

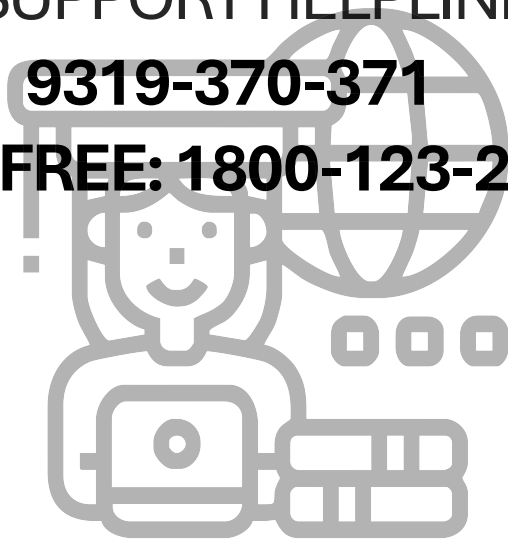
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Chapter I

The Concept of Crime

It is a myth to think of a crimeless society. In fact, there can be no society without the problem of crime and criminals. The concept of crime is essentially concerned with the social order. It is well known that man's interests are best protected as a member of the community. Everyone owes certain duties to his fellow-men and at the same time has certain rights and privileges which he expects others to ensure for him. This sense of mutual respect and trust for the rights of others regulates the conduct of the members of society *inter se*. Although most people believe in 'live and let-live' principle yet there are a few who, for some reason or the other, deviate from this normal behavioural pattern and associate themselves with anti-social elements. This obviously imposes an obligation on the State to maintain normalcy in society. This arduous task of protecting the law-abiding citizens and punishing the lawbreakers vests with the State which performs it through the instrumentality of law. It is for this reason that *Salmond* has defined law as a 'rule of action' regulating the conduct of individuals in society. The conducts which are prohibited by the law in force at a given time and place are known as wrongful acts or crimes whereas those which are permissible under the law are treated as lawful. The wrongdoer committing crime is punished for his guilt under the law of crime.)

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Early concept of crime

Ever since the dawn of human civilisation crime has been a baffling problem. There is hardly any society which is not beset with the problem of crime. Commenting on this aspect of crime problem, *Emile Durkheim* in his treatise '*crime as a normal phenomenon*' says, "a society composed of persons with angelic qualities would not be free from violations of the norms of that society. In fact, crime is a dynamic concept changing with the social transformation. He argues that crime is a necessary feature of every society as it is a fundamental condition of social organisation. Different groups have variable and often incompatible interests in the society which give rise to conflicts eventually resulting in the incidence of crime.

(Historically, the concept of crime seems to have always been changing with the variations in social conditions during the evolutionary stages of human society. This can be illustrated by the fact that early English society during 12th and 13th centuries included only those acts as crime which were committed against the State or the religion. Thus, treason, rape and blasphemy were treated as crime whereas 'murder' was not a crime.¹)

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(Primitive societies did not recognise any distinction between the law of crime

1. See Oppenheimer on "Rationale of Punishment".

and torts but only knew law of wrongs. Commenting on this point, *Frederick Pollock* and *Maitland* observed that the English society prior to tenth century confused crimes with torts because the bond of family was far stronger than that of the community,¹ the injured party and his kindred could avenge the wrong by private vengeance and self-redress. During this period, recourse to legal remedy was considered merely an optional alternative to self-redress. The wrongdoer was supposed to offer compensation to the person wronged, the quantum of which depended on the extent of the wrong caused and the status of the sufferer. The payment of compensation known as '*bot*' washed away the guilt of the wrongdoer and relegated him to a position as if he had done no wrong. The early Anglo-Saxon laws contained minutest details of compensation (*bot*) which was payable for different wrongs with a view to helping the person wronged in seeking redress.

However, if *bot* was refused, the law had no other means to enforce its payment. In that event it was for the victim or his kindred to prosecute a '*blood-feud*' against the wrongdoer and law could help him only by declaring the wrongdoer as an '*outlaw*' who could be chased and killed by anyone like a wild beast.

Besides the offences which could be atoned by *bot* (payment of compensation to the victim) there were certain other wrongs which entailed additional fines (*wite*) payable to the King. That apart, there were certain *botless* offences for which no amount of compensation could wipe out the guilt and the wrongdoer had to undergo punishment. Such cases were punishable with death, mutilation or forfeiture of property to the King. House-breaking, harbouring the outlaws, refusing to serve in the army and breach of peace etc., were some of the early '*botless*' offences which entailed compulsory punishment under the law of the State. As a matter of fact it is from these '*botless*' offences that the modern concept of crime has emerged. The number of '*botless*' offences increased considerably after twelfth century. Thus, a distinct line of demarcation could be drawn between the wrongs which could be redressable by payment of compensation (*bot*) and those which were not so redressable by money compensation (*botless*) and for which the wrongdoer was to be punished by the King. In course of time the former came to be known as civil wrongs or '*torts*' while the latter as '*crime*'. It can, therefore, be observed that the law did not play compelling part in regulating the social relations in early days as it does today. The modern legal systems provide that as soon as an offence is committed, the law is set into motion at once irrespective of the wishes of the injured party, whereas in early societies the law was administered only if both the parties agreed to submit themselves to the verdict.

