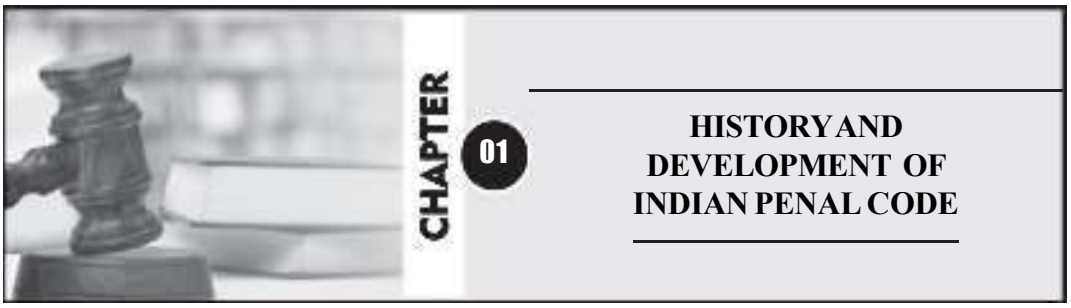


CHAPTER 01

HISTORY AND DEVELOPMENT OF INDIAN PENAL CODE

INTRODUCTION

The Indian Penal Code (IPC) is the main criminal code of India. It is a comprehensive code intended to cover all substantive aspects of criminal law. The code was drafted in 1860 on the recommendations of first law commission of India established in 1834 under the Charter Act of 1833 under the Chairmanship of Thomas Babington Macaulay. It came into force in British India during the early British Raj period in 1862. However, it did not apply automatically in the Princely states, which had their own courts and legal systems until the 1940s. The Code has since been amended several times and is now supplemented by other criminal provisions. After the partition of the British Indian Empire, the Indian Penal Code was inherited by its successor states, the Dominion of India and the Dominion of Pakistan, where it continues independently as the Pakistan Penal Code. The Ranbir Penal Code (RPC) applicable in Jammu and Kashmir is also based on this Code. After the separation of Bangladesh from Pakistan, the code continued in force there.

HISTORY

The draft of the Indian Penal Code was prepared by the First Law Commission, chaired by Thomas Babington Macaulay in 1835 and was submitted to Governor-General of India Council in 1837. Its basis is the law of England freed from superfluities, technicalities and local peculiarities. Elements were also derived from the Napoleonic Code and from Edward Livingston's Louisiana Civil Code of 1825. The first final draft of the Indian Penal Code was submitted to the Governor-General of India in Council in 1837, but the draft was again revised. The drafting was completed in 1850 and the Code was presented to the Legislative Council in 1856, but it did not take its place on the statute book of British India until a generation later, following the Indian Rebellion of 1857. The draft then underwent a very careful revision at the hands of Barnes Peacock, who later became the first Chief Justice of the Calcutta High Court, and the future puisne judges of the Calcutta High Court, who were members of the Legislative Council, and was passed into law on 6 October 1860.The Code came into operation on 1 January 1862. Macaulay did not survive to see his masterpiece come into force, having died near the end of 1859.

GENERAL INTRODUCTION RELATING TO THE SECTION OF THE CODE

INDIAN PENAL CODE, 1860 ***(Sections 1 to 511)***		
Chapter	***Sections covered***	***Classification of offences***
Chapter I	Sections 1 to 5	Introduction
Chapter II	Sections 6 to 52	General Explanations
Chapter III	Sections 53 to 75	of Punishments
Chapter IV	Sections 76 to 106	General Exceptions *of the Right of Private Defence* (Sections 96 to 106)
Chapter V	Sections 107 to 120	Of Abetment
Chapter VA	Sections 120A to 120B	Criminal Conspiracy
Chapter VI	Sections 121 to 130	Of Offences against the State
Chapter VII	Sections 131 to 140	Of Offences relating to the Army, Navy and Air Force
Chapter VIII	Sections 141 to 160	Of Offences against the Public Tranquillity
Chapter IX	Sections 161 to 171	Of Offences by or relating to Public Servants
Chapter IXA	Sections 171A to 171I	Of Offences Relating to Elections
Chapter X	Sections 172 to 190	Of Contempts of Lawful Authority of Public Servants
Chapter XI	Sections 191 to 229	Of False Evidence and Offences against Public Justice
Chapter XII	Sections 230 to 263	Of Offences relating to coin and Government Stamps
Chapter XIII	Sections 264 to 267	Of Offences relating to Weight and Measures
Chapter XIV	Sections 268 to 294	Of Offences affecting the Public Health, Safety, Convenience, Decency and Morals.
Chapter XV	Sections 295 to 298	Of Offences relating to Religion
Chapter XVI	Sections 299 to 377	Of Offences affecting the Human Body. • Of Offences Affecting Life including murder, culpable homicide (Sections 299 to 311) • Of the Causing of Miscarriage, of Injuries to Unborn Children, of the Exposure of Infants, and of the Concealment of Births (Sections 312 to 318) • Of Hurt (Sections 319 to 338) • Of Wrongful Restraint and Wrongful Confinement (Sections 339 to 348) • Of Criminal Force and Assault (Sections 349 to 358) • Of Kidnapping, Abduction, Slavery and Forced Labour (Sections 359 to 374) • Sexual Offences including rape (Sections 375 to 376) • Of Unnatural Offences (Section 377)

