

CRIMINAL LAW

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INTRODUCTION

Historical evolution of criminal law

Starting from Vedic age the law in India has evolved from religious directions, which operate the human conduct between do and don't. It was not the law of crime but the law of wrong, and more of religious prescriptions and philosophy which was shaped by the concept of "Dharma", or rules of right conduct. Punishment for wrong was more popular than compensation, and it was the duty of the King to punish the offender. During the time of Manu Criminal law was getting it shaped, Manu recognized crime, justice, and punishment.

During Mugal period, administration of justice was regarded by the Muslim kings as a religious duty; Quran was the first and the most important source of law and criminal law was Islamic in nature, and Kazi were considered to be administrator of Criminal Justice, who explain and clarify the law.

Britishers laid the foundation of Modern Indian Criminal Law. When the Britishers came into India they adopted a different set of law which was based on British pattern, and it was not uniform across India.

Crime – Nature and definition social & legal context –

What is Crime?

To obtain the definition of crime, we must closely analyze the co relation between crime and law, **crime** and law is the **intrinsic nature of any society**, it is as old as society, in fact it is the by product of society, when ever people organized into groups or unions and set some basic rule to govern that groups or unions some kind of resistance or violation of those rules or principle appear as a crime, and it seems to **social protest**, and that group or union forced to develop some sort of rules or principle to cube that unwanted resistance or violation.

There is no simple and universal commentary on Crime, it is dynamic in nature and varies into geography. It is the **Wish of the Society**, or it always depend on the public opinion, about what you can and cannot do, or more precisely, rules that forbid certain conduct and then attach punishments for disobedience.

In general terms crime is defined as an **act punishable by law as forbidden by statue or injurious to the public welfare**. An action or omission, which constitutes an offence, and punishable **by law**. A crime is an **illegal action** or activity **for which a person punishes by law**.

Thus A crime may, therefore, be an act of noncompliance 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 violating 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

Definition of Crime

According to **Austin**: *A wrong which is pursued at the discretion of the injured party and his representatives is a civil injury; a wrong which is pursued by the sovereign or his subordinates is a crime.*

Thus Austin, directly link crime to State, and proceeding initiated by State, where as in civil wrong the state does not interfere until the injured party or any other party on its behalf wish to initiate.

Stephen says *a crime is a violation of a right considered in reference to the evil tendency of such violation as regards the community at large.*

Stephen also indicates the similar nature of crime violation of right against the community at large.

Donald also admitted the same thing *“Crime is a social injury and an expression of subjective opinion varying in time and place.”*

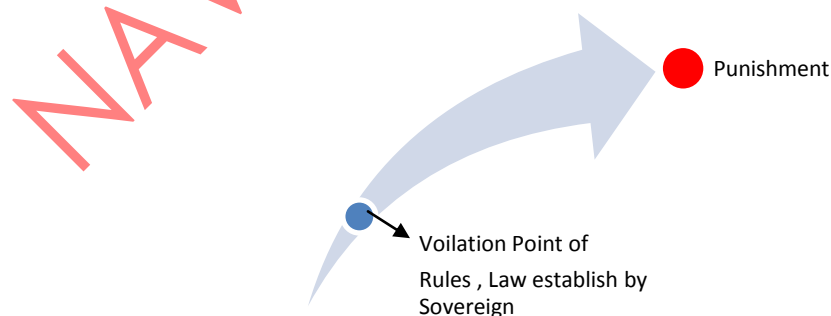
According to **Keeton**, *“ a crime would seem to be any undesirable act which the State find is most convenient to correct by the institution of proceedings for the infliction of a penalty, instead of leaving the remedy to the discretion of some injured person.”*

Paton, *“the normal marks of a crime are the State has power to control the procedure, to remit the penalty or to inflict the punishment”*

As a result it is very difficult to determine a universal definition of crime; Russell also admitted that – to define crime is a task which so far has not been satisfactorily accomplished by any writer.

However the **attributes of crime** can be determined i.e.

- **Anti Social Act**
- **Prohibited by Society or Sovereign**
- **Violation attract punishment**



An action or omission that is deemed injurious to the public welfare or to the interests of the state and that is legally prohibited.

Crime = An act or activities prohibited by public law

In T.K. Gopatl Vs. State of Karnataka, AIR2000 SC1669 (1673,1674). The Apex Court Held:

Crime can be defined as an act that subjects the doer to legal punishment. It may also be defined as the commission of an act specifically forbidden by law; it may be an offence against morality or social order.

What is Law?

