those who commit them. It regulates social conduct and prescribes whatever is threatening, harmful, or otherwise endangering to the property, health, safety, and moral welfare of people. It includes the punishment of people who violate these laws. Criminal law varies according to jurisdiction, and differs from civil law, where emphasis is more on dispute resolution and victim compensation than on punishment.

Of all the branches of law, criminal law is the most important branch of law, because it closely touches and concerns man in his day to day affairs. From the beginning of the human civilization the human society has prescribed a code of conduct for its members. Any act or anti social behaviour which will violate the code of conduct and will reduce human happiness, is considered as crime. But violations are bound to occur and crime is inevitable. It is the responsibility of the state to protect the members of the society from any anti social behaviour and hence it makes criminal laws with the object to protect the society from the criminals. But when a person commits a crime he is not automatically punished or he himself will not come and confess that has committed a crime and accept punishment. There must be a procedure to enforce the criminal law.

Objectives of Criminal Law

Criminal law is distinctive for the uniquely serious potential consequences or sanctions for failure to abide by its rules. Every crime is composed of criminal elements. Capital punishment may be imposed in some jurisdictions for the most serious crimes. Physical or corporal punishment may be imposed such as whipping or caning, although these punishments are prohibited in much of the world. Individuals may be incarcerated in prison or jail in a variety of conditions depending on the jurisdiction. Confinement may be solitary. Length of incarceration may vary from a day to day life. Government supervision may be imposed, including house arrest, and convicts may be required to conform to particularized guidelines as part of a parole or probation regimen. Fines also may be imposed, seizing money or property from a person convicted of a crime.

Five objectives are widely accepted forenforcement of the criminal law by punishments: retribution, deterrence, incapacitation, rehabilitation and restoration. Jurisdictions differ on the value to be placed on each.

- ☉ **Retribution** – Criminals ought to *suffer* in some way. This is the most widely seen goal. Criminals have taken improper advantage, or inflicted unfair detriment, upon others and consequently, the criminal law will put criminals at some unpleasant disadvantage to “balance the scales.” People submit to the law to receive the right not to be murdered



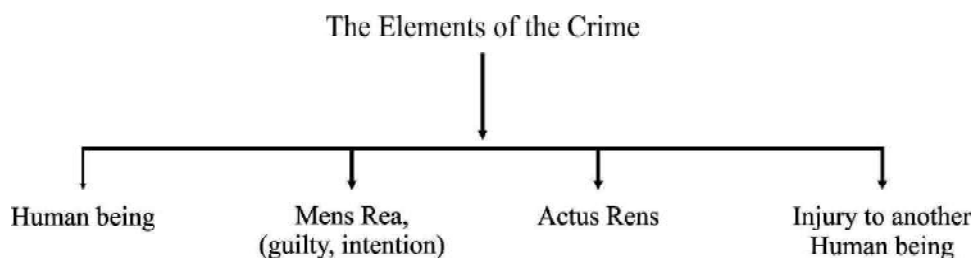
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and if people contravene these laws, they surrender the rights granted to them by the law. Thus, one who murders may be executed himself. A related theory includes the idea of “righting the balance.”

- **Deterrence** – *Individual* deterrence is aimed toward the specific offender. The aim is to impose a sufficient penalty to discourage the offender from criminal behavior. *General* deterrence aims at society at large. By imposing a penalty on those who commit offenses, other individuals are discouraged from committing those offenses.
- **Incapacitation** – Designed simply to keep criminals *away* from society so that the public is protected from their misconduct. This is often achieved through prison sentences today. The death penalty or banishment have served the same purpose.
- **Rehabilitation** – Aims at transforming an offender into a valuable member of society. Its primary goal is to prevent further offense by convincing the offender that their conduct was wrong.
- **Restoration** – This is a victim-oriented theory of punishment. The goal is to repair, through state authority, any injury inflicted upon the victim by the offender. For example, one who embezzles will be required to repay the amount improperly acquired. Restoration is commonly combined with other main goals of criminal justice and is closely related to concepts in the civil law, i.e., returning the victim to his or her original position before the incident.

Elements of Crime



The basic components of an offense are listed below; generally, each element of an offense falls into one or another of these categories. At common law, conduct could not be considered criminal unless a defendant possessed some level of intention — either purpose, knowledge, or recklessness — with regard to both the nature of his alleged conduct and the existence of the factual circumstances under which the law considered that conduct criminal.

Human Being

The first requirement is that the wrongful act must be committed by a human being. In the IPC if an animal causes an injury we held not the animal but its owner liable for such injury. Indian Penal Code includes a company association or body of persons whether incorporated or not under the definition of person.



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Mental State (Mens Rea) “Actus non “ non facitrem nisimens sit rea”-

An act dos non make one guilty unless it is accompanied by guilty mind.