Chapter XVII	Sections 378 to 462	Of Offences Against Property • Of Theft (Sections 378 to 382) • Of Extortion (Sections 383 to 389) • Of Robbery and Dacoity (Sections 390 to 402) • Of Criminal Misappropriation of Property (Sections 403 to 404) • Of Criminal Breach of Trust (Sections 405 to 409) • Of the Receiving of Stolen Property (Sections 410 to 414) • Of Cheating (Section 415 to 420) • Of Fraudulent Deeds and Disposition of Property (Sections 421 to 424) • Of Mischief (Sections 425 to 440) • Of Criminal Trespass (Sections 441 to 462)
Chapter XVIII	Section 463 to 489 –E	Offences relating to Documents and Property Marks • Offences relating to Documents (Section 463 to 477-A) • Offences relating to Property and Other Marks (Sections 478 to 489) • Offences relating to Currency Notes and Bank Notes (Sections 489A to 489E)
Chapter XIX	Sections 490 to 492	Of the Criminal Breach of Contracts of Service
Chapter XX	Sections 493 to 498	Of Offences Relating to Marriage
Chapter XXA	Sections 498A	Of Cruelty by Husband or Relatives of Husband
Chapter XXI	Sections 499 to 502	Of Defamation
Chapter XXII	Sections 503 to 510	Of Criminal intimidation, Insult and Annoyance
Chapter XXIII	Section 511	Of Attempts to Commit Offences

IMPORTENT "DEFINITION,S" UNDER THE INDIAN PENAL CODE.

SECTION 8. "GENDER"

The pronoun "he" and its derivatives are used of any person, whether male or female.

SECTION 10. "MAN", "WOMAN"

The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.

SECTION 11. "PERSON"

The word "person" includes any Company or Association or body of persons, whether incorporated or not.

SECTION 19. "JUDGE"

The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person,- who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations

(a) A Collector exercising jurisdiction in a suit under Settelment Act 10 of 1859, is a Judge.

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(c) A member of a panchayat which has power, under Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.

(d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

SECTION 20. "COURT OF JUSTICE"

The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration

A panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

SECTION 21. (FIRST) - "PUBLIC SERVANT"

The words "public servant" denote a person falling under any of the descriptions hereinafter following; namely-

FIRST-OMMITED

(Second)- Every Commissioned Officer in the Military, [Naval or Air] Forces of India];

(Third)- Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(Fourth)- Every officer of a Court of Justice [(including a liquidator, receiver or commissioner)] whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

(Fifth) - Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

(Sixth) - Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

(Seventh) - Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(Eighth) - Every officer of [the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(Ninth) - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of [the Government], or to make any survey, assessment or contract on behalf of [the Government], or to execute any revenue process, or to investigate, or to

report, on any matter affecting the pecuniary interests of [the Government], or to make, authenticate or keep any document relating to the pecuniary interests of [the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of [the Government]

(Tenth) - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

(Eleventh) - Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(Twelfth) - Every person-

(a) In the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) In the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).]

Illustration

A Municipal Commissioner is a public servant.

Explanation 1: Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2: Wherever the words "public servant" occurs, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3: The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.] 34

SECTION 22. "MOVABLE PROPERTY"

The words "movable property" is intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

SECTION 23. "WRONGFUL GAIN"

"Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss":- "Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled. Gaining wrongfully, losing wrongfully.-A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

SECTION 24."DISHONESTLY"

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing "dishonestly".