Another characteristic feature of this period (1000 to 1200 A.D.) in the history of crime was the preponderance of the system of ordeals by fire or by water² to establish the guilt or innocence of the accused. This was perhaps due to the dominance of religion in early days and superstitions of the people who believed that their social relations were governed by some supernatural power which they



Crime defined

A precise definition of 'crime' is by no means an easy task. Generally speaking, almost all societies have certain norms, beliefs, customs and traditions which are implicitly accepted by its members as conducive to their well being and

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Classification of Crimes

The existence of crime in a society is a challenge to its members due to its deleterious effect on the ordered social growth. In fact, it leads to a colossal waste of human energy and an enormous economic loss. Therefore, with the advance in the field of criminology and behavioural sciences, efforts are being constantly made to work out a commonly acceptable classification of crimes and criminals for providing a rational basis of punishment for various categories of offenders.

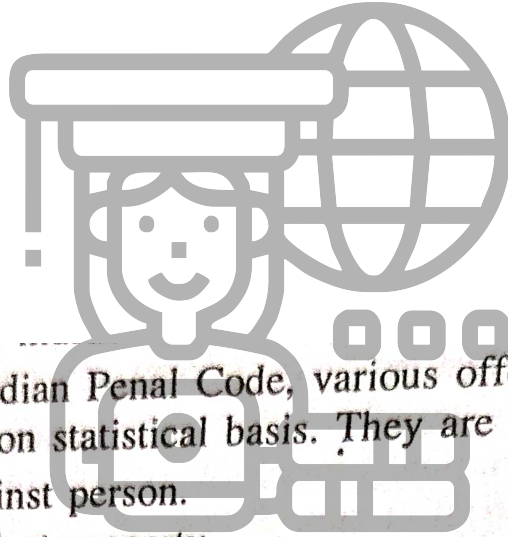
There are a variety of crimes such as violent personal crimes, occasional property crimes, occupational crimes, political crimes, public order crimes, conventional crimes, organised crimes, professional crimes, white collar crimes, sexual crimes, crimes against property, person, decency, public order etc. Broadly speaking, these may be categorised into three main heads, namely, (i) offences falling under Code of Criminal Procedure; (ii) offences under Indian Penal Code; and (iii) offences under local or special laws or enactments.

Some writers have preferred to classify crimes into legal, political, economic, social and miscellaneous crimes.

1. Legal crimes can be termed as traditional crimes such as theft, robbery, dacoity, rape, hurt and rioting etc.
2. Political offences are those which are motivated politically or committed in violation of the election laws or norms set out for the politicians in course of their political activities.
3. Economic crimes include white collar offences such as tax evasion, smuggling, prostitution, gambling, foreign exchange violations, offences under the MRTP (Amendment) Act, 1991 etc.
4. Social crimes are those which are committed under social legislation such as the Child Marriage Restraint Act, 1978; Protection of Civil Rights Act, 1955; Immoral Traffic (Prevention) Act, 1956; Indecent Representation of Women (Prohibition) Act, 1986; Commission of Sati (Prevention) Act, 1987; The Dowry Prohibition Act, 1961 as amended in 1983 and 1986; Juvenile Justice (Care and Protection of Children) Act, 2000; Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 etc.
5. All other remaining crimes which are committed under local or special Acts, are termed as miscellaneous crimes, for example, offences under the Prevention of Food Adulteration Act, 1954; Drugs Act, 1940; Consumer's Protection Act, 1986; Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988 etc.

More recently, a new specie of crime known as cyber crime has emerged as a result of development of computer science and information technology during last quarter of the 20th century. These are crimes either computer generated crime or where computer software is itself a target of crime. A special Act called the Information Technology Act, 2000 has been enacted to tackle these offences.

Classification of offences under I.P.C.



types of crime ranging from

However, under the Indian Penal Code, various offences have been classified into seven broad categories on statistical basis. They are :—

1. Offences against person.
2. Offences against property.
3. Offences relating to documents.
4. Offences affecting mental order.
5. Offences against public tranquillity.
6. Offences against State.
7. Offences relating to public servants.

This classification seems to be more rational and elaborate from the point of view of administration of criminal law and penal justice.

Characteristics of Crime *Actus non facit Reum Nisi Mens*

There are certain characteristics of a crime which make an unlawful act or omission punishable under the law of the land. The main characteristics of a crime are as follows :—

(1) **External consequences.**—Crimes always have a harmful impact on society, may it be social, personal, emotional or mental. The harm must have been actually caused. Mere intention to cause harm does not