

Chapter – 1 Preliminary – Introduction to Indian Penal Code

Governor-General of India in Council appointed "The Indian Law Commissioners" in 1834 to recommend a comprehensive penal code¹. The Commission consisted of

1. Lord Sir Thomas James Babington Macaulay [President]
2. Macleod
3. Anderson
4. Millet.

The Report was submitted in 1837. It was revised several times. It was submitted to the Legislative Council in 1856. Indian Penal Code was enacted after the first revolt for the Independence.

Governor-General in Council assented on October 06, 1860. It came into force on January 01, 1862. Lord Sir Thomas James Babington Macaulay is known as the father of Indian Penal Code, 1860. It extends to the whole of India.

The entire sections and Chapters are 511 and XXIII, respectively. Three Chapters were added later on. These are

1. VA [Criminal Conspiracy] [Ins. by Act 8 of 1913]
2. IXA [Of Offences Relating to Elections] [Ins. by Act 39 of 1920]
3. XXA [Of Cruelty by Husband or Relatives of Husband] [. Ins. by Act 46 of 1983]

Nature and Definition of Crime

To understand the meaning and concept of crime in its correct perspective, it would be appropriate to examine some of the definitions propounded by jurists.

. **Terence Morris** : "Crime is what society says is crime" by establishing that an act is a violation of the criminal law. Without law there can be no crime at all, although there may be moral indignation which results in law being enacted.

. **Blackstone** : Crime is an act committed or omitted in violation of a public law either forbidding or commanding it.

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

. **Kenny** : Crimes are wrongs whose sanction is punitive and is in no way remissible by any private person but is remissible by crown alone, if remissible at all.

. **Sellin T.** : Crime as a deviation from or breach of a conduct norm. This deviation or breach is punished by society by means of its sanction.

. **Raffaele Garofalo** : Crime is an immoral and harmful act that is regarded as criminal by public opinion, because it is an injury to so much of the moral sense as is possessed by a community- a measure which is indispensable for the adaptation of the individual society.

. **Edwin Sutherland** : Criminal behaviour is behaviour in violation of criminal law. No matter what the degree of immorality, reprehensibility, or indecency of an act, it is not a crime unless it is prohibited by criminal law. (This definition is also consistent with the concept 'nulla poena sine lege', which means there is no crime without law)

. **John Gillin** : Crime is an act that has been shown to be actually harmful to society, or that is believed to be socially harmful by a group of people that has the power to enforce its beliefs, and that places such act under the ban of positive penalties.

. **John Stuart Mill** : Human beings owe to each other help to distinguish the better from the worse and encouragement to choose the former and avoid the latter. They should be forever stimulating each other to increase the exercise of their higher faculties and increased direction of their feelings and aims. In the conduct of human beings towards one another it is necessary that general rule should, for the most part, be observed in order that people may know what they have to expect. Roscoe Pound : A final answer to the question 'what is Crime ?', is impossible, because law is a living, changing thing, which may at one time be uniform, and at another time give much room for judicial discretion, which may at one time be more specific in its prescription and at another time much more general.

Fundamental Elements of Crime

There are four elements which go to constitute a crime, these are :

- . Human being
- . Mens rea or guilty intention
- . Actus reus or illegal act or omission
- . Injury to another human being

Human Being

Human being

Only Human beings can commit a crime under IPC. In European Countries, animals were also punished for committing a crime during the medieval era. In Hindu criminal jurisprudence did not provide for trial and punishment of animals or inanimate objects. Only a human being under a legal obligation and capable of being punished can be the proper subject of criminal law. The commission of offence activities of human being can be divided into two parts –

- (a) offences committed by him directly. Like conspiracy, abetment, attempt and commission of rape, murder, bigamy etc. These offences need physical body. On this point, there is no controversy. Everyone accepts that these offences can be committed by human body under IPC.
- (b) Offences committed by companies, firm etc. formed by human being. On this point there are some controversies. These controversies can be solved with the help of Section 11 IPC, *Anath Bandhu v. Corporation of Calcutta (1952 Cal.)* and *Iridium India Telecom Ltd v. Motorola Incorporated & Ors.*

A company has a distinct legal personality. It can sue or be sued, can own and sell assets, or commit an offence that is of civil or criminal in nature. This notion had been changed through many decisions.⁶ Section 11, IPC defines "Person". It says 'the word "person" includes any Company or Association or body of persons, whether incorporated or not. In *Anath Bandhu v. Corporation of Calcutta (1952)* question was whether 'Limited Company could be prosecuted under Indian Criminal Law'. Section 11 of IPC, General Clauses Act and Bengal General Clauses Act was also discussed. It was concluded that even limited companies could be prosecuted.