SECTION 25. "FRAUDULENTLY"

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

SECTION 26. "REASON TO BELIEVE"

A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise.

SECTION 28."COUNTERFEIT"

A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practiced.

Explanation 1: It is not essential to counterfeiting that the imitation should be exact.

Explanation 2: When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practice deception or knew it to be likely that deception would thereby be practiced.]

SECTION 29. "DOCUMENT"

The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1: It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document. A cheque upon a banker is a document. A power-of-attorney is a document. A map or plan which is intended to be used or which may be used as evidence, is a document. A writing containing directions or instructions is a document.

Explanation 2: Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

SECTION 29 A. "ELECTRONIC RECORD"

The words "electronic record" shall have the meaning assigned to them in clause (t) of sub-section 2 Of the Information Technology Act, 2000.]

SECTION 30."VALUABLE SECURITY"

The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration

A writes his name on the back of a bill of exchange. As the effect of this endorsement is transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security".

SECTION 31. "A WILL"

The words "a will" denote any testamentary document.

SECTION 33. "ACT", "OMISSION"

The word "act" denotes as well a series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.

SECTION 39. "VOLUNTARILY"

A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration

A set fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

SECTION 40. "OFFENCE"

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 Chapter IV, [Chapter VA] and in the following sections, namely, sections [64, 65, 66, [67], 71], 109, 110, 112, 114, 115, 116, 117, [118, 119, 120,] 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined. And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.]

SECTION 44. "INJURY"

The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

SECTION 45. "LIFE"

The word "life" denotes the life of a human being, unless the contrary appears from the context.

SECTION 46."DEATH"

The word "death" denotes the death of a human being, unless the contrary appears from the context.

SECTION 51. "OATH"

The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

SECTION 52. "GOOD FAITH"

Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

SECTION 52A. "HARBOUR"

Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means or conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.]

SECTION 53. "PUNISHMENTS"

The punishments to which offenders are liable under the provisions of this Code are-

(First) - Death; [Secondly.-Imprisonment for life;]

(Fourthly) - Imprisonment, which is of two descriptions, namely:-

(1) Rigorous, that is, with hard labour;

(2) Simple;

(Fifthly) - Forfeiture of property;

(Sixthly) - Fine.

CHAPTER 02

THE ELEMENT AND STAGES OF CRIME

INTRODUCTION

The term criminal law generally refers to substantive criminal laws. Substantive criminal laws define crimes and prescribe punishment. The first written codes of law were discussed by the Sumerians around 2100-2050 BC. Another important early code was the code Hammurabi, which is formed by the core of Babylonian law. The primary objectives of criminal law are to maintain law and order in the society, protect the life and liberty of people and punish the offender. As punishment to the offender has long term consequences for the convict, it is the basic principle that criminal liability may be imposed only if all the ingredients of an offence are fully proved beyond reasonable doubt. Various offences in the Indian Penal Code have been drafted keeping in view various principles of criminal liability. For example, most offences specify the required state of mind as well as the prohibited act for imposition of criminal liability. However, many situations require deviation from these principles due to the involvement of more than one person in the action, or due to the resultant harm to society, or due to prevailing social and cultural norms contrary to constitutional principles of equality and liberty to all.

NATURE AND DEFINITION OF CRIME.

A crime may, therefore, 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, heresy was a crime at one time in most of the countries of the world, 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 suttee, 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 repress conduct which they feel may endanger their position".

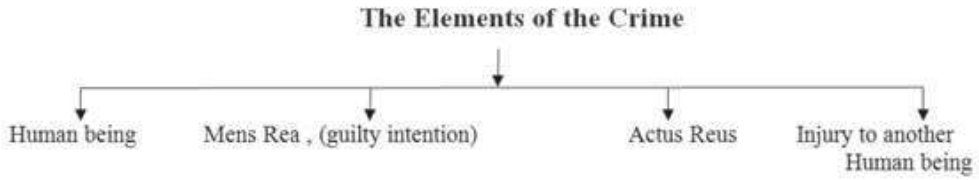
Stephen:- "Observed a crime is a violation of a right considered in reference to the evil tendency of such violation as regards the community at large."

Black Stone:- "Crime is an act committed or omitted in violation of a public law either forbidding or commanding it."

DIFFERENCE BETWEEN CIVIL AND CRIMINAL WRONG.