The second important essential element of a crime is mens rea or evil intent or guilty mind. There can be no crime of any nature without mens rea or an evil mind. Every crime requires a mental element and that is considered as the fundamental principle of criminal liability. The basic requirement of the principle mens rea is that the accused must have been aware of those elements in his act which make the crime with which he is charged. There is a well known maxim in this regard, i.e. “actus non facit rem nisi mens sit rea” which means that, the guilty intention and guilty act together constitute a crime. It comes from the maxim that no person can be punished in a proceeding of criminal nature unless it can be showed that he had a guilty mind. Mens rea varies depending on the offense. For murder, the mental element requires the defendant acted with “malice aforethought”. Others may require proof the act was committed with such mental elements such as “knowingly” or “willfulness” or “recklessness”. Arson requires an intent to commit a forbidden act, while others such as murder require an intent to produce a forbidden result. Motive, the reason the act was committed, is not the same as mens rea and the law is not concerned with motive.

CASE LAW

R V ALLEN [1988] CRIM LR 698

Facts: The appellant consumed some homemade wine. This had a much greater effect on him than anticipated. He committed sexual assaults and claimed he was so drunk he did not know what he was doing. He argued that he had not voluntarily placed himself in that condition as the wine was much stronger than he realised.

Held: The intoxication was still voluntary even though he had not realised the strength of it. The crime of sexual assault is one of basic intent and therefore the appellant was unable to rely on his intoxicated state to negate the mens rea.

EXCEPTIONS TO THE PRINCIPLE OF MENS REA

At common law there are three recognized exceptions to the general principle of mens rea-

1. Public Nuisance
2. Criminal libel
3. Contempt of court.

Conduct (Actus Rea)

All crimes require actus reus. That is, a criminal act or an unlawful omission of an act, must have occurred. A person cannot be punished for thinking criminal thoughts. This element is based on the problem of standards of proof. Unlike thoughts, words can be considered acts in criminal law. For example, threats, perjury, conspiracy, and solicitation are offenses in which words can constitute the element of actus reus.

The omission of an act can also constitute the basis for criminal liability.



Injury

The injury should be illegally caused to any person in body, mind, reputation or property. An injury is a harm suffered by a person due to some act or omission done by another person, and can generally give rise to a civil tort claim or a criminal prosecution.

An injury or harm done is also an essential element of unintentional torts. For example, a negligent act or omission is a breach of the duty of care to “prevent harm to oneself or others.”

Some other forms of injury recognized by the law include:

- A permanent injury is a type of personal injury of a nature that has a lasting, adverse effect on employment potential.
- An irreparable injury is a type of harm that cannot be cured or reversed by monetary compensation. One example is the pollution of a river.

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Stages of the crime:

- INTENTION.
- PREPARATION.
- ATTEMPT.
- COMMISSION.

In most of the cases last two stages are punishable. But in few offences preparation to commit crime is also punishable.

Intention

In criminal law, intent is one of three general classes of *mens rea* necessary to constitute a *conventional crime*, as opposed to strict liability, crime. A more formal, generally synonymous legal term is scienter: intent or knowledge of wrongdoing. Intent is defined in Canadian law by the ruling in *R v Mohan* (1994) as “the decision to bring about a prohibited consequence.” A range of words represents shades of *intent* in criminal laws around the world. The mental element, or *mens rea*, of murder, for example, is traditionally expressed as malice aforethought, and the interpretations of malice, “maliciously” and “willful” vary between pure intent and recklessness or negligence, depending on the jurisdiction in which the crime was committed and the seriousness of the offence. The intent element of a crime, such as intent to kill, may exist without a malicious motive, or even with a benevolent motive, such as in the case of euthanasia.

A person *intends* a consequence when they;

1. *Foresee*, that it will happen if their given series of acts or omissions continue, and
2. *Desire*, it to happen.

The most serious level of culpability, justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused’s mind (a “subjective” test). A person who plans and executes a crime is considered, rightly or wrongly, a more serious danger to the public than one who acts spontaneously (perhaps because they are less likely to get caught), whether out of the sudden opportunity to steal, or out of anger to injure another. But intent can also come from the common law viewpoint as well.

The policy issue for those who administer the criminal justice system is that, when planning their actions, people may be aware of many probable and possible consequences. Obviously, all of these consequences could be prevented through the simple expedient either of ceasing the given activity or of taking action rather than refraining from action. So the decision to continue with the current plan means that all the foreseen consequences are to some extent *intentional*, i.e. within and not against the scope of each person’s intent. But, is the test of culpability based on purely a subjective measure of what is in a person’s mind or does a court measure the degree of fault by using objective tests?

For example, suppose that A, a jealous wife, discovers that her husband is having a sexual affair with B. Wishing only to drive B away from the neighbourhood, one night, pours petrol on and sets fire to the front door. B dies in the resulting fire. A is shocked and

horrified. It did not occur to her that B might be physically in danger and there was no conscious plan in her mind to injure B when the fire began. But when A's behaviour is analysed, B's death must be intentional. If A had genuinely wished to avoid any possibility of injury to B, she would not have started the fire. Or, if verbally warning B to leave was not an option, she should have waited until B was seen to leave the house before starting the fire. As it was, she waited until night when it was more likely that B would be at home and there would be fewer people around to raise the alarm. Whereas intent would be less if A had set fire to the house during the day after ringing the doorbell to check no one was home and then immediately ringing the fire brigade to report the fire. On a purely subjective basis, A intended to render B's house uninhabitable, so a reasonably substantial fire was required. The reasonable person would have foreseen a probability that people would be exposed to the risk of injury. Anyone in the house, neighbours, people passing by, and members of the fire service would all be in danger.