The **system of rules or principle** which a **particular country** or society **define** as **regulating the actions of its members** and which it may enforce by the **imposition of penalties**. Rule of conduct, which is uniform for all.

In Board of Mining Examination Vs. Ramjee, AIR 1977 SC 965 (967), The Apex Court Held:

Law is meant to serve the living and does not beat its abstract wings in the jural void. Its functional fulfillment as social engineering depends on its sensitized response to situation, subject-matter and the complex of realities which require ordered control. A holistic understanding is simple justice to meaning of all legislation.

Thus law is the command for a particular course of conduct. The command may be of a sovereign or of political superiors to the political inferiors; or it may be the command of a legally constituted body or a legislation emanating from a duly constituted legislature to all the members of the society

What is Offence?

Offence means a breach of a law or rule; an illegal act.

In P.Ramanath Aiyar's Advance law Lexicon, 3rd Edn.,2005 page 3302, offence defined as

The word "offence" is not defined in the Act. According to Concise Oxford English Dictionary, it means, "an act or instance offending. Offend means,"commit an illegal act" and illegal means, "contrary to forbidden by law" According to New Shorter Oxford English Dictionary,

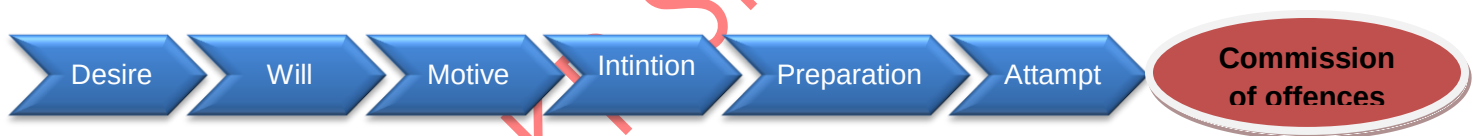
“an offence of breach of law, rules, duty, propriety, etiquette, and illegal act, a transgression, sin, wrong, misdemeanor, misdeed, fault,” Thus, an offence only means the commission of an act contrary to or forbidden by law. It is not confined to the commission of a crime along. It is an act committed against law or omitted where the law requires it and punishable by it. In this legal signification, an offence is the transgression of a law; a breach of the laws established for the protection of the public as distinguished from an infringement of mere private right a punishable violation of law, a crime the doing that which a penal law forbids to be done or omitting to do what it commands

In Depot Manager, Andhra Pradesh State Road Transport Corporation V. Mohd, Yousul Miya, (1997)2 SCC 699, The Apex Court Held:

Generally implies infringement of a public duty, as distinguished from mere private right punishable under criminal law.

In Brown v. Allweather Mechanical Co. (1954 2OB 443), it was held:

“a failure to do something prescribed by a statute may be described as an offence, though no criminal sanction is imposed but merely a pecuniary sanction recoverable as civil debt,”



Desire is constructed to will and this will forms motive and this motive forms intention and intention forms attempt and attempts form commission of offence.

Criminal law

Criminal law is the sets of law that relates to crime. It regulates social conduct and ensures health, safety, and moral welfare of people. It includes the punishment of people who violate these laws. Criminal law is a public Law, rest are private law.

In Kartar Sing Vs. State of Punjab, (1994)3, SCC 569 (755) The Apex Court Held:

Criminal law is any Act or Rule dealing with crime.

Object of Criminal Law

The primary intent of criminal law is to uphold law and order in the society and to protect the life and liberty of people. Therefore the penal law cannot afford to be weak, ambiguous or ineffective. Nor can it be harsh and arbitrary in its impact. The application of criminal law has to be uniform regardless of any discrimination on grounds of class, caste, religion, sex or creed etc. of either the criminal or the victim.