No	Crime	Civil wrongs
1)	Crime is a Wrong against Society	Civil Wrong is against a private individual or individuals
2)	Remedy against crime is Punishment	Remedy against civil wrong is Damages
3)	The proceeding in case of Crime is are criminal proceeding	In case of Civil wrong are civil proceedings
4)	In Crime intention is essential element.	In civil it is not relevant
5)	In Crime , State takes action against Criminal	Aggrieved person takes action

THE ELEMENTS OF THE CRIME.



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. Section 11 includes a company association or body of persons whether incorporated or not.

MENS REA.

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 reum 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.

STRICT LIABILITY AS EXCEPTION TO 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.**

Public Nuisance

An employer can be held guilty of the offence even where the offence doing act is done by an employee without his knowledge. Section 268 of IPC creates the offence of public nuisance. In modern times the principle of strict responsibility is mare noticeable in "public welfare offences". They are offences connected with sale of adulterated food or drugs, or offences of possession or offences connected with road traffic or offences against customs rules and foreign regulations.

ACTUS REUS [GUILTY ACT OR OMISSION]

The second essential element of a crime is actus reus. In other words, some overt act or illegal omission must take place in pursuance of the guilty intention. Actus reus is the manifestation of mens rea in the external world. Prof. Kenny was the first writer to use the term 'actus reus'. He has defined the term thus- "such result of human conduct as the law seeks to prevent".

Actus Reus is the physical aspect of a crime. The accused needs to have done something or omitted to do something, resulting in injury to the plaintiff, or the victim in civil cases. Without a guilty act, there can be no crime and no suit for damages can arise. An act alone does not make a crime, however, and both the intention of the person and the act itself, if such act is prohibited, combine to form the crime. In certain cases, circumstances of the case are also taken into consideration, and are often used to either conclusively prove guilt, or can be used to prove reasonable doubt of intention. (Example: - carrying a knife into someone's house with the express intention of committing the act of murder, or driving a car on a foggy night and accidentally striking someone attempting to unsafely cross the road.)

Actus Reus can also be the omission of an act, by omitting to do something that the accused knows he is bound by duty or law to do (example: - a mother intentionally omits to feed her female child, leading to the child's death.) The mother can legally be charged with causing death by negligence, and may also be charged with murder, if her intentions of murdering her infant can be proven in court.

INJURY

The injury should be illegally caused to any person in body, mind, reputation or property as according to section 44 of the IPC 1860.

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. Example:Sec.122, 126, 399, 233, 235, 255, 242, 243, 259, 266, 474 of Indian Penal Code are punishable even on the preparation of the offences.

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 tools?

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, she goes to B's house 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 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'

For any criminal liability there must be a "voluntary act". This proposition is derived from the maxim actus me invito factus non est mens actus" means "An act done by me against my will is not my act".

Difference Between Volition, Motive, Intention.

According to the Austin, "bodily movements obey wills they move when we will they should". The wish is volition and consequent movements are acts. Besides the volition and act, it is supposed that is a will, when I will a movement I wish it, and when I conceive the wish I accept that the movements wished will follow.

The wishes followed by the act wished, are only wishes which attain their ends without external means our desires of them are volitions.

The act I will, the consequences I intend. This imaginary will is determined to action by motive".

The desire which implies the motion is known as volition which implies the motion is known as volition.

"The longing for the object desired which sets the volition in motion is motive. The expectations that desired motions will lead to certain consequences is the intention, we will the act and intend the consequences".

Note:- According to Stephen "will is often used as being synonymous with the act of volition, which proceeds or accompanies voluntary action"

Difference Between Intention and Motive

Stephen:- Intention is an operation of the will directing an overt act, motive is the feeling which prompts the operation of the will, the ulterior object of the person willing.

Bentham:- Motive is anything which by influencing the will of a sensitive being is supposed to serve as a means of determining him to act upon any occasion.

Note:- Intention refers to the immediate object, while motive refers to the ulterior object which is at the root of the intention.

Whether the mens rea is essential Ingredient for every penal provision or there is any exception?

There are few land mark case law on this topic:

1. R v. Prince.
2. R v. Tolson.
3. Sherras v De rutzen .
4. M.H George v. State of Maharashtra.
5. Nathu lal v State of M.P.