Hon'ble Justice Chunder observed, "It is quite clear that if there is anything in the definition or context of a particular section in the statute which will prevent the application of the section to a limited company, certainly a limited company cannot be proceeded against. For example, *rape cannot be committed by a limited company. There are heaps of other sections in which it will be physically impossible for a limited company to commit the offences. Then again, it is quite clear that a limited company cannot generally be tried when mens rea is essential. Again it cannot be tried where the only punishment for the offence is imprisonment because it is not possible to send a limited company to prison by way of a sentence. If we leave these classes of cases aside, it is not clear why under the Indian law a limited liability company cannot be proceeded against*".⁷ Ratio of *King v. Daily Mirror Newspapers Ltd.*⁸ was rejected and it was said that 'Indian Law' is different from 'English Law'. So Limited companies can be prosecuted for those offences which are punishable only with a fine.

Standard Chartered Bank v. Directorate of Enforcement (2005 SC)

No immunity to companies from prosecution merely because it is in respect of offences for which punishment of imprisonment is mandatory - In such cases in lieu of imprisonment fine can be imposed - Also word 'person' in S.11, Penal Code and S. 3(42), General Clauses Act includes any company or association or body of persons.¹⁰

Iridium India Telecom Ltd v. Motorola Incorporated & Ors. (2010 SC)

(Principle of 'alter ego')

The complaint pertained to cheating allegations against the company under Section 420 read with Section 120B of the Indian Penal Code, 1860. In this case, Supreme Court observed, "....a corporation is virtually in the same position as an individual and may be convicted of common law and statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons are so intense that a corporation may be said to think and act through the person or the body of persons. The position of law on this issue in Canada is almost the same. Mens rea is attributed to corporations on the *Principle of 'alter ego'* of the company. Supreme Court also observed, "...virtually in all jurisdictions across the world governed by the rule of law, the companies and corporate houses can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offences. The legal position in England and the United States has now crystallised to leave no manner of doubt that a corporation would be liable for crimes of intent".

Mens Rea

The second important essential element of a crime is mens rea or evil intent or guilty mind. There can be no crime of any nature without mens rea or an evil mind. Every crime requires a mental element and that is considered as the fundamental principle of criminal liability. The basic requirement of the principle mens rea is that the accused must have been aware of those elements in his act which make the crime with which he is charged.

There is a well known maxim in this regard, i.e. "actus non facit reum nisi mens sit rea" which means that, the guilty intention and guilty act together constitute a crime. It comes from the maxim that no person can be punished in a proceeding of criminal nature unless it can be showed that he had a guilty mind.

ACTUS NON FACIT REUM, NISI MENS SIT REA

Actus non facit reum, nisi mens sit rea means the act itself does not make a man guilty, unless the mind is also guilty. This theory was developed by Common Law Courts. This is 'Common Law Doctrine'. First time concept of Mens Rea was discussed by Justice Coke²⁰. In the case of **Fowler v. Padget (1798)** Lord Kenyon held that actus reus and mens rea are essentials for a commission of crime. Section 95 IPC creates exception. It means even if any act has been done with intention or knowledge, but act is of trifling nature, the person will not be punished. His trifling act is protected under Section 95, IPC.

This maxim denotes that guilty mind, and prohibited act both are part and parcel of crime. It is rule that without a guilty mind, crime cannot be committed. There are also certain exceptions to this maxim which are put in the category of 'Principle of Strict Liability.

If maxim applies [Benefit for accused] – In case of application of this maxim, accused person would be benefited and there would be utmost probability to win the case because prosecutor would be bound to prove prohibited act and guilty mind. Proving the guilty mind for prosecution is difficult. For example in case of theft, culpable homicide etc. prosecutor is bound to prove guilty mind also.

If maxim does not apply [Benefit for victim/prosecutor] - It would be very easy for a prosecutor to win the case because he would be bound to prove only one condition, i.e. prohibited act. Proving of guilty mind is always very difficult. In such cases, there would be a lot of harm to the accused for example, offences coming under 'Principle of Strict Liability. A few example of this point is rape, waging war etc.

Principle of Strict Liability

Sometimes offence is constituted even without a guilty mind. Such offences come under the 'Principle of Strict Liability. These offences are also known as exceptions of *Actus non facit reum, nisi mens sit rea*. Judges apply this Principle only when statutory provisions are silent about the mens rea of the accused. One of the first cases in which a statute was interpreted as imposing strict criminal liability was *Regina v. Woodrow* Application and non-application of this maxim depend upon sound logic and reasonable discretion of judges.

How to decide which offence should come under Strict Liability?