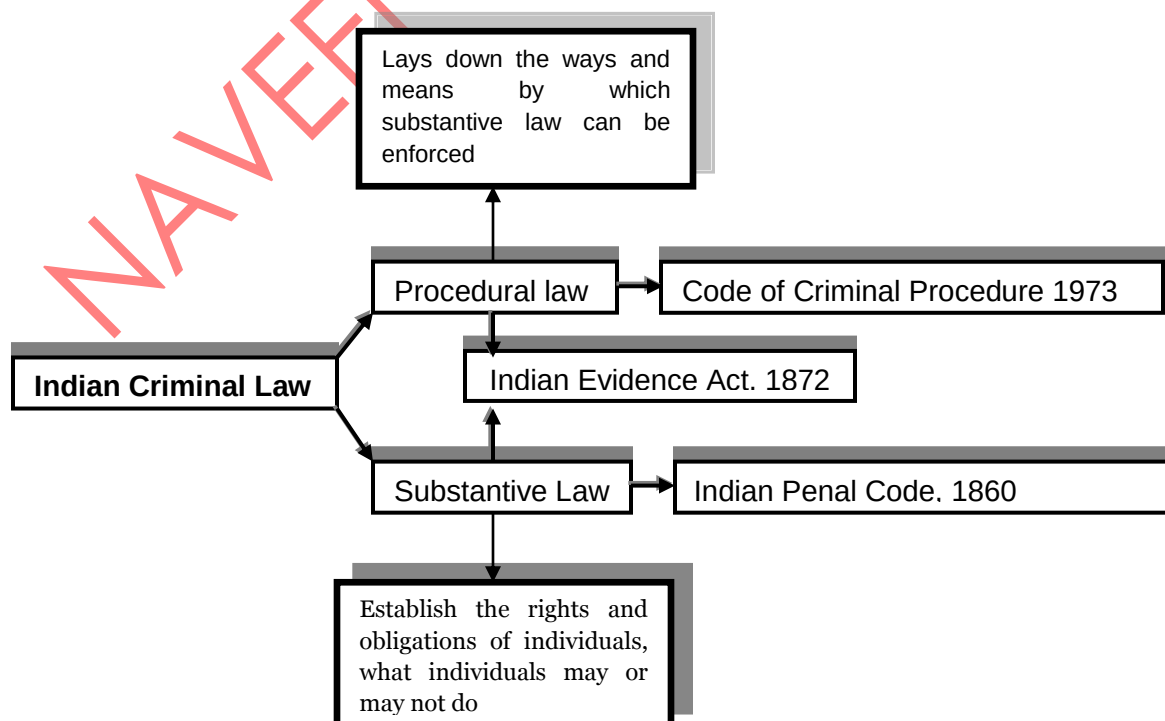
Criminal law is the sets of law that relates to crime.

Indian Criminal Law

Indian Criminal Laws are divided into two parts one general principle of criminal liability and criminal procedure for preventing crime and promoting justice, and one more act to assist these two Acts:

- i. Indian Penal Code, 1860
- ii. Code of Criminal Procedure 1973
- iii. Indian Evidence Act, 1872

Apart from these three major acts there are other special enactment passed by Parliament of India.



Ingredients to Crime

The elements of crime are a series of components which must be presented in order for it to be demonstrated that someone is guilty of a crime.

There are four chief element of Crime i.e.

Sr. No	Ingredients	Mining	Qualification	Degree
1	Mens rea	Mental element	Voluntary criminal intent or evil intention	Prime / essential • Intention • Knowledge • Negligence • Recklessness
2	Actus reus	Action	An over act of illegal commission or omission	Secondary
3	Human being	Human being must have a body not a Animal, and Artificial person	Human being under a legal obligation to act in a particular way and a fit subject for the infliction of appropriate punishment	Prime
4	Injury	Hurt / Damage	an injury to another human being or to society at large by such an act	Consequence • Mind • Body • Reputation • Property

Thus the four elements that go to constitute a crime are as follows:

1. a **human being** under a legal obligation to act in a particular way and a fit subject for the infliction of appropriate punishment
2. an **evil intent or mens rea** on the part of such human being
3. **actus reus**, i.e., act committed or omitted in furtherance of such an intent; and
4. **an injury** to another human being or to society at large by such an act.

Mens Rea- Mental element in crime. Intention mens rea means a mental state, in which a person deliberately violates a law. Thus mens rea means intention to do the prohibited act. No act per se (itself) is criminal, the act becomes a crime only when it is done with a guilt mind. It signifies the mental element necessary to convict for any crime. Mens rea

is not the same thing as motive. The mens rea refers to the intent with on which the criminal act happened. On the other hand, the motive refers to the reason of criminal act.

In Director of Enforcement v. M/s MCTM Corpn. Pvt.Ltd AIR 1996 SC 1100(1103), the Apex Court held:

“Mens rea” is a state of mind. Under the criminal law, mens rea is considered as the “guilty intention” and unless it is found that the “assused” had the guilty intention to commit the “crime” he cannot be held “guilty” of committing the crime.

Illustration.

A blacksmith is seized by a gang of robbers and he forced to break the doors of a house for robbery to enter, and the robbers committed a robber.

Q- Whether the Act is voluntary or not.

A- No

Q- Whether the accused have foresight of the consequences.

A-Yes

Conclusion- If there would be two “**Yes**” in the above citation then only it becomes crimes.

Illustration:

A while shooting at a tiger kills B, who was behind the bush, cancelled (hidden) from his view.