1. REGINA V. PRINCE.

Facts: Defendant was convicted of taking an unmarried girl under 16 years out of the possession and against the will of her father (a misdemeanor). The jury found that the girl had told the defendant she was 18, the defendant honestly believed the statement, and his belief was reasonable.

Defendant's argument: The statute has a requirement read into it that the prosecution must prove that the defendant believed the girl he had taken was over 16.

State's argument: The statute does not require this proof. The act of taking a girl out is wrong in and of itself - that is the mens rea. It does not matter that he thought the girl was older. Just like it would not matter whether he knew or did not know whether she is under 16. However, it would have mattered if he did not know the girl was in the custody of her father.

Holding: Conviction affirmed.

Reasoning: The court interpreted the statute to require a strict liability application. The Common Law does not allow defenses to strict liability.

Dissent: The defendant had reasonable ground for believing what the girl told him and had what she said been true, he would not have done the act (no mens rea). "a mistake of facts, on reasonable grounds…is an excuse" (if, had the facts been true, he would not have been guilty) that is implied in every criminal charge and enactment in England.

2. R V TOLSON.

Fact: It appeared that the marriage of the prisoner to Tolson took place on September 11,1880; that Tolson deserted her on December 13, 1881; and that she and her father made inquiries about him and learned from his elder brother and from general report that he had been lost in a vessel bound for America, which went down with all hands on board. On January 10, 1887, the prisoner, supposing herself to be a widow, went through the ceremony of marriage with another man. The circumstances were all known to the second husband, and the ceremony was in no way concealed. In December, 1887, Tolson returned from America. Stephen, J., directed the jury that a belief in good faith and on reasonable grounds that the husband of the prisoner was dead would not be a defence to a charge of bigamy, and stated in the case that his object in so holding was to obtain the decision of the Court in view of the conflicting decisions of single judges on the point. The jury convicted the prisoner, stating, however, in answer to a question put by the judge, that they thought that she in good faith and on reasonable grounds believed her husband to be dead at the time of the second marriage, and the judge sentenced her to one day's imprisonment. The question for the opinion of the Court was whether the direction was right. If the direction was right, the conviction was to be affirmed; if not, it was to be quashed.

Held: The defendant appealed against her conviction for bigamy, saying that she had acted in a mistaken belief. A man commits bigamy if he goes through a marriage ceremony while his wife is alive, even though he honestly and reasonably believes she is dead. 'At common law an honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a prisoner is indicted an innocent act has always been held to be a good defence. This doctrine is embodied in the somewhat uncouth maxim 'actus non facit reum, nisi mens sit rea'. Honest and reasonable mistake stands on the same footing as absence of the reasoning faculty, as in infancy, or perversion of that faculty, as in lunacy. . So far as I am aware it has never been suggested that these exceptions do not equally apply in the case of statutory offences unless they are excluded expressly or by necessary implication.'

Stephen J 'The mental element of most crimes is marked by one of the words 'maliciously', 'fraudulently', 'negligently', or 'knowingly', but it is the general - I might, I think, say, the invariable - practice of the legislature to leave unexpressed some of the mental elements of crime. In all cases whatever, competent age, sanity, and some degree of freedom from some kinds of coercion are assumed to be essential to criminality, but I do not believe they are ever introduced into any statute by which any particular crime is defined.' and "Mens rea' means in the case of rape, an intention to have forcible connection with a woman without her consent.' As to the element of mens rea he said: Though this phrase is in common use, I think it most unfortunate, and not only likely to mislead, but actually misleading, on the following grounds. It naturally suggests that, apart from all particular definitions' of crimes, such a thing exists as a 'mens rea', or 'guilty mind', which is always expressly or by implication involved in every definition. This is obviously not the case, for the mental elements of different crimes differ widely. 'Mens rea' means in the case of murder, malice aforethought; in the case of theft, an intention to steal; in the case of rape, an intention to have forcible connection with a woman without her consent; and in the case of receiving stolen goods, knowledge that the goods were stolen. In some cases it denotes mere inattention. For instance, in the case of manslaughter by negligence it may mean forgetting to notice a signal. It appears confusing to call so many dissimilar states of mind by one name.'

Stephen J. concluded: 'The principle involved appears to me, when fully considered, to amount to no more than this. The full definition of every crime contains expressly or by implication a proposition as to a state of mind. Therefore, if the mental element of any conduct alleged to be a crime is proved to have been absent in any given case, the crime so

defined is not committed; or, again, if a crime is fully defined, nothing amounts to that crime which does not satisfy that definition.'