The court therefore assesses the degree of probability that B or any other person might be in the house at that point time. The more certain the reasonable person would have been, the more justifiable it is to impute sufficient desire to convert what would otherwise only have been recklessness into intent to constitute the offence of murder. But if the degree of probability is lower, the court finds out only recklessness proved. Some states once had a rule that a death that occurred during commission of a felony automatically imputed sufficient *mens rea* for murder. This rule has been mostly abolished, and direct evidence of the required mental components is now required. Thus, the courts of most states use a hybrid test of intent, combining both subjective and objective elements, for each offence changed.

Meaning of the maxim "Actus reum nisi mens sit rea"

Firstly of the above maxim is that "an act in order to be a crime must be committed with guilty mind". In other words "An act alone does not make a man guilty unless his intention were so is a well known principle of **Natural Justice**.

- **"Voluntary Act"**
- **Case Law**
- **Sherras v De Rutzen.**

Fact: The defendant was convicted of selling alcohol to a police officer whilst on duty. It was customary for police officers to wear an armlet whilst on duty but this constable had removed his. The appellant therefore believed he was off duty. The statute was silent as to the question of whether knowledge was required for the offence. He was convicted and appealed contending that knowledge that the officer was on duty was a requirement of the offence.

Held: The appeal was allowed and his conviction was quashed.

Wright J: "There is a presumption that mens rea, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals. It is plain that if guilty knowledge is not necessary, no care on the part of the publican could save him from a conviction under section 16, subsection (2), since it would be as easy for the constable to deny that he was on duty when asked, or to produce a forged permission from his superior officer, as to remove his armlet before entering the public house. I am, therefore, of opinion that this conviction ought to be quashed."

Preparation

Preparation is the second stage in the commission of a crime. It means to arrange the necessary measures for the commission of the intended criminal act. Intention alone or the intention followed by a preparation is not enough to constitute a crime. Preparation has not been made punishable because in most of the cases the prosecution has failed to prove that



the preparations in the question were made for the commission of the particular crime. If A purchases a pistol and keeps the same in his pocket duly loaded in order to kill his bitter enemy B, but does nothing more. A has not committed any offence as still he is at the stage of preparation and it will be impossible for the prosecution to prove that, A was carrying the loaded pistol only for the purpose of killing B.

Preparation When Punishable Generally, preparation to commit any offence is not punishable but in some exceptional cases preparation is punishable, following are some examples of such exceptional circumstances a) Preparation to wage war against the Government - Section 122, IPC 1860; b) Preparation to commit depredation on territories of a power at peace with Government of India- Section 126, IPC 1860; c) Preparation to commit dacoity- Section 399, IPC 1860; d) Preparation for counterfeiting of coins or Government stamps- Sections 233-235, S. 255 and S. 257; e) Possessing counterfeit coins, false weight or measurement and forged documents. Mere possession of these is a crime and no possessor can plead that he is still at the stage of preparation- Sections 242, 243, 259, 266 and 474.

Parliament Attack Case

A single most important factor which pipples to think that this is the case of waging war or attempting to wage war against the government of India, as the target of attaching chosen by slain terrorists and conspirators and the immediate object sought to be achieved thereby. The battlefield chosen for this was “parliament”, a symbol of the sovereignty of the Indian republic.

Huge and powerful explosives, sophisticated arms and ammunition carried by the slain terrorist, who indulge in ‘fidayeen’ operations with a definite purpose in view, is a clear indicator of grave danger in store for the inmates of the house. The planned act, if executed, would have spelt disaster for the whole nation.

Even if the conspired purpose and objective fall short of installing some other authority or entity in the place of an established government, it does not detract from the offence of waging war.

Attempt

Attempt is the direct movement towards the commission of a crime after the preparation is made. According to English law, a person may be guilty of an attempt to commit an offence if he does an act which is more than merely preparatory to the commission of the offence; and a person will be guilty of attempting to commit an offence even though the facts are such that the commission of the offence is impossible. There are three essentials of an attempt:-

1. Guilty intention to commit an offence;
2. Some act done towards the commission of the offence;
3. The act must fall short of the completed offence.

Accomplishment or commission of crime

Accomplishment or Completion is the last stage in the commission of an offence is its accomplishment or completion. If the accused succeeds in his attempt to commit the crime, he will be guilty of the complete offence and if his attempt is unsuccessful he will be guilty of an attempt only.

For example, A fires at B with the intention to kill him, if B dies, A will be guilty for committing the offence of murder and if B is only injured, it will be a case of attempt to murder.

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