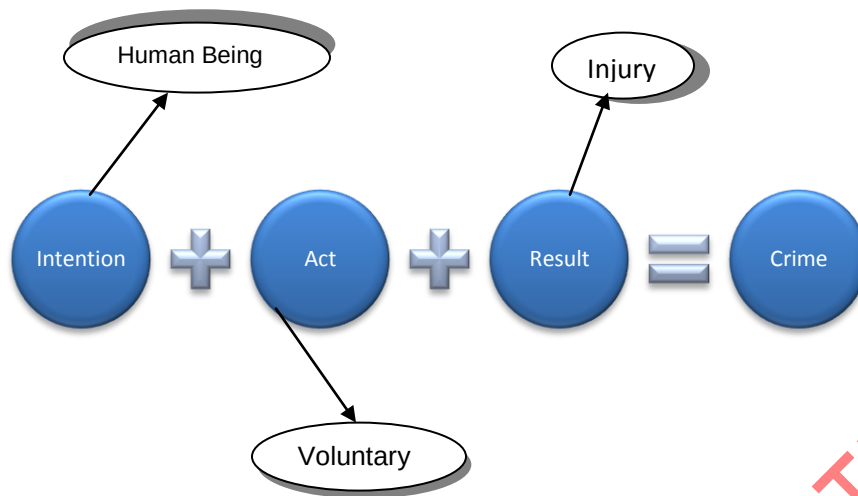
- Act is voluntarily.
- Accused have foresight of the consequences.
- Conclusion: No crime

Example-

Mens Rea-

Murder - Intention to Kill.

Rape - Intention to sexual pleasure without the consent of other.



Conduct: *Result but not prohibition by law (than no crime) i.e. Solders kills the enemy.*

Exception of Mens rea: Offence against state, police, nuisance, and stick liability etc Mens rea is not require.

Dgree of Mens Rea

- Intention
- Knowledge
- Negligence
- Recklessness

Intention Is a basic rule. Intention is to bring about a desired act. An intended to commit an illegal act

Exm Intention to sustain injury to other like to Kill (intention to caused death).

Presumption of Intention- Natural and probable consequences should be presumed.

Consent- Intention to have sexual pleasure from a person without her consent.

In Allrd v. Selfridge, it was held

Intention to do an act, which is made penal by statute or by common law.

Knowledge – Direct appeal to your senses. Here the probability is very high (against to commit the act against Law).

Exp to purchase a stolen good. Theft-To taking possession without the consent of the owner.

Motives- Intention and motives is two different things in a crime. Motive may be to get anything, Intention to kill the person. Motive may be good or bad, but intention is bad than it becomes crime. Motive leads to intention, and ulterior intention is motive. In fixing criminal liability motive may be irrelevant, but intention is maintain or main element.

Recklessness (irresponsibility)- Basic principle of fixing a criminal liability. Is the combination of : Foresight and Indifference. Doing something without the knowledge but the foresight.

Mans Rea In the IPC?

The word Mens Rea is not defined in the IPC, but to incorporate the doctrine some specific word is being used. The general principle of mens rea has defined in IPC in two ways:

1. **Qualifying Words 'dishonestly', 'fraudulently', 'voluntarily', 'intentionally', 'knowingly'**
2. **General Exceptions under Chapter IV of IPS like accident, infancy, insanity, intoxication ext.**

Examples:

A is at work with a hatchet; the head flays off and kill a person accidentally.

A is not liable for a murder, because some exception are granted under chapter IV of IPC.

Examples:

Infancy- A child below age 7 kill a person.

A is not liable for a murder, because some exception are granted under chapter IV of IPC.

Strict Liability. - It is possible there is no Mans Rea, but you are liable under IPC, because a crime without Mans Rea is a Strict Liability, or When the definition does not include mens rea, it means that the liability is strict.

Example Section 292 – Selling an obscene literature is a crime.

Certain Examples of doctrine of mens rea in IPC

Wrongful gain and Wrongful Loss- Section 23 IPC.

Wrongful gain

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

Ingredient:

1. Gain of some property.
2. By unlawful means.
3. Not legally entitled.

Wrongful lost

Wrongful loss is the loss by unlawful means of property to which the person losing it is legally entitled.

Ingredient:

1. Loss of some property
2. Legally entitled.
3. Unlawful means.

III:

A is the owner of a car. The person B steal the car, this is the wrongful gain for B, and wrongful lost to A.

Dishonestly- Section 24 IPC

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.