If any statute is silent about the guilty mind of the accused, a question arises whether the person should be convicted even without guilty mind. Any judge can't put any offence arbitrarily in the category of strict liability. The sound rule had been established by Courts to decide whether any offence should come under strict liability or not. But still, there are many cases in which judges have different opinions. Enacted law does not say which offence would come under strict liability. There are some cases in which the method to decide strict liability had mentioned -

- In *Sherras v. De Rutzen* (1895) Justice Wright observed, -There is a presumption that mens rea, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the *statute*

creating the offence or by the subject-matter with which it deals, and both must be considered.¶

- In *Brend v. Wood* (1946), Justice Goddard, "The general rule applicable to a criminal case is *actus non facit reum, nisi mens sit rea*...It is of the utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, *unless the statute, either clearly or by necessary implication rules out mens rea as a constituent part of a crime*¶.
- -A statutory crime may or may not contain an express definition of the necessary state of mind. A statute may require a specific intention, malice, knowledge, wilfulness or recklessness. On the other hand, it may be silent as to any requirement of mens rea, and in such a case in order to determine whether or not mens rea is an essential element of the offence, it is necessary to look at the **objects** and **terms** of the statute¶.
- In *M.H. George Case* Supreme Court observed, -Mens rea by necessary implication can be excluded from a statute only where it is absolutely clear that the implementation of the object of a statute would otherwise be defeated and its exclusion enables those put under strict liability by their act or omission to assist the promotion of the law¶.

From the above discussion, it becomes clear that if the law is silent, the requirement of mens rea can be excluded to achieve the object and implication of the Act.

Mens Rea in Indian Law

The words "mens rea" are not used anywhere in the Indian Penal Code. However, the framers of the Code used the equivalent words to those of mens rea in the Code very frequently. Such expressions are - Fraudulently (Section 25); Dishonestly (Section 24); Reason to believe (Section 26); Voluntarily (Section 39); Intentionally, etc.

A. Hari Prasad Rao vs. State (AIR 1951 SC 204), The Supreme Court held that there were no grounds for conviction of the master, especially when he was not present at the time of delivery of the spirit. He, however, was convicted for non-endorsement on coupons by his servant which was mandatory and an absolute rule. Non-observance of such statutory rules was punishable even without mens rea.

B. Nathulal vs. State of M.P. (AIR 1966 SC 43), In this case, the accused/a food grain dealer applied for a licence and deposited the requisite licence fee. He, without knowledge of rejection of his application, purchased food grains and sent returns to the Licencing Authority, who on checking, found that it was in excess of the quantity permitted by Section 7 of MP Food Grains Dealers Licensing Order, 1958. The accused was prosecuted. However, he was acquitted on the ground that he had no guilty mind.

Malhan K.A. vs. Kora Bibi Kutti (1996 SCC 281), The accused was a financier. He seized a vehicle for which he financed but did not receive the installments. The person from whom the vehicle was seized complained to Police alleging that the accused had stolen his vehicle. The Supreme Court held that the element of mens rea is totally wanting in this case and the accused cannot be convicted for the offence of theft under Section 379.

In Sankaran Sukumaran vs. Krishnan Saraswathi (1984), the Supreme Court held that Mens Rea is an essential ingredient of the offence under Section 494 (Bigamy), where the second marriage has been entered in a bona fide belief that the first marriage was not subsisting, no offence under Section 494 is committed.

In C. Veerudu vs. State of Andhra Pradesh (1989), the Supreme Court held that Mens Rea is an essential ingredient of the offence under Section 498-A. Cruelty in Section 498-A means "wilful conduct". Cruelty by husband or relatives of husband against a wife includes wilful conduct. Wilful conduct includes Mens Rea.

INTENTION, KNOWLEDGE, MOTIVE, NEGLIGENCE & RASHNESS – Different Shades of Mens Rea

Intention

Intention is the desire and awareness of the consequences. There are two elements of intention namely:

- (1) The desire of consequence, and
- (2) Awareness of consequences

Exceptions	general exceptions. For example, if an act is done with intention, he can't take benefit of Section 81.	of some general exceptions. For example, if an act is done with knowledge and other conditions are being fulfilled, he can take benefit of Section 81 and Section 92.
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Motive

Neither bad motive nor good motive is relevant to constitute an offence. It is relevant under section 8 of the Indian Evidence Act. Motive prompts a person to do something. Sometimes offence is committed with motive and sometimes without motive. Intention refers to the immediate object, while motive refers to the ulterior object, which is at the root of intention.

Negligence (Breach of Duty)

Meaning of Criminal negligence - In *S.N. Hussain v. State of Andhra Pradesh*⁵⁵ Hon'ble Supreme Court observed, -Criminal negligence on the other hand, is the *gross and culpable neglect or failure to exercise that reasonable and proper care and precaution* to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the *imperative duty* of the accused person to have adopted.