3. SHERRAS V DE RUTZEN.

Fact: The defendant was convicted of selling alcohol to a police officer whilst on duty under to s.16(2) Licensing Act 1872. 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."

4. STATE OF MAHARASHTRA V. MAYER HANS GEORGE.

Fact:

1. The appellant Mayer Hans George, who is a German National, has been sentenced to a year's term by the leaned Presidency Magistrate, 23rd Court, Bombay, for offences under Section 23 (l-A) (a) of the Foreign Exchange Regulation Act, 1947, and See. 167 (81) of the Sea Customs Act, 1878. Stated simply, the charge against the appellant is that he brought gold into India without the permission of the Reserve Bank of India and with intent to defraud the Government of the duty payable thereon.

2. The facts which are relevant for the decision of this appeal are mostly admitted. The appellant boarded a Swiss Air Plane at Zurich, Switzerland, on the 27th of November 1962, holding a ticket for Manila, Phillipines. The plane touched the Santacruz-Airport, Bombay, at 6. 05 a. m. on the 28th for a brief halt. Acting on previous information, two Customs Officers, Turilay and Bhappu, looked out for the appellant and not finding him in the Transit Passengers' Lounge, they boarded the plane and saw the appellant sitting solitarily in the plane. Inspector Bhappu verified the name of the appellant and asked him if he was carrying gold. The appellant, who knows and can speak in English, is stated to have indicated a 'no' by the shrug of his shoulders. Inspector Bhappu, however, felt the back of the appellant, suspected that the appellant was carrying gold on his person, off-loaded him and took him to the Customs Baggage Hall for a search. The search showed that the appellant was wearing a specially orepared jacket, having 28 compartments, which was attached to his body by adhesive tapes. In these compartments were found 34 slabs of gold weighing I Kilo each, of the total value of Rs. 3,06,000/- at the local market rate.

3. Soon after the search, the appellant admittedly made a statement (Ex. P) which shows that he is a professional carrier of gold. It appears from the statement that the appellant was once a sailor, then a porter and is now employed by an agency to smuggle gold into various countries. The appellant has stated in Ex. P that on the occasion in question, he

was asked to carry gold from Zurich to Manila on a wage of 500 German Marks and that the gold did not belong to him.;

Held: The following principle were laid down by the Supreme Court-------

1. The act is designed to safeguarding and conserving foreign exchange which is essential to economic life of a developing country.
2. The very object and purpose of the act and its effectiveness as an instrument for the prevention of smuggling would be entirely. Frustrated if a condition were to be read into section 8(1) or section 23 (IA) of the act qualifying the plain words of the enactment, that the accused should be proved to have knowledge that he was contravening the law of land.
3. Unless the statue either clearly or by necessary implication rules out mens rea as a constituent part of a crime a defendant should not be found guilty of an offence against the criminal law unless he has a guilty mind.

Note:- Absolute liability is not to be lightly presumed but has to be clearly established.

5. NATHULAL V. STATE OF M.P.

Fact:

The appellant is a dealer in foodgrains at Dhar in Madhya Pradesh. He was prosecuted in the Court of the Additional District Magistrate, Dhar, for having in stock 885 maunds and 21/4 seers of wheat for the purpose of sale without a licence and for having thereby committed an offence under Section 7 of the Essential Commodities Act, 1955 (Act X of 1955), hereinafter called the Act. The appellant pleaded that he did not intentionally contravene the provisions of the said section on the ground that he stored the said grains after applying for a licence and was in the belief that it would be issued to him. The learned Additional District Magistrate, Dhar, found on evidence that the appellant had not the guilty mind and on that finding acquitted him. On appeal a Division Bench of the Madhya Pradesh High Court, Indore Bench, set aside the order of acquittal and convicted him on the basis that in a case arising under the Act "the idea of guilty mind" was different from that in a case like theft and that he contravened the provisions of the Act and the order made there under, it sentenced the appellant to rigorous imprisonment for one year and to a fine of Rs. 2,000 and in. default of payment of the fine he was to undergo rigorous imprisonment for six months. Hence the appeal disallowed.