Ingredient

1. An act (by a person)
2. Intention to cause wrongful gain.

Illu:

A finds a ring belonging to Z on a table in the house while Z occupies where ring is in the possession of Z, if A takes the ring out of Z possession without Z consent with intention to our with intention of causing wrongful gaining to A and to cause wrongful loss to Z, this is dishonesty.

Fraudulently – Section 25 IPC

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

-to get something from somebody.

A financial cause can be called is fraud

Illustration:

A steal food to feed the starving child.

Motive- To save the life of a child- Good.

Intention – To steal some food-Bad

1. Illustration

- A man steal a food in order to feed a starving child.

Intention- To Save a Child.

Motive- To Steal

2. Illustration

- A throws a ball from a high tower the boy dies

3. Illustration

- B cuts off A head.

4. C abundant two months old child in a forest the child dies.

What is Presumption?

Natural and probable consequences should be performed.

What is the difference between Intention & Motives

Intention: Is to bring about a desired act.

Motive: Is the ulterior (Hidden) intention.

Illustration

M Nanawaty wife had illicit relation with Prem Ahuja, Nanawati fired at Prem Ahuja, and he died.

What is the Motive- To Take the revenge.

What is the Intention- To Kill Prem Ahuja.

Illustration:

An executioner (who gives the death sentence) enjoys putting a convicted to death, because of spite against him.

Intention to Kill- Is irrelevant or it is Illegal.

Motive is bad.

III:

A Steal some food from a shop to feed a starving child.

Motive: To save the life of a child

Intention: To Steal.

INTENTION AND KNOWLEDGE

Knowledge- An direct appeal to your seances.

III-

A Sets a house on fire in an inhabited locality to facilitate a robbery and there by caused death of several persons.

Intention: to facilitated in the robbery.

Exp- The intention is not clear in this case but the intention is referred from his knowledge.

Jud- he is liable for the death of several people because his intention can be inferred from his knowledge.

III-

A attracted by a wild animal he calls out to B to shoot the wild animal in order to save him, A fires and caused death of A, .

Jud- B is not the held liable, because we cannot infer from his knowledge but the consent was there.

REASON TO BELIVE.

Section 26 IPC-

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

III-

A comes to B at night under suspicious circumstances to sell a valuable watch for Rs 100 only and A buys it.

Recklessness (irresponsibility)- Basic principle of fixing a criminal liability. Is the combination of : **Foresight and Indifference. DOING SOMETHING WITHOUT THE KNOWLEDGE BUT THE FORESIGHT.**

III-

A throws a stone over a crowd.

Jud- Crime committed here is- hurt.

Mens Rea- is Recklessness.

Components of Recklessness (per se) is a crime

1. **Foresight.** No direct appeal to your senses, and the probability of (doing something against law is very low.). It is a direct application to believe, is an application of recklessness.
2. **Indifference.**

Illustration:

A drive his cars at a furious speed throw a narrow road, it is a clear case of indifference.

Recklessness:

Case ref: Hudson V/s Vinay- establish first time that recklessness is an activity of mental indifference to obvious risks.

NEGLIGENCE (per se) is not a crime.

Absence of proper care and precautions, it is not a basic element in IPC, it is not an offence.

IIIi-

Doing a quarrel with his wife A in a sheer anger picks up a paper weight and throw it out of a window, which fracture the skull of a passer nearby.

Jud-

Here offence is Hurt.

Mens Rea- Want of proper care and precaution.

STATE OF MIND IN CRIME COMPONENT



Actus Reus- An Act which is prohibited by Law. It is the physical part of a crime.

“Actus non facit reum, nisi mens sit rea” An act does not make a person legally liable unless the mind is legally blameworthy'.

Actus reus, sometimes called the external element or the objective element of a crime, is the Latin term for the "guilty act". When proved beyond a reasonable doubt in combination with the mens rea,

Actus Reus: Comprises the following:

1. Human Conduct or an Activity.
2. The Result of the Act.
3. Prohibition by Law.

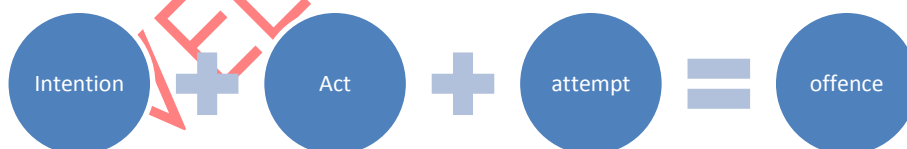


Illustration: A shoots at B using a rifle intentionally and B dies.

Other notes of mine can be seen by clicking below links.

<http://www.scribd.com/doc/40130303/Indian-Penal-Code-11b-i-Year>