Negligence is not taking care, where there is a duty to take care. Negligence or Carelessness indicates a state of mind, viz. absence of a desire to cause a particular consequence. It is your duty to check the brake of the car before driving. But you did not. You do not know that your brake is not doing work. A boy suddenly tried to a crossroad. You applied your brake. But due to the non-functioning of brake, you killed that boy. This is criminal negligence.

Recklessness / Rashness (Hasty Act)

Meaning of Rashness- In *S.N. Hussain v. State of Andhra Pradesh*⁵⁶ Hon'ble Supreme Court observed, -Rashness consists in *hazarding a dangerous or wanton act with the knowledge* that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences.

Recklessness occurs when the actor does not desire the consequence but foresees the possibility and consciously takes the risk. You are driving your car. But the speed of the car is not moderate. There was high speed. You hit a pedestrian and killed. This is a case

of recklessness.

Ground	Intention	Knowledge
Definition	The intention is desire and awareness of consequences.	Knowledge is awareness of consequences.
Gravity (In <i>R. Punnayya Case</i> , Hon'ble Justice Sarkaria divided culpable homicide on the gravity of mens rea, i.e. intention and knowledge).	If an offence is committed with intention, punishment will be more severe. For example if culpable homicide is committed with intention, a person will be punished under Section 304 Part I for which the maximum punishment is imprisonment for life.	If offence is committed with knowledge, punishment will be less severe. For example if culpable homicide is committed with knowledge person will be punished under Section 304 Part II for which the maximum punishment is ten years.
General	If the act is done with intention, a person can't take benefit of some	If the act is done even with knowledge, a person can get benefit

In *Cherubin Gregory v. State of Bihar*, (July 31, 1963), Supreme Court observed, -The voltage of the current passing through the naked wire being high enough to be lethal, there could be no dispute that charging it with current of that voltage was a 'rash act' done in reckless disregard of the serious consequences to people coming in contact with it.

Actus Reus

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

Injury

According to section 44 of IPC the word -injury denotes any harm whatever illegally caused to any person,

- ❖ in body,
- ❖ mind,
- ❖ reputation or
- ❖ property.

In certain situations, a person is punished even though he had not committed actual injury to another person. These are the cases of inchoate crime. These are -

- ❖ abetment,
- ❖ conspiracy and
- ❖ attempt.

STAGES OF CRIME

In *State of Madhya Pradesh v. Narayan Singh & Ors* Supreme Court observed, -In the commission of an offence there are four stages viz. intention, preparation, attempt and execution. The first two stages would not attract culpability but the third and fourth stages would certainly attract culpability. Four stages of crime are -

- (1). Intention (Formation in mind)
- (2). Preparation
- (3). Attempt; and
- (4). Execution.

Formation in mind/ Intention (Generally it is denoted by intention) – Intention/ knowledge/ reason to believe etc. is the first stage of the commission of offence. There must be something in mind for the commission of an offence. This intention must be taken in regard to thinking of mind. For e.g. any person is in the stage of preparation, here it should be highlighted that before preparing he must have something in mind i.e. what he is preparing for. No matter good or bad. There is always something before preparation and that should come under the category of intention. If a person is unable to form design for commission of an offence, no question arises for commission of an offence. For example child below the age of 7 years or Person of unsound mind can't commit an offence. If first stage is missing, no question arises for application of the second stage. Intention is mental status, which cannot be traced, so mere intention is not punishable.

(1) **Preparation** – Preparation is the second stage. Generally preparation is also not punishable. But there are some exceptional cases when at the stage of preparation, offence is punishable, namely:

- I. Preparation to wage war against the Government (Section 122)
- II. Anyone commits damages to the property and destruction of property within the territories of our country and the country which is with peace with our government (Sec. 126)
- III. Preparation for counterfeiting of coins or Government Stamps (Sections 233 to 235, 255 and 257) .
- IV. Possessing counterfeit coins, false weights or measurements and forged documents (Section 242, 243, 259, 266 and 474)
- V. Making preparation to commit dacoity (Section 399).

(2) **Attempt** – Attempt is the third stage of any offence. Attempt is called inchoate crime (incomplete crime). A person commits the offence of ‘attempt to commit a particular offence’ when -

- I. *he intends to commit that particular offence; and*
- II. *he, having made preparations and with the intention to commit the offence,*
- III. *does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence.*

Attempt is punishable.

(3) **Execution of Offence** – When an offender achieved his desired goal i.e. called execution of an offence. It is the last stage. It is always punishable unless it comes under 'General Exception' or in any other exception.

Case Laws :