How to disprove mens rea has been succinctly stated in Halsbury's Laws of England, 3rd Edition, Col. 10, at p. 288, thus: --

"When the existence of a particular intent or state of mind is a necessary ingredient of the offence, and prima facie proof of the existence of the intent or state of mind has been given by the prosecution, the defendant may excuse himself by disproving the existence in him of any guilty intent or state of mind, for example, by showing that he was justified in doing the act with which he is charged, or that he did it accidentally, or in ignorance, or that he had an honest belief in the existence of facts which, if they had really existed, would have made the act an innocent one. The existence of reasonable grounds for a belief is evidence of the honesty of that belief.

Held:

The court held "mens rea is an essential ingredient of criminal law. Doubtless a statute may exclude the element of mens rea, but it is a sound rule of construction adopted in England and

also in India to construct a statutory provision creating an offence in conformity with the common law rather than against it unless the state expressly or by necessary implication excluded mens rea. "The main fact that the object of the statute expressly or by necessary implication excluded mens rea, or the mere fact that the object of the statute is to promote Welford activities or to eradicate a grave social civil is by itself is not decisive of the question whether the element of guilty mind is excluded from the ingredients of an offence. And hence the accused is not held liable.

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 the 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.

Attempt.

Attempt is the direct movement towards the commission of a crime after the preparation is made.

'Attempt' in general meaning is said to be an effort to achieve tasks or activities. It is when someone tries to commit a crime but fails. 'Law of Attempt' under IPC prevents offenders from attempting the offence again and helps keep society safer.

'Attempt' is not defined in the Indian Penal Code. Section 511 of the IPC only dealt with punishment for attempting to commit offences.

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.

Why is an Attempt to Commit a Crime Punishable?

An attempt to commit a crime is a crime under the Indian Penal Code. Every attempt, falls short of success must create a threat in the mind of people which by itself is an injury and the moral guilt of the offender is the same as if he had succeeded. According to Section 511 of the IPC, only half of the punishment is awarded because the injury is not as great as if that crime had been committed.

An Attempt to Commit a Crime - An Inchoate Crime?

The term "inchoate" means "undeveloped", "just begun", "incipient", "in an initial or early stage".

Inchoate offences cannot be understood in isolation and must be read in conjunction with substantive offences. A characteristic feature of these offences is that they are committed even if the substantive offence does not reach a stage of completion and no consequence ensues.

Thus, if the offence of crime has not been completed, even then a person can be guilty of an attempt to commit a crime.

Actus reus and mens rea are essentials for a commission of any crime.

Actus reus: Action or conduct which is an element of a crime,

Mens rea: The intention or knowledge of wrongdoing that constitutes part of a crime.

Here, actus reus to commit a crime is not completed but mens rea to commit the same crime is completed in an attempt and therefore attempt itself would be said to have been committed at this stage.

Attempt Under The Indian Penal Code, 1860.

- The Indian Penal Code has dealt with attempt in the following four different ways Completed offences and attempts have been dealt with in the same section and same punishment is prescribed for both. Such provisions are contained in Sections 121, 124, 124-A, 125, 130, 131, 152, 153-A, 161, 162, 163, 165, 196, 198, 200, 213, 240, 241, 251, 385, 387, 389, 391, 394, 395, 397, 459 and 460.
- Secondly, attempts to commit offences and commission of specific offences have been dealt with separately and separate punishments have been provided for attempt to commit such offences from those of the offences committed. Examples are- murder is punished under section 302 and attempt to murder to murder under section 307; culpable homicide is punished under section 304 and attempt to commit culpable homicide under section 308; Robbery is punished under section 392 and attempt to commit robbery under section 393.
- Thirdly, attempt to commit suicide is punished under section 309;
- Fourthly, all other cases [where no specific provisions regarding attempt are made] are covered under section 511 which provides that the accused shall be punished with one-half of the longest term of imprisonment provided for the offence or with prescribed fine or with both.

In the case of Koppula Venkata Rao vs State of A.P. the Supreme Court has said that 'Attempt' should be taken as ordinary meaning. The ordinary meaning of 'Attempt' to commit an offence is an act or series of acts which leads inevitably to the commission of the offence unless something which the doer of the act neither foresaw not intended happens to prevent

this.

An attempt is defined in the case of Aman Kumar v. State of Haryana as follows:

- Attempt consist in it the intent to commit the crime.
- If any person failed to achieve that intention.

Abhayanand Mishra v state of Bihar

In this case, the Supreme Court has described essential elements of 'Attempt' as follows:

(i) Accused has an intention or means rea to commit the intended offence.

(ii) He has taken a step forward (that is an act or step which was more than preparatory to the commission of the intended offence towards the commission of the contemplated offence).

(iii) He failed to commit that intended offence by any reason.

Tests for Determining Whether an Act Amounts to a Mere Preparation or an Attempt to Commit an Offence

At what stage an act or series of acts is done toward the commission of act intended would be an attempt to commit an offence. Some principles have been evolved to solve that issue:

(a) The Proximity Rule: Proximity in Relation to Time and Action or to Intention?

The Proximity test examined how much the defendant close to completing that offence. Measured difference is the distance between preparation for the offence and successfully completion of that offence. In the case of Commonwealth v. Hamel, it was held that the proximity rule amount left to be done, not what has already been done, that is analyzed.

(b) The Doctrine of Locus Poenitentiae

It deals with those cases in which an individual made preparation to commit the crime but changes his mind at the end, thereby pulling out at the last instant. Such intentional withdrawal prior to the commission or attempt to commit the act will be termed as mere preparation for the commission of the crime and no legal liability will be imposed.

(c) The Equivocality Test

'Equivocality Test' is used to differentiate between preparation and attempt in a criminal case. When a person's conduct, in itself, shows that the person actually intends to carry out a crime without reasonable doubt, then the conduct is a criminal attempt to commit that crime.

An act is proximate if it indicates beyond reasonable doubts what is the end towards which is directed. The Act to commit a specific crime is constituted when an accused person does an act which is a step towards the commission of that crime and doing of such an act cannot reasonably be regarded as having another purpose than the commission of that specific crime.

(d) Attempting an Impossible Act

If a person attempts to commit a crime which is impossible, then also it will be punishable under the Indian Penal Code.

If a person attempts to kill someone by empty gun, or steal something from an empty pocket, or steal jewels from empty jewel box. Then it is considered as an impossible attempt of

committing that crime but here intention to commit the crime is present and also a step is taken towards completion of that crime. Thus it is considered as 'attempt to crime' under Section 511 of the IPC.

Accomplishment or commission of crime-

Accomplishment or Completion 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.

OFFENCES CAN BE CLASSIFIED IN TWO CATEGORIES

1. ***Malum Prohibitium (Act Prohibited by state (Innocent)***
2. ***Malum in Se. (Intrinsically illegal and Prohibited)***

(1) Malum prohibitum: "A wrong prohibited; a thing which is wrong because prohibited; an act which is not inherently immoral, but becomes so because its commission is expressly forbidden by positive law; an act involving an illegality resulting from positive law."

(2) Malum in se: "A wrong in itself; an act or case involving illegality from the very nature of the transaction, upon principles of natural, moral, and public law .... An act is said to be malum in se when it is inherently and essentially evil, that is, immoral in its nature and injurious in its consequences, without any regard to the fact of its being noticed or punished by the law of the state."

Note: The words denoting mens rea includes: Corruptly, Malignantly and Maliciously, Rashly and negligently.

PRINCIPLE OF LEGALITY.

A person accused of an offence is put under the peril of his life and liberty one of such principles is Nullum criemen sine lege, nulla poena sine lege (there must be no crime or punishment except in accordance with fixed predeterminated law)

The maxim "nulla poena sine lege" conveys four different rules.

Nulla poena sine lege (Latin for "no penalty without a law"): is a legal principle, requiring that one cannot be punished for doing something that is not prohibited by law. This principle is accepted and codified in modern democratic states as a basic requirement of the rule of law. It has been described as "one of the most 'widely held value-judgement[s] in the entire history of human thought'"

Nulla poena sine praevia lege poenali: There is to be no penalty without previous law. This prohibits ex post facto laws, and the retroactive application of criminal law

Nulla poena sine lege scripta: There is to be no penalty without written law. That is, criminal prohibitions must be set out in written legal instruments of general application, normally statutes, adopted in the form required by constitutional law. This excludes customary law as a basis of criminal punishment.

Nulla poena sine lege certa: There is to be no penalty without definite law. This provides that a penal statute must define the punishable conduct and the penalty with sufficient

definiteness to allow citizens to foresee when a specific action would be punishable, and to conduct themselves accordingly. The rule expresses the general principle of legal certainty in matters of criminal law. It is recognized or codified in many national jurisdictions, as well as e.g. by the European Court of Justice as a "general principle of Union law".

****