

LL.B. I Term

Paper : LB - 104 – Criminal Law - I

Objectives of the Course

The primary objective of criminal law is to maintain law and order in the society and to protect the life and liberty of people. It is for this reason that people place their ultimate reliance on this branch of law for protection against all injuries that human conduct can inflict on individuals and institutions. Due to these reasons, 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. The subject of Criminal Law-II has been so designed as to generate critical thinking among students about the stated objectives of criminal law and to enable them to scrutinize the recent developments and changes that have taken place in the field. The primary objectives of this course are:-

- To familiarize the students with the key concepts regarding crime and criminal law.
- To expose the students to the range of mental states that constitute *mens rea* essential for committing crime.
- To teach specific offences under the Indian Penal Code.
- To keep students abreast of the latest developments and changes in the field of criminal law.

Prescribed legislation: The Indian Penal Code, 1860

Prescribed Books:

1. C.K. Thakker (Rev.), **Ratan Lal & Dhiraj Lal's *Indian Penal Code***, (30th ed., 2004)
2. K.D. Gaur, ***Criminal Law – Cases and Materials***, (6th ed., 2009)
3. R.C. Nigam, ***Law of Crimes in India*** (Vol. I) (1965)
4. V.B. Raju, ***Commentary on Indian Penal Code***, 1860 (Vol. I & II) (4th ed., 1982)
5. K.N.C. Pillai & Shabistan Aquil (Rev.), ***Essays on the Indian Penal Code*** (The Indian Law Institute, 2005)
6. K.I. Vibhute (Rev.), **P.S.A. Pillai's *Criminal Law***, (10th ed., 2008)

SPECIFIC CRIMES

PART – A : OFFENCES AFFECTING HUMAN BODY

Topic 1 : Culpable Homicide and Murder

(Sections 299-302, 304 read with sections 8-11, 21, 32, 33, 39, 52)

Offences of culpable homicide amounting and not amounting to murder distinguished - culpable homicide of first degree provided in clause (a), second degree in clause (b) and third degree in clause (c) of section 299, IPC. Each clause of section 299 contains comparable clauses in section 300. Every murder is culpable homicide but not *vice versa*. Culpable homicide is the *genus* and murder is its *species*.

Culpable homicide amounting to murder means that the case falls in one of the three clauses of section 299 and is also covered in the corresponding clause of section 300 but does not fall in any of the exceptions to section 300 and is punishable under section 302. Culpable homicide not amounting to murder can be punishable under section 304 in two situations –

first, when a case falls in section 299 but not under section 300, or,

second, when a case falls under section 299 and also under the comparable clause of section 300 and the defence is able to prove that the case also attracts one of the exceptions to section 300. Broadly speaking, the main distinction between sections 299 and 300 is the higher degree of probability of death resulting from the act of the accused in case of murder as defined in section 300.

Causation - The act of the accused must be the causal factor or direct cause of death read with section 301

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| 1. | Palani Goundan v. Emperor, 1919 ILR 547 (Mad) | 1 |
| 2. | In re Thavamani, AIR 1943 Mad 571 | 8 |
| 3. | Emperor v. Mushnooru Suryanarayana Murthy
(1912) 22 MLJR 333 (Mad.) | 10 |

Comparison of clause (a) of section 299 with clause (1) of section 300

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|----|---|----|
| 4. | Rawalpenta Venkalu v. State of Hyderabad, AIR 1956 SC 171 | 22 |
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Comparison of clause (b) of section 299 with clause (3) of section 300

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| 5. | Kapur Singh v. State of Pepsu, AIR 1956 SC 654 | 26 |
| 6. | Virsa Singh v. State of Punjab, AIR 1958 SC 465 | 27 |
| 7. | State of Andhra Pradesh v. R. Punnayya, AIR 1977 SC 45 | 32 |
| 8. | Dhupa Chamar v. State of Bihar (2002) 6 SCC 506 | 42 |
| 9. | Prahlad Krishant Patil v. State of Maharashtra (2006) 9 SCC 211 | 51 |

Comparison of clause (c) of section 299 with clause (4) of section 300

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| 10. | <i>Emperor v. Mt. Dhirajia</i> , AIR 1940 All. 486 | 53 |
| 11. | <i>Gyarsibai v. The State</i> , AIR 1953 M.B. 61 | 58 |

Topic 2 : Exceptions to section 300

General and partial defences distinguished – general defences in Chapter IV, IPC, if applicable in a given case, negate criminality completely. Partial defences such as exceptions to section 300 partly reduce the criminality, not absolving an accused completely. The law, based on sound principle of reason, takes a lenient view in respect of murders committed on the spur of the moment. Exceptions I to V to section 300 are illustrative of partial defences.

Exception I to section 300

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| 12. | <i>K.M. Nanavati v. State of Maharashtra</i> , AIR 1962 SC 605 | 62 |
| Reading | Katherine O'Donovan, 'Defences for Battered Women Who Kill', 18 (2) <i>Journal of Law and Society</i> 219 (1991) | 71 |

Exception IV to section 300

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|-----|---|----|
| 13. | <i>Ghapoo Yadav v. State of M.P.</i> , (2003) 3 SCC 528 | 79 |
| 14. | <i>Dhirajbhai Gorakhbhai Nayak v. State of Gujarat</i> (2003) 9 SCC 322 | 82 |

Topic 3 : Homicide by Rash or Negligent act not amounting to Culpable Homicide
(Section 304A)

Distinction between intention, knowledge, negligence and rashness as forms of *mens rea*; *mens rea* required is criminal negligence (inadvertent negligence) or criminal rashness (advertent negligence)

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| 15. | <i>Cherubin Gregory v. State of Bihar</i> , AIR 1964 SC 205 | 86 |
| 16. | <i>S.N. Hussain v. State of Andhra Pradesh</i> , AIR 1972 SC 685 | 89 |
| 17. | <i>Mohammed Aynuddin v. State of Andhra Pradesh</i> (2000) 7 SCC 72 | 93 |

Topic 4 : Dowry Death (Section 304B read with section 498-A)

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| 18. | <i>Shanti(Smt.) v. State of Haryana</i> , AIR 1991 SC 1226 | 95 |
| 19. | <i>Satvir Singh v. State of Punjab</i> (2001) 8 SCC 633 | 99 |
| 20. | <i>Ram Badan Sharma v. State of Bihar</i> (2006) 10 SCC 115 | 105 |

Topic 5 : Hurt and Grievous Hurt (Sections 319-325)

Definitions - sections 319 and 320, IPC; Offence of voluntarily causing grievous hurt - section 322 read with section 325 IPC.

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| 21. | <i>Rambaran Mahton v. The State</i> , AIR 1958 Pat. 452 | 115 |
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22. *E.K. Chandrasenan v. State of Kerala* (1995) 2 SCC 99 123

Topic 6 : Kidnapping and Abduction (Sections 359-363 read with section 18)

Ingredients of the offence of kidnapping from lawful guardianship (section 362); distinction between taking, enticing and allowing a minor to accompany; Kidnapping from lawful guardianship is a strict liability offence (section 363) and distinction between 'Kidnapping' and 'Abduction'.

23. *S. Varadarajan v. State of Madras*, AIR 1965 SC 942 132
 24. *Thakorlal D. Vadgama v. State of Gujarat*, AIR 1973 SC 2313 137
 25. *State of Haryana v. Raja Ram* (1973) 1 SCC 544 148

Topic 7 : Rape (Sections 375-376 read with section 90)

26. *Tukaram v. State of Maharashtra*, AIR 1979 SC 185 154
Reading : An Open Letter to the Chief Justice of India (1979) 4 SCC (J) 17 160
 27. *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384 165
 28. *Sakshi v. Union of India* (2004) 5 SCC 518 178
 29. *Bhupinder Sharma v. State of Himachal Pradesh* (2003) 8 SCC 551 189
 30. *Priya Patel v. State of Madhya Pradesh* (2006) 6 SCC 263 193
 31. *Bhupinder Singh v. UT of Chandigarh* (2008) 8 SCC 531 196

PART - B : OFFENCES AGAINST PROPERTY

Topic 8 : Offences of Theft & Extortion

(Sections 378 & 379 read with sections 22-25, 44) and
 (Sections 383 & 384 read with sections 29 & 30)

Ingredients of the offence of theft; it is an offence against possession. Distinction between 'Theft' and 'Extortion'.

32. *Pyare Lal Bhargava v. State of Rajasthan*, AIR 1963 SC 1094 200
 33. *Jadunandan Singh v. Emperor*, AIR 1941 Pat. 129 203
 34. *Sekar v. Arumugham* (2000) Cr.L.J. 1552 (Mad.) 205
 35. *State of Karnataka v. Basavegowda* (1997) Cr.L.J. 4386 (Kant.) 208

Topic 9 : Offences of Criminal Misappropriation, Criminal Breach of Trust and Cheating (Sections 403-406, 415-417 and 420 read with sections 29-30)

Ingredients of the offences, distinction between theft and criminal misappropriation, criminal misappropriation and criminal breach of trust, distinction between theft and cheating, punishment.

36.	<i>Jaikrishnadas Manohardas Desai v. State of Bombay</i> , AIR 1960 SC 889	213
37.	<i>Mahadeo Prasad v. State of West Bengal</i> , AIR 1954 SC 724	218
38.	<i>Akhil Kishore Ram v. Emperor</i> , AIR 1938 Pat. 185	221
39.	<i>Shri Bhagwan S.S.V.V. Maharaj v. State of A.P.</i> , AIR 1999 SC 2332	225

IMPORTANT NOTE:

1. The students are advised to read only the books prescribed above along with legislations and cases.
2. The topics and cases given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/cases.
3. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.
4. The Question Paper shall include one compulsory question consisting of five parts out of which four parts will be required to be attempted. The question papers set for the academic years 2007-08 and 2008-09 are printed below for guidance.

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LL.B. II Term Examinations, April-May, 2009

Note: Attempt *five* questions including Question No. 1 which is compulsory.
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:
 - (i) Section 304-B IPC and Section 498-A IPC are not mutually exclusive. Comment.
 - (ii) What is 'Doctrine of Transferred Malice'?
 - (iii) What is 'Dishonest Intention' ? On its basis, how do you differentiate between the offences of theft and criminal misappropriation.
 - (iv) State the definition of 'Grievous Hurt' as contained in the Indian Penal Code,
 - (v) Is criminal rashness different from criminal negligence?
2. (a) A was in a habit of beating up his wife over trivial issues. One day, during such a fight, A picked up a lathi lying nearby and hit his wife on her head. Consequent to the lathi blow, the woman fell unconscious. Believing her to be dead, A dragged her to the kitchen, sprinkled kerosene on her and set her ablaze. The post-mortem report stated that the victim had received an ante-mortem head injury and had died due to severe burns. Can A be held liable for murdering his wife.
- (b) Explain the legal provision relating to causing death by negligence' and examine if it is different from 'causing death with the knowledge that the act is likely to cause death.'

3. Ram caused a severe injury on Shyam's leg, with a sharp instrument used for cutting. The wound so inflicted led to the amputation of Shyam's leg. Since that day, Shyam's father Kalicharan harboured a grudge against Ram. On the fateful day, finding the opportune moment, Kalicharan and his friend Chandram encountered Ram. Whereas Chandram held Ram by his head, Kalicharan inflicted 22 injuries on the arms and legs of Ram, by using a Gandasa. Although none of the injuries, singly was sufficient to cause death in the ordinary course of nature, the victim died due to the cumulative effect of the injuries. What is the liability of Kalicharan for causing death of Ram?
4. W, a highly educated woman residing in Delhi, suspected that her husband H was into an extra-marital relationship with his secretary S. On getting to know that her husband H was staying in a hotel with S, W rushed to the hotel. On reaching there within half an hour, W saw H and S in a compromising position. At this, W took out the revolver that she carried with her and shot at S and H both. S died on the spot and H died after a week as he had not received proper medical treatment. W is prosecuted for causing death of H and S. She pleads the defence of 'grave and sudden provocation' in her favour. Decide.
5. Kamini, a girl aged 17 years six months, was a student of B.A. (Hons.), first year, in Delhi University. Fed up with the ill treatment meted out to her by her step-mother, she decided to spend a few days at her aunt's place at Faridabad. She boarded a bus bound to Faridabad and came across Ramesh, who was also commuting by the same bus. Ramesh got very impressed by Kamini and showed a keen interest in being friends with her. On a sympathetic ear being lent to her, Kamini narrated the troubles in her life to Ramesh. On hearing about her suffering, Ramesh offered to marry Kamini and left his visiting card with her. During her stay at her aunt's house, Kamini considered the proposal seriously and finally decided to go to Ramesh instead of going back to her natal home. They got married thereafter according to the wishes of Kamini, at the time and place decided by her. Ramesh was later arrested by the police and tried for kidnapping Kamini. Will the prosecution succeed in this case?
6. Aruna got married to Ashok, believing him to be a nice eligible bachelor. The couple resided together for two years and Aruna got pregnant in the meanwhile. On day, suddenly, Ashok went missing and a baffled Aruna contacted all friends of her husband. To her dismay, she was informed by one of such friends, that Ashok had a first wife Sudha and two kids from her. This family of Ashok resided at Jabalpur and Ashok has finally proceeded to stay with them forever. At Aruna's complaint, Ashok was arrested and tried for rape. Ashok contended that the sexual relations that he had with Aruna occurred with her consent only so consensual sexual relations between two adults could not be described as rape. Decide.
7. (a) X, finds a diamond ring belonging to Y on a table in the latter's house and puts the same under the carpet there with the intention of taking it afterwards. The ring still lies there in the house of Y undetected. Better side of man prevails over X and later he decides not to take out the ring. Has X still committed any offence.
(b) L, a newly married woman, wearing various gold ornaments, is encountered by two goondas A and B, near Maurice Nagar Chowk. Whistling, A threatens L of sexually abusing her. As L gets terrified, B snatches the necklace which L is wearing. With

trembling hands, L removes all other ornaments and hands them over to A, praying that they should stop her harassment. What offence(s) has been committed by A and B?

8. (a) Explain the law on 'Cheating'.
 (b) E gives her expensive saree to a dry-cleaner for dry-cleaning and ironing it. On the next day, the dry-cleaner tells her that the saree is not yet ready and will be given to her after two days. In the afternoon, E goes to a ladies' party and sees her friend Z wearing the same saree. On inquiring Z reluctantly discloses that she has hired the saree for a day from the same dry-cleaner. What offence has been committed by the dry-cleaner?

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LL.B. Examinations, May-June 2009

Note: Attempt *five* questions including Question No. 1 which is compulsory. All questions carry *equal* marks.

1. Answer any *four* parts and the answers should not exceed 150 words each :
 - (a) Distinction between Section 299(C) and Section 304A of the IPC in the matter of determining criminal liability.
 - (b) Explain and illustrate why kidnapping from lawful guardianship, unlike abduction, is not a continuing offence.
 - (c) Bring out briefly the essential ingredients of Section 304-B of IPC to attract criminal liability of the offence of causing dowry death.
 - (d) Bring out the distinction between the offence of theft and extortion under IPC.
 - (e) Discuss the justification behind "Sudden Fight" as a partial defence under Section 300 IPC.
2. Tej had scolded Teena, daughter of Shan, for misbehaving with his daughter, Rama. Shan became wild on hearing this and was looking for an opportunity to give good thrashing to Tej. One day Shan saw that Tej was passing through his place and seizing this opportunity, Shan caught hold of a stick lying nearby and gave nearly nineteen blows with the stick on the legs and arms of Tej. Tej was removed to a nearby hospital and he breathed his last within two days of sustaining these injuries. The post-mortem report attributed death to multiple fractures on arms and legs and internal bleeding. Shan is tried for the offence of murder under Section 300(3). Decide with the help of legal provisions and decided cases.
3. Rajesh went to attend a party along with his college friends. He got unusually drunk. Although his friends warned him not to drive and offered to drive him home, yet he decided to drive himself home. He was driving unusually fast when a boy was hit by his car while trying to cross the road. The speed of the car being unusually high, the boy was killed immediately and the car turned turtle causing serious injuries to Rajesh in an effort to bring it to a halt. Rajesh is tried for the offence of murder under Section 300(4). Decide.

4. Rakhi, aged about 15 years, and Raj, aged about 16 years, were good friends in the school in which they were studying. One day, Rakhi proposed to marry Raj but Raj did not heed but wondered why she had put up such a proposal. Out of curiosity, Raj started making enquiries from Rakhi and came to know that she had lost her mother in childhood, her father had remarried and she was being ill-treated by her step-mother. Rakhi proposed to Raj mainly because she knew that Raj's mother was kind-hearted and was hopeful of bringing her around. After knowing that Rakhi had been ill-treated by her step-mother. Raj brought Rakhi home to enable her to stay with him and his mother to save her from further harassment at the hands of her step-mother. Rakhi's father filed an FIR against Raj under Section 361. Raj was arrested and is facing trial for the said offence. As counsel, advise Raj.
5. Critically examine the judgment of the Supreme Court in *K.M. Nanavati v. State of Maharashtra*, AIR 1962 SC 605, bringing out clearly the essential conditions necessary for invoking the defence of "grave and sudden provocation" under Exception-I to Section 300 IPC.
6. Seema became one of the best sought after playback singers in Bollywood. Many female singers of repute were losing business because of her exceptionally good talent. Fearing grave losses, ZW, one of the reputed female singers, decided to mix some chemical substance in her fruit juice, which would affect her voice and make her suffer bodily pain for a number of days. ZW called Seema for a get-together and offered her fruit juice mixed with the chemical substance which she took. Seema immediately felt uneasy in the abdomen with irritation and pain in her throat and had to be hospitalized. She was discharged from the hospital after 15 days and was advised not to sing for another 15 days. Decide the liability of ZW.
7. (a) Bring out the distinction between the offence of criminal misappropriation and criminal breach of trust.
(b) Ahmed was entrusted to take care and watch paddy crops till it was ripe when the farmer-owner would give notice to the factory-owner doing the business of processing and selling paddy who would reap it. Ahmed cut the crop and disposed it off using the proceeds to marry off his daughter as he was in dire need of money. Discuss with the help of legal provisions and decided cases, what offence, if any, has been committed by Ahmed under the IPC.
8. (a) What is cheating and what are its essential ingredients?
(b) Nawab represented to Prince that he was a big estate-holder owning innumerable properties when the representations were not true. Prince, believing the representation of Nawab to be true, agreed to purchase an estate from Nawab of which Nawab was not the owner, for a consideration which eventually he paid after documents were executed between him and Nawab. Later on, Prince came to know that Nawab had no title in the said property. Prince wants to proceed against Nawab under the Indian Penal Code and seeks your advice as to what offence, if any, has been committed by Nawab. You are required to prepare a detailed legal advice in the matter.

LL.B. Examinations, December, 2010

Note: Attempt *five* questions including Question No. 1 which is compulsory.
All questions carry *equal* marks.

1. Write short notes with illustrations on any four of the following:
 - (a) Kidnapping, unlike abduction, is not a continuing offence;
 - (b) Essential ingredients of the offence of voluntarily causing grievous hurt by endangering the life of the victim;
 - (c) Illustrate and explain distinction between motive and intention;
 - (d) Bring out essential ingredients of offence under Section 304B IPC;
 - (e) Distinction between the offences of theft and extortion.
2. Critically examine the decision of the Supreme Court in *Kapur Singh vs. State of Pepsu*, AIR 1956 SC 654 in the light of the distinction between Sections 299(b) and 300 (3) of IPC explained and crystallized by the Supreme Court in *Virsa Singh v. State of Punjab*, AIR 1958 SC 465 which has attained the status of *locus classicus*.
3. Critically examine the decision of the Allahabad High Court in *Emperor v. Mt. Dhirajia*, AIR 1940 Allahabad 486 and state as to what are the distinguishing facts in the case from those in *Cyarsibai v. The State*, AIR 1953 MB 61 and *Supadi Lukada v. Emperor*, AIR 1925 Bombay 310 in fixing different criminalities in these cases.
4. Sunil was very fond of his fiancée Renu. But, when she told him about her intimacy with another man, Shyam, and that she was planning to break her engagement with him, Sunil was terribly upset. Next day Sunil was with Renu and Shyam in a restaurant having a very romantic evening and he lost his cool. He picked up a sharp knife from the kitchen of the restaurant and abused Shyam for taking liberties with his fiancée. In the hot exchange of words between Sunil and Shyam, Sunil inflicted two deep stab wounds in the abdomen of Shyam causing his death. Sunil is being tried for the offence of murder under Section 302 IPC. He pleads Exception 1 to Section 300 in his defence. Discuss.
6. Sunita and Sanjay were childhood friends in the village. Both of them grew together and there was an understanding between them that they will eventually marry each other after Sanjay takes a job in the city. Sanjay got a job and was to leave for the city. Before leaving for city he made a promise to Sunita that he will be marrying her after he comes back from the city with sufficient funds for the marriage. On the basis of the said promise he had a sexual intercourse with Sunita with her consent before leaving for the city. After going to the city he was attracted to another girl named Rita in his office and started evading Sunita and ultimately refused to marry her. Shocked by the conduct of Sanjay, Sunita files a criminal complaint against Sanjay which becomes the basis for his prosecution for the offence of rape under I.P.C. Sanjay pleads that sexual intercourse was with the consent of Sunita and, therefore, he has committed no offence. Decide with the help of legal provisions and judicial decisions.

7. (a) Critically examine the decision of the Supreme Court in *Cherubin Gregory vs. State of Bihar*, AIR 1964 SC 205. Do you think that if the State had appealed against the decision of the Session's court acquitting him under Section 304 part II and convicting him only under Section 304A IPC, the decision in this case in the higher courts would have been different and if so, why?
- (b) Critically bring out the distinction between the offence of criminal misappropriation and criminal breach of trust.
8. (a) S and U were very close friends studying B.E. Course in Computer Engineering together. They would frequently exchange books and notes. S came down to U's place to pick up a book but found a beautiful pen of very high cost on the table of U.S. picked it up to use it for a day believing that he had U's tacit consent. S did not inform U but after reaching home he found that the pen was really good and decided not to part with it. When U informed S about the loss of his pen, S kept quiet. U wants to take a criminal action against S as he came to know that it was nobody other than S who had picked up his pen in his absence and was not interested in returning it. What offence, if any, has S committed?
- (b) Bring out clearly the distinction between criminal breach of trust and cheating under IPC.

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LL.B. Term (Supplementary) Examinations, June-July, 2011

Note: Attempt *five* questions including Question No. 1 which is compulsory. All questions carry *equal* marks.

1. Answer briefly any four of the following:
- (a) "Grievous hurt is hurt of a more serious kind." Comment.
 - (b) Compare Sec. 304 B with Sec. 498 A IPC.
 - (c) Justify 'sudden fight' as a partial defence under Sec. 300 IPC.
 - (d) Illustrate distinction between theft and Criminal Misappropriation under IPC.
2. (a) A assaulted his wife by kicking her repeatedly on non-vital parts of her body. She fell down and became unconscious. In order to create an appearance that the woman had committed suicide, he took up the unconscious body and thinking it to be a dead body, hung it by a rope. The post-mortem examination showed that death was due to hanging.
- With the help of decided cases determine the culpability of A.
- (b) Under Sec. 300(3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional body injury or injuries sufficient to cause death in the ordinary course of nature.

3. (a) H, the husband killed his wife one night in the kitchen of his house. He was on terms of immoral intimacy with one Mrs. X. the husband had entertained suspicious of his wife's conduct with his cousin. On the fateful night husband and wife quarreled which culminated in the saying by the wife, "Well, if it will ease your mind, I have been untrue to you" and she went on "I know I have done wrong, but I have no proof that you haven't at Mrs. X". Upon hearing this, the husband lost his temper, picked up the hammer-head and struck on her head. She lost her life immediately.

On his prosecution for murder, H pleads, grave and sudden provocation. Will he succeed?

- (b) A, a driver of a double decker bus was driving the bus. A pedestrian suddenly crosses a road without taking note of the approaching bus. The pedestrian got dashed against the bus without the driver becoming aware of it. Although the driver was driving the bus very slowly, but he could't apply the brakes so quickly as to save the pedestrian.

The driver was prosecuted and punished under Sec. 304-A IPC for negligent driving. Has he been rightly prosecuted?

4. (a) A knows that B is suffering from jaundice and inflammation of the brain and that a blow on the head is likely to cause death. A gives B such a blow, from the effect of which B dies.
- (b) X without any excuse fires a loaded cannon into a crowd of persons and kills one of them. Is X guilty of murder, although he may not have had a premeditated design to kill any particular individual?

5. Sheenu, a girl of sixteen years, left her parental home because of the ill-treatment of her step-mother. On way she met a friend Ankit from her school, to whom she narrated her story of sufferings. He persuaded her to return to her parents with the promise that he will contact her after he gets job. Sheenu leaves her phone number and residential address with him. On his persuasion Sheenu went back to her home.

After a month or so, she called Ankit and was happy to know that he had got a job. Both of them decided to meet and at a meeting Ankit promised to marry her. Finally she of her own decided to walk out of the house and directly proceeded to Ankit's house and started living with him. They eventually decided to marry, but before marriage could happen, Ankit was arrested on the complaint filed by the parents of Sheenu for the offence of kidnapping under Sec. 361 IPC. Can he be punished under Sec. 363 IPC?

6. The prosecutrix was an educated woman and employed. She went in the jeep of the accused at night for a long distance intending to meet her senior officer. She alleged that she was raped by the accused in his house when they halted there. There was no explanation of any compelling reasons for meeting the officer at night. She asserted virginity but medical evidence showed that she was habituated to sex.

Argue for the defence as well as for the prosecution of the accused under Sec. 375 IPC.

7. (a) The bag of an ex-student of Ramjas college was removed from him by another student on a college day and handed over to the Principal of the college. The Principal and Vice-Principal suspecting that it contained objectionable leaflets of the kind hurled in the college hall on the college day, informed the complainant's father that the bag was in college office and the Principal would like to see him to discuss matters. The Principal refused to hand-over the bag to the complainant but later handed it over to the police. On a complaint by the ex-student, a charge of theft of a bag was made against the Principal, Vice Principal and another student.

Can offence of theft be proved against them?

- (b) How will you explain that "delivery by the person put in fear" is essential in order to constitute the offence of extortion?
8. (a) A finds a purse on the main road. On opening he found cash amount of Rs. 20,000 and few addresses inside it. Thereafter, he telephoned and by post contacted all the addresses, but could't locate the real owner. A also put notices and advertisements in the local newspaper. However, even after six months when no one came forward to claim the purse. A use the money partly for paying the expenses incurred in advertising and contacting persons and rest of the money for meeting his daily needs.

Can A be prosecuted for any offence?

- (b) "Criminal breach of trust and cheating are two distinct offences generally involving dishonest intention but mutually exclusive and different in basic concept." Explain with the help of decided cases.

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GENERAL INTRODUCTION

NATURE AND DEFINITION OF CRIME*

I. NATURE OF CRIME

WHAT IS A CRIME? We must answer this question at the outset. In order to answer this question we must know first, what is law because the two questions are closely interrelated. Traditionally, we know a law to be a command enjoining a 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. 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 our 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 practise 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

* R.C Nigam, *LAW OF CRIMES IN INDIA* 25-37 (1965)

sections of the community who are powerful or astute 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".

But a student embarking on study of principles of criminal law must understand the chief characteristics and the true attributes of a crime. Though a crime, as we have seen, is difficult of a definition in the true sense of the term, a definition of a crime must give us "the whole thing and the sole thing," telling us something that shall be true of every crime and yet not be true of any other conceivable non-criminal breach of law. We cannot produce such a definition of crime as might be flexible enough to be true in all countries, in all ages and in all times. Nevertheless, a crime may be described and its attributes and characteristics be clearly understood. In order to achieve this object, we propose to adopt two ways, namely, first, we shall distinguish crime from civil and moral wrongs, and *secondly*, we shall critically examine all the definitions constructed by the eminent criminal jurists from time to time.

II. DISTINCTION BETWEEN MORAL, CIVIL AND CRIMINAL WRONGS

In order to draw a distinction between civil and criminal liability, it becomes necessary to know clearly what is a wrong of which all the three are species. There are certain acts done by us which a large majority of civilised people in the society look upon with disapprobation, because they tend to reduce the sum total of human happiness, to conserve which is the ultimate aim of all laws. Such acts may be called wrongs, for instance, lying, gambling, cheating, stealing, homicide, proxying in the class, gluttony and so on. The evil tendencies and the reflex action in the society of these acts or wrongs, as we have now chosen to call them, differ in degree. Some of them are not considered to be serious enough as to attract law's notice. We only disapprove of them. Such wrongs may be designated as moral wrongs, for instance, lying, overeating or gluttony, disobedience of parents or teachers, and so on. Moral wrongs are restrained and corrected by social laws and laws of religion.

There are other wrongs which are serious enough to attract the notice of the law. The reaction in the society is grave enough and is expressed either by infliction of some pain on the wrongdoer or by calling upon him to make good the loss to the wronged person. In other words, law either awards punishment or damages according to the gravity of the wrong done. If the law awards a punishment for the wrong done, we call it a crime; but if the law does not consider it serious enough to award a punishment and allows only indemnification or damages, we call such a wrong as a civil wrong or tort. In order to mark out the distinction between crimes and torts, we have to go deep into the matter and study it rather elaborately.

Civil and Criminal Wrongs: We may state, broadly speaking, *first*, that crimes are graver wrongs than torts. There are three reasons for this distinction between a crime and a tort. First, they constitute greater interference with the happiness of others and affect the well-being not only of the particular individual wronged but of the community as a whole. Secondly, because the impulse to commit them is often very strong and the advantage to be gained from the wrongful act and the facility with which it can be accomplished are often so great and the risk of detection so small that human nature, inclined as it is to take the shortest cut to happiness, is more likely to be tempted, more often than not, to commit such wrongs. A pickpocket, a swindler, a gambler are all instances. Thirdly, ordinarily they are deliberate acts and directed

by an evil mind and are hurtful to the society by the bad example they set. Since crimes are graver wrongs, they are singled out for punishment with four-fold objects, namely, of making an example of the criminal, of deterring him from repeating the same act, of reforming him by eradicating the evil, and of satisfying the society's feeling of vengeance. Civil wrongs, on the other hand, are less serious wrongs, as the effect of such wrongs is supposed to be confined mainly to individuals and does not affect the community at large.

Secondly, the accused is treated with greater indulgence than the defendant in civil cases. The procedure and the rules of evidence are modified in order to reduce to a minimum the risk of an innocent person being punished. For example, the accused is not bound to prove anything, nor is he required to make any statement in court, nor is he compellable to answer any question or give an explanation. However, under the Continental Laws an accused can be interrogated.

Thirdly, if there is any reasonable doubt regarding the guilt of the accused, the benefit of doubt is always given to the accused. It is said that it is better that ten guilty men should escape rather than an innocent person should suffer. But the defendant in a civil case is not given any such benefit of doubt.

Fourthly, crimes and civil injuries are generally dealt with in different tribunals. The former are tried in the criminal courts, while the latter in the civil courts.

Fifthly, in case of a civil injury, the object aimed at is to indemnify the individual wronged and to put him as far as practicable in the position he was, before he was wronged. Therefore he can compromise the case, whereas in criminal cases generally the state alone, as the protector of the rights of its subjects, pursues the offender and often does so in spite of the injured party. There are, however, exceptions to this rule.

Lastly, an act in order to be criminal must be done with malice or criminal intent. In other words, there is no crime without an evil intent. *Actus non facit reum nisi mens sit rea*, which means that the act alone does not make a man guilty unless his intentions were so. This essential of the crime distinguishes it from civil injuries.

Criminal and Moral Wrongs: A criminal wrong may also be distinguished from a moral wrong. It is narrower in extent than a moral wrong. In no age or in any nation an attempt has ever been made to treat every moral wrong as a crime. In a crime an idea of some definite gross undeniable injury to some one is involved. Some definite overt act is necessary, but do we punish a person for ingratitude, hard-heartedness, absence of natural affection, habitual idleness, avarice, sensuality and pride, which are all instances of moral lapses? They might be subject of confession and penance but not criminal proceeding. The criminal law, therefore, has a limited scope. It applies only to definite acts of commission and omission, capable of being distinctly proved. These acts of commission and omission cause definite evils either on definite persons or on the community at large. Within these narrow limits there may be a likeness between criminal law and morality. For instance, offences like murder, rape, arson, robbery, theft and the like are equally abhorred by law and morality. On the other hand, there are many acts which are not at all immoral, nonetheless they are criminal. For example, breaches of statutory regulations and bye laws are classed as criminal offences, although they do not involve the slightest moral blame. So also "the failure to have a proper light on a bicycle or keeping of a pig in a wrong place," or the

neglect in breach of a bye-law to cause a child to attend school during the whole of the ordinary school hours; and conversely many acts of great immorality are not criminal offences, as for example, adultery in England, or incest in India. However, whenever law and morals unite in condemning an act, the punishment for the act is enhanced.

Stephen on the relationship between criminal law and morality observes:

The relation between criminal law and morality is not in all cases the same. The two may harmonise; there may be a conflict between them, or they may be independent. In all common cases they do, and, in my opinion, wherever and so far as it is possible, they ought to harmonise with and support one another. Everything which is regarded as enhancing the moral guilt of a particular offence is recognised as a reason for increasing the severity of the punishment awarded to it. On the other hand, the sentence of the law is to the moral sentiment of the public in relation to any offence what a seal is to hot wax. It converts into a permanent final judgement what might otherwise be a transient sentiment. The mere general suspicion or knowledge that a man has done something dishonest may never be brought to a point, and the disapprobation excited by it may in time pass away, but the fact that he has been convicted and punished as a thief stamps a mark upon him for life. In short, the infliction of punishment by law gives definite expression and a solemn ratification and a justification to the hatred which is excited by the commission of the offence, and which constitutes the moral or popular as distinguished from the conscientious sanction of that part of morality which is also sanctioned by the criminal law. The criminal law thus proceeds upon the principle that it is morally right to hate criminals, and it confirms and justifies that sentiment by inflicting upon criminals punishments which express it.

Criminal Law and Ethics: Let us also distinguish criminal law from ethics. Ethics is a study of the supreme good. It deals with absolute ideal, whereas positive morality deals with current public opinion, and law is concerned with social relationship of men rather than with the individual's excellence of character. The distinction between law and morality has been discussed already. We may now bring out the distinction between law and ethics by citing two illustrations. Your neighbour, for instance, is dying of starvation. Your granary is full. Is there any law that requires you to help him out of your plenty? It may be ethically wrong or morally wrong; but not criminally wrong. Then again, you are standing on the bank of a tank. A woman is filling her pitcher. All of a sudden she gets an epileptic fit. You do not try to save her. You may have committed an ethical wrong or a moral wrong, but will you be punished criminally? However, with the growth of the humanitarian ideas, it is hoped that the conception of one's duty to others will gradually expand, and a day might arrive when it may have to conform to the ideal conduct which the great Persian Poet, Sheikh Saadi, aimed at, viz.: "If you see a blind man proceeding to a well, if you are silent, you commit a crime." This was what the poet said in the 13th century. But we may have to wait for a few more decades, when we might give a different answer to the question: "Am I my brother's keeper?"

Are Crimes and Torts Complementary? In the foregoing, we have drawn a clear distinction between crimes and civil injuries. In spite of those distinctions, however, it should be remembered that crimes and torts are complementary and not exclusive of each other. Criminal wrongs and civil wrongs are thus not sharply separated groups of acts but

are often one and the same act as viewed from different standpoint, the difference being not one of nature but only of relation. To ask concerning any occurrence, "is this a crime or a tort?" is, to borrow Sir James Stephen's apt illustration, no wiser than it would be to ask of a man, "Is he a father or a son? For he may be both." In fact, whatever is within the scope of the penal law is crime, whatever is a ground for a claim of damages, as for an injury, is a tort; but there is no reason why the same act should not belong to both classes, and many acts do. In fact, some torts or civil injuries were erected and are being erected into crimes, whenever the law-making hand comes to regard the civil remedy for them as being inadequate. But we cannot go so far as to agree with Blackstone when he makes a sweeping observation that "universally every crime is a civil injury." This observation of Blackstone is proved incorrect in the following three offences which do not happen to injure any particular individual. *First*, a man publishes a seditious libel or enlists recruits for the service of some foreign belligerent. In either of these cases an offence against the state has been committed but no injury is caused to any particular individual. *Secondly*, an intending forger, who is found in possession of a block for the purpose of forging a trade mark or engraving a bank-note or for forging a currency note, commits a serious offence but he causes no injury to any individual. *Thirdly*, there are cases where though a private individual does actually suffer by the offence, yet the sufferer is no other than the actual criminal himself who, of course, cannot claim compensation against himself, for example, in cases of attempted suicide. However, in England as elsewhere the process of turning of private wrongs into public ones is not yet complete, but it is going forward year to year. For instance, the maiming or killings of another man's cattle were formerly civil wrongs but they were made crimes in the Hanoverian reign. Then again, it was not until 1857 a crime for a trustee to commit a breach of trust. So also, incest was created a crime in 1908. In fact, the categories of crimes are not closed. In our own country, since Independence, many acts have now been enacted into crimes which we could not even have conceived of, for instance, practice of untouchability or forced labour or marrying below a certain age and so on. A socialistic state does conceive of many anti-social behaviours punishable as crimes more frequently.

We must remember that crime is a relative concept and a changing one too. Different societies have different views as to what constitutes a criminal act and the conception of a crime may vary with the age, locality and several other facts and circumstances. For example, people were burned for heresy a few centuries ago, but in modern times no civilised nation punishes a man on the ground that he professes a different religious view. Then again, adultery is a crime according to our penal code, while it is a civil wrong according to English law.

Maine's Dictum and its Criticism: Before we pass on to examine the definitions constructed from time to time by jurists as regards crime, we may examine the well-known generalisation of Sir Henry Maine as regards the conception of crime in ancient communities. He observes:

Penal law of ancient communities is not the law of crimes: it is the law of wrongs. The person injured proceeds against the wrongdoer by an ordinary civil action and recovers compensation in the shape of money damages, if he succeeds.

In support of this observation, he cites a good many instances of compounding of murder by payment of blood money. The idea underlying was that homicide could be purged by the blood money being paid to the relatives of the deceased. The conception that crimes are wrongs against the community is of a comparatively modern growth in the European countries and not in ancient India where it was the dominant feature of the time. The generalisation of Maine, therefore, does not apply to ancient Indian law, based as it is on a study of the Roman law and the old Germanic systems of law. In these systems of law, acts which are not treated as offences were treated as civil wrongs and were requited by payment of compensation. If we examine closely the penal law of the ancient Hindus, we find that the penalty imposed on the offender was usually not in the nature of compensation to the injured party. Moreover, Maine's generalization has recently been pronounced to be incorrect by a modern research scholar, Sir A.S. Diamond. He observes:

Partly from a chapter in Maine's *Ancient Law* (Chapter X) has been drawn a widespread conception that there is no separation in crimes and civil injuries in primitive law. But this is not so: the distinction is universal, from the time when civil and criminal laws are first found, until the end of the primitive law.

III. DEFINITIONS OF CRIME

Now we shall examine the definitions of crime given to us by the eminent jurists and see how far they have succeeded in constructing a true definition of crime.

Sir William Blackstone in his classical work, *Commentaries on the Laws of England*, Volume IV, which is devoted to "Public Wrongs or Crimes," attempted to define crime at two different places in his work. We shall examine both these definitions given by him. At one place, he states that crime is

an act committed or omitted in violation of a public law forbidding or commanding it.

Here in defining crime Blackstone uses "public law." Now what is meant by public law? It has several accepted meanings. For instance, Austin takes public law as identical with constitutional law. In that sense, the definition given by him would cover only political offences which are only a very small portion of the whole field of crime. If we were to follow Austin and interpret the definition given by Blackstone as violation of our constitutional law, namely, Articles 21 and 31, which guarantee protection of one's life, liberty and property, even then the definition of crime would remain too narrow. The Germans, on the other hand, interpret "public law" to mean both constitutional law and criminal law. In this sense, the definition given by Blackstone ceases to define because we shall be using criminal law in defining a crime. Then again, some take "public law" to mean positive law or municipal law, which would mean all laws made by the state. In that sense, the definition given by Blackstone obviously become too wide, for then crime will include every legal wrong or violation of law. Therefore, this definition given by Blackstone is not satisfactory.

Now we pass on to the second definition given by the same jurist, Blackstone. He defines crime as "a violation of the public rights and duties due to the whole community considered as a community." This definition has been slightly altered by the learned editor of Blackstone, Serjeant Stephen, who expresses it thus:

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

As regards the reconstructed definition, it might be observed that it introduces a new error, namely, it limits crimes to violations of rights only, whereas Blackstone applied it to a violation of both a right and a duty. Instances of a violation of a duty amounting to crimes are numerous, for example, being in possession of house-breaking tools by night or possession of counterfeit coins. Undoubtedly the idea incorporated in the definition given by Blackstone as well as by his learned editor Stephen is very important, namely, that crimes are breaches of those laws which injure the community. The same was the idea which was noted by the Roman jurists as well. Therefore they called crimes *delicta publica* and the criminal trials *judicia publica*. Indeed, if only a rough, general description of crime were to be given then public mischief could be made the salient feature of the crime, but this alone would not suffice for a definition. It would be a vague fact for a definition of a crime. There are many things which are only breaches of contract and are injurious to the community but they are not crimes, for example, the negligent management of the affairs of a company, which may bring about a calamity to the community greater than that produced by a thief stealing an article. The latter is a crime, while the former is only a wrong and not a crime. On the other hand, a conduct may amount to a crime, though instead of bringing an evil to the community it may bring some good to the community. For instance, constructing a sloping causeway, though it might facilitate the landing of passengers and goods, is an offence of common nuisance. Therefore, the definition of crime that it is a legal wrong, if it tends to cause evil to the community, is not correct. It is, of course, an instructive general description of it.

Some jurists define crime as those legal wrongs which violently offend our moral feelings. As we have seen already, law and morality do not always go together. This definition, moreover, breaks down in many cases, for example, in treason offences. Such offences are hardly considered immoral or disgraceful, yet they are very serious offences. Treason, as Sir Walter Scott says, "arises from mistaken virtue, and therefore, however highly criminal, cannot be considered disgraceful," a view which has even received legislative approval. Then again, mere omission to keep a highway in repair shocks nobody, yet it is crime. On the other hand, many grossly cruel and fraudulent breaches of trust are merely civil wrongs, for example, a man who stands by the river and watches a child drowning. He is a known swimmer but does not plunge into water to save the child. He may be guilty of committing a grossly wicked immoral act which may arouse universal indignation but he will not be held guilty of committing a crime nor even a civil wrong. In France, however, he may be held guilty but not so under English criminal law, or under the Indian Penal Code. Of course, it would be different with a father who owes a duty to a son while not a grandfather.

Some jurists define crime according to the interference by the state in such acts. In civil cases the state does not interfere until actual wrong has been committed, and even then it does not interpose unless proceedings are initiated by the person actually affected by it. In criminal matters the state maintains an elaborate police staff to prevent offences and if one is committed an action may be instituted by the state without the cooperation of the party injured. Of course, to define crime in this way is only to bring out the contrast between civil

and criminal wrongs, which, howsoever genuine it may be, cannot be the correct basis of a definition for two reasons. First, because civil proceedings are often taken to obtain injunction against some anticipated wrong which has not yet been committed while, on the other hand, some criminal acts are so trivial that the police do not interfere before hand to prevent them. Secondly, there are some crimes for which a prosecution cannot be initiated by any private person without the permission from the state, for example, printing or publishing demoralising, indecent details of a judicial proceeding.

Austin has, in defining crime, observed:

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.

It may be observed that his definition is not of substance but of procedure only. Moreover, under the Indian Penal Code there are several offences which cannot be pursued except by the injured party, for example, offences of criminal elopement under Section 498 of the Penal Code which can only be tried on a complaint being lodged by the husband.

Professor Kenny modifies Austin and defines crime to be "wrongs whose sanction is punitive and is in no way remissible by any private person, but is remissible by the Crown alone, if remissible at all." This definition of crime as given by Professor Kenny is also open to criticism. Professor Winfield points out that the word "sanction," used in the definition must mean punishment and the word "remissible" must refer to pardon by the Crown and observes that it is on the word "remissible" that the definition breaks down, for the only way in which the Crown can remit a punishment is by pardon. It may be observed that, under English common law, crimes which are pardonable are only those which are against the public laws and statutes of the realm. Then again, this definition fails when it is applied to our own law because there are very many offences under the Indian Penal Code which are compoundable without even the intervention of the Court or, in other words, where the punishment can be remitted by the private individual. Therefore, this definition of Professor Kenny also breaks down.

An American author has defined crime to be the commission or omission of an act which the law forbids or commands under pain of a punishment to be imposed by the state by a proceeding in its own name. This definition seems to be less open to criticism than others, Professor Paton observes:

In crime we find that the normal marks are that the state has power to control the procedure, to remit the penalty or to inflict the punishment.

Similarly Professor Keeton says:

A Crime today would seem to be any undesirable act which the state finds it 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.

Thus we have seen that all attempts to define crime have proved abortive and would indeed be a barren research, We can only describe it and may state that in a crime we find at least *three attributes*, namely, *first*, that it is a harm brought about by some anti-social act of human being, which the sovereign power desires to prevent; *secondly*, the preventive measures taken by the state appear in the form of a threat of a sanction or punishment; and

thirdly, the legal proceedings, wherein the guilt or otherwise of the accused is determined, are a special kind of proceedings governed by special rules of evidence.

IV. TEST OF CRIMINALITY

Now what is the test of criminality or criminal liability? The true test of criminal liability has had a gradual development. In the very beginning only the most serious crimes were recognised and were singled out for punishment. The list of crimes at that time was short. In the next stage we find that the machinery for administration of justice was refined and developed, and procedural laws for the trial of criminal cases were also reformed. In this process of development we find that certain fundamental principles were evolved. The first was that nobody should be held liable unless he had the evil intent to commit it, and the second was that the accused was to be presumed to be innocent unless he was proved to be guilty. The former principle assumed a Latin garb and became known as *actus non facit reum, nisi mens sit rea*, and was first cited as a principle by Lord Kenyon C.J. in **Fowler v. Pedger** thus: "It is a principle of natural justice and of our law that *actus non facit reum, nisi mens sit rea*." This principle has even in modern times been accepted to be a leading doctrine of criminal law, for Lord Goddard C.J. observed in a case in 1949: "*actus non facit reum, nisi mens sit rea* is a cardinal doctrine of the Criminal Law." This maxim which has been accepted not only by the courts of England but also our own courts recognise that there are two necessary elements in a crime, namely, first, a physical element, and, secondly, a mental element. The former is known technically as *actus reus* and the latter as *mens rea*. These are the tests of criminality known to our law and to the laws of England.

The *actus reus* may be an act of commission or an act of omission. It may be punishable by a statute or by common law. The *actus reus* may be the disobedience of the orders of a competent tribunal or may even be of a rule made by an executive. But in order that the *actus reus* may be punishable it must generally be accompanied by a guilty mind. However, in some cases, law awards a punishment although the *actus reus* is not consummated. They are known to us as attempt, conspiracy or even some cases of preparation, which we have discussed at length elsewhere in this work."

V. TRADITIONAL AND MODERN APPROACH TO CRIME

As we have seen above, the traditional approach to crime had been to formulate a definition of crime. Therefore, all the eminent jurists beginning with Blackstone down to Kenny attempted to define crime, but, as we have seen, they all failed to bring in within the narrow compass of a definition the flexible notion of a crime, because it was conditioned by the changing moral values and social opinions of the community from time to time. Moreover, the traditional approach to crime may have well suited a society which had not developed into a complex society. The crimes known to them in the beginning at that stage of the society may have been fewer in number which could have been roped in the four corners of a definition. With the rise of industrial revolution and rapid means of communications and modern scientific investigations, crimes also have taken a new turn. Not only that they have multiplied in number but also they have grown more complex and even scientific. Formerly, we knew only crimes arising out of greed, land and lust. But now such crimes have been relegated to the category of traditional crimes. Modern crimes committed by persons

belonging to the higher social status by beguiling people or practising fraud or misrepresentation or by adopting other known or unknown ways to amass money by fair means or foul have all appeared. Therefore, a modern approach to combat such crimes has become absolutely necessary. Defining crime, being a traditional approach, has to be given up.

The modern conception is that crime is a public wrong, i.e., wrong which offends against the public generally. The modern approach is not to bother about a definition of a crime but to lay stress on its functions. In other words, the modern approach is a functional approach to crime. The Wolfendon Committee Report (1958) has spotlighted the functional approach to crime in England, and lays down clearly both positively and negatively what it should be and what it should not be. It observes that the function of criminal law is

to preserve public order and decency, to protect citizens from what is offensive or injurious and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are young, weak in body or mind, inexperienced, or in a state of physical, official or economic dependence.

This is the positive aspect of the functional approach to criminal law. This crux of the modern approach lies in what is its negative aspect which is expressed thus:

It is not the function of the law to intervene in the private lives of citizens or to seek to enforce any particular pattern of behaviour further than is necessary to carry out the above purposes.

The purposes mentioned here are defined and described in the above paragraph defining the positive approach. In defining the positive aspect of this approach, two general terms have been used, namely, "offensive" and "injurious," about which doubts may be expressed and therefore the committee observes by way of an explanation thus:

Opinions will differ as to what is offensive or injurious or inimical to the common good and as to what constitutes exploitation or corruption and those opinions will be based on the prevailing moral, social or cultural standards.

This explanation fits in with the growing needs of the society. Of course, it goes without saying that criminal law will not concern itself with what a man does in private unless it can be shown to be so contrary to the public good that the law ought to intervene in its function as the guardian of that public good. Then again, no useful purpose can be served by legislating against an activity which you cannot satisfactorily control. Therefore, it becomes clear that private morality or immorality is not the concern of law. It appears that we are again reverting to what Blackstone told us about four hundred years ago that crime is a public wrong because the modern notion of criminal law is concerned with behaviour which is normally reprehensible and is inimical to law and order. Therefore, a search for a definition of crime, being a traditional approach to crime, should now in modern times be given up as being a barren search and instead the real search should be for the norms, ethics and practical expediency. Herein lies the distinction between the traditional and the modern approach to criminal law.

CONSTITUENT ELEMENTS OF CRIME*

ELEMENTS OF A CRIME

The two elements of crime are *mens rea* and *actus reus*. Apart from these two elements that go to make up a crime, there are two more indispensable elements, namely, first, “a human being under a legal obligation to act in a particular way and a fit subject for the infliction of appropriate punishment,” and secondly, “an injury to another human being or to the society at large.” Thus the four elements that go to constitute a crime are as follows: *first*, a human being under a legal obligation to act in a particular way and a fit subject for the infliction of appropriate punishment; *secondly*, an evil intent or *mens rea* on the part of such human being; *thirdly*, *actus reus*, i.e., act committed or omitted in furtherance of such an intent; and *fourthly*, an injury to another human being or to society at large by such an act.

A Human Being: The first element requires that the act should have been done by a human being before it can constitute a crime punishable at law. The human being must be “under a legal obligation to act, and capable of being punished.”

Mens Rea: The *second element*, which is an important essential of a crime, is *mens rea* or guilty mind. In the entire field of criminal law there is no important doctrine than that of *mens rea*. The fundamental principle of English Criminal jurisprudence, to use a maxim which has been familiar to lawyers following the common law for several centuries, is “*actus non facit reum nisi mens sit rea*”. *Mens rea* is the state of mind indicating culpability, which is required by statute as an element of a crime. It is commonly taken to mean some blameworthy mental condition, whether constituted by intention or knowledge or otherwise, the absence of which on any particular occasion negatives the intention of a crime. The term ‘*mens rea*’ has been given to volition, which is the motive force behind the criminal act. It is also one of the essential ingredients of criminal liability

As a general rule every crime requires a mental element, the nature of which will depend upon the definition of the particular crime in question. Even in crimes of strict liability some mental element is required. Expressions connoting the requirement of a mental element include: ‘with intent’, ‘recklessly’, ‘unlawfully’, ‘maliciously’, ‘unlawfully and maliciously’, ‘wilfully’, ‘knowingly’, ‘knowing or believing’, ‘fraudulently’, ‘dishonestly’, ‘corruptly’, ‘allowing’, and ‘permitting’. Each of these expressions is capable of bearing a meaning, which differs from that ascribed to any other. The meaning of each must be determined in the context in which it appears, and the same expression may bear a different meaning in different contexts. Under the IPC, guilt in respect of almost all offences is fastened either on the ground of intention or knowledge or reason to believe. All the offences under the Code are qualified by one or the other words such as wrongful gain or wrongful loss, dishonestly, fraudulently, reason to believe, criminal knowledge or intention, intentional co-operation, voluntarily, malignantly, wantonly. All these words describe the mental condition required at the time of commission of the offence, in order to constitute an offence. Thus, though the

* **Edited from:** R. C. Nigam, *LAW OF CRIMES IN INDIA* 38-43 (1965); V. Suresh and D. Nagasaila (eds.), *P.S. ATCHUTHEN PILLAI’S CRIMINAL LAW* 42-47 (9th edn., 2006)

word *mens rea* as such is nowhere found in the IPC, its essence is reflected in almost all the provisions of the code. The existence of the mental element or guilty mind or mens rea at the time of commission of the actus reus or the act alone will make the act an offence.

Generally, subject to both qualification and exception, a person is not criminally liable for a crime unless he intends to cause, foresees that he will probably cause, or at the lowest, foresees that he may cause, the elements which constitute the crime in question. Although the view has been expressed that it is impossible to ascribe any particular meaning to the term mens rea, concepts such as those of intention, recklessness and knowledge are commonly used as the basis for criminal liability and in some respects may be said to be fundamental to it:

Intention: To intend is to have in mind a fixed purpose to reach a desired objective; it is used to denote the state of mind of a man who not only foresees but also desires the possible consequences of his conduct. The idea foresees but also desires the possible consequences of his conduct. The idea of 'intention' in law is not always expressed by the words 'intention', 'intentionally' or 'with intent to'. It is expressed also by words such as 'voluntarily', 'wilfully' or 'deliberately' etc. Section 298 IPC makes the uttering of words or making gestures with deliberate intent to wound the religious feelings punishable under the Act. ON a plain reading of the section, the words 'deliberate' and 'intent' seem synonymous. An act is intentional if, and in so far as it exists in idea before it exists in fact, the idea realizing itself in the fact because of the desire by which it is accompanied. Intention does not mean ultimate aim and object. Nor is it a synonym for motive.

Transferred intention: Where a person intends to commit a particular crime and brings about the elements which constitute that crime, he may be convicted notwithstanding that the crime takes effect in a manner which was unintended or unforeseen. A, intends to kill B by poisoning. A places a glass of milk with poison on the table of B knowing that at the time of going to bed B takes glass of milk. On that fateful night instead of B, C enters the bedroom of B and takes the glass of milk and dies in consequence. A is liable for the killing of C under the principle of transferred intention or malice.

Intention and Motive: Intention and motive are often confused as being one and the same. The two, however, are distinct and have to be distinguished. The mental element of a crime ordinarily involves no reference to motive. Motive is something which prompts a man to form an intention. Intention has been defined as the fixed direction of the mind to a particular object, or determination to act in a particular manner and it is distinguishable from motive which incites or stimulates action. Sometimes, motive plays an important role and becomes a compelling force to commit a crime and, therefore, motive behind the crime become a relevant factor for knowing the intention of a person. In *Om Prakash v. State of Uttaranchal* [(2003) 1 SCC 648] and *State of UP v. Arun Kumar Gupta* [(2003) 2 SCC 202] the Supreme Court rejected the plea that the prosecution could not signify the motive for the crime holding that failure to prove motive is irrelevant in a case wherein the guilt of the accused is proved otherwise. It needs to be emphasised that motive is not an essential element of an offence but motive helps us to know the intention of a person. Motive is relevant and important on the question of intention.

Intention and knowledge: The terms ‘intention’ and ‘knowledge’ which denote *mens rea* appear in Sections 299 and 300, having different consequences. Intention and knowledge are used as alternate ingredients to constitute the offence of culpable homicide. However, intention and knowledge are two different things. Intention is the desire to achieve a certain purpose while knowledge is awareness on the part of the person concerned of the consequence of his act of omission or commission, indicating his state of mind. The demarcating line between knowledge and intention is no doubt thin, but it is not difficult to perceive that they connote different things. There may be knowledge of the likely consequences without any intention to cause the consequences. For example, a mother jumps into a well along with her child in her arms to save herself and her child from the cruelty of her husband. The child dies but the mother survives. The act of the mother is culpable homicide. She might not have intended to cause death of the child but, as a person having prudent mind, which law assumes every person to have, she ought to have known that jumping into the well along with the child was likely to cause the death of the child. She ought to have known as prudent member of the society that her act was likely to cause death even when she may not have intended to cause the death of the child.

Recklessness: Intention cannot exist without foresight, but foresight can exist without intention. For a man may foresee the possible or even probable consequences of his conduct and yet not desire this state of risk of bringing about the unwished result. This state of mind is known as ‘recklessness’. The words ‘rash’ and ‘rashness’ have also been used to indicate this same attitude.

Negligence: If anything is done without any advertence to the consequent event or result, the mental state in such situation signifies negligence. The event may be harmless or harmful; if harmful the question arises whether there is legal liability for it. In civil law (common law) it is decided by considering whether or not a reasonable man in the same circumstances would have realized the prospect of harm and would have stopped or changed his course so as to avoid it. If a reasonable man would not, then there is no liability and the harm must lie where it falls. The word ‘negligence’, therefore, is used to denote blameworthy inadvertence. It should be recognized that at common law there is no criminal liability for harm thus caused by inadvertence. Strictly speaking, negligence may not be a form of *mens rea*. It is more in the nature of a legal fault. However, it is made punishable for a utilitarian purpose of hoping to improve people’s standards of behaviour. Criminal liability for negligence is exceptional at common law; manslaughter appears to be the only common law crime, which may result from negligence. Crimes of negligence may be created by statute, and a statute may provide that it is a defence to charges brought under its provisions for the accused to prove that he was not negligent. Conversely, negligence with regard to some subsidiary element in the *actus reus* of a crime may deprive the accused of a statutory defence which would otherwise have been available to him.

Advertent negligence is commonly termed as wilful negligence or recklessness. In other words, inadvertent negligence may be distinguished as simple. In the former the harm done is foreseen as possible or probable but it is not willed. In the latter it is neither foreseen nor willed. In each case carelessness, i.e. to say indifference as to the consequences, is present; but in the former this indifference does not, while in the latter it does prevent these

consequences from being foreseen. The physician who treats a patient improperly through ignorance or forgetfulness is guilty of simple or inadvertent negligence; but if he does the same in order to save himself trouble, or by way of a scientific experiment with full recognition of the danger so incurred, his negligence is wilful. It may be important to state here that the wilful wrong doer is liable because he desires to do the harm; the negligent wrong doer is liable because he does not sufficiently desire to avoid it. He who will excuse himself on the ground that he meant no evil is still open to the reply: - perhaps you did not, but at all event you might have avoided it if you had sufficiently desire to do so; and you are held liable not because you desired the mischief, but because you were careless and indifferent whether it ensued or not. It is on this ground that negligence is treated as a form of mens rea, standing side by side with wrongful intention as a formal ground of responsibility.

Actus Reus: To constitute a crime the third element, which we have called actus reus or which Russell¹ has termed as “physical event”, is necessary. Now what is this actus reus?² It is a physical result of human conduct. When criminal policy regards such a conduct as sufficiently harmful it is prohibited and the criminal policy provides a sanction or penalty for its commission. The *actus reus* may be defined in the words of Kenny to be “such result of human conduct as the law seeks to prevent.”³ Such human conduct may consist of acts of commission as well as acts of omission. Section 32 of our Penal Code lays down: “Words which refer to acts done extend also to illegal omissions.”

It is, of course, necessary that the act done or omitted to be done must be an act forbidden or commanded by some statute law, otherwise, it may not constitute a crime. Suppose, an executioner hangs a condemned prisoner with the intention of hanging him. Here all the three elements obviously are present, yet he would not be committing a crime because he is acting in accordance with a law enjoining him to act. So also if a surgeon in the course of an operation, which he knew to be dangerous, with the best of his skill and care performs it and yet the death of the patient is caused, he would not be guilty of committing a crime because he had no *mens rea* to commit it.

As regards acts of omission which make a man criminally responsible, the rule is that no one would be held liable for the lawful consequences of his omission unless it is proved that he was under a legal obligation to act. In other words, some duty should have been imposed upon him by law, which he has omitted to discharge. Under the Penal Code, Section 43 lays down that the word “illegal” is applicable to everything which is an offence or which is prohibited by law, or which furnishes a ground for a civil action; and a person is said to be “legally bound to do whatever it is illegal in him to omit.” Therefore, an illegal omission would apply to omissions of everything which he is legally bound to do. These indicate problems of *actus reus* we have discussed in detail elsewhere. However, the two elements *actus reus* and mens rea are distinct elements of a crime. They must always be distinguished and must be present in order that a crime may be constituted. The mental element or mens rea in modern times means that the person’s conduct must be voluntary and it must also be

¹ Russell, *op. cit.*, p. 27

² It includes not only the result of active conduct (i.e. a deed), but also the result of inactivity.

³ Kenny, *Outlines of Criminal Law* (17th Ed.), p. 14.

actuated by a guilty mind, while *actus reus* denotes the physical result of the conduct, namely, it should be a violation of some law, statutory or otherwise, prohibiting or commanding the conduct.

Injury to Human Being: The fourth element, as we have pointed out above, is an injury to another human being or to society at large. This injury to another human being should be illegally caused to any person in body, mind, reputation or property. Therefore, it becomes clear that the consequences of harmful conduct may not only cause a bodily harm to another person, it may cause harm to his mind or to his property or to his reputation. Sometimes, by a harmful conduct no injury is caused to another human being, yet the act may be held liable as a crime, because in such a case harm is caused to the society at large. All the public offences, especially offences against the state, e.g. treason, sedition, etc. are instances of such harms. They are treated to be very grave offences and punished very severely also.

We may state again that there are four essential elements that go to constitute a crime. First, the wrongdoer who must be a human being and must have the capacity to commit a crime, so that he may be a fit subject for the infliction of an appropriate punishment. Secondly, there should be an evil intent or *mens rea* on the part of such human being. This is also known as the subjective element of a crime. Thirdly, there should be an *actus reus*, i.e. an act committed or omitted in furtherance of such evil intent or *mens rea*. This may be called the objective element of a crime. Lastly, as a result of the conduct of the human being acting with an evil mind, an injury should have been caused to another human being or to the society at large. Such an injury should have been caused to any other person in body, mind, reputation or property. If all these elements are present, generally, we would say that a crime has been constituted. However, in some cases we find that a crime is constituted, although there is no *mens rea* at all. These are known as cases of strict liability. Then again, in some cases a crime is constituted, although the *actus reus* has not consummated and no injury has resulted to any person. Such cases are known as inchoate crimes, like attempt, abetment or conspiracy. So also, a crime may be constituted where only the first two elements are present. In other words, when there is intention alone or even in some cases there may be an assembly alone of the persons without any intention at all. These are exceptional cases of very serious crimes which are taken notice of by the state in the larger interests of the peace and tranquillity of the society.

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LL.B. I Term

Criminal Law – I (Specific Crimes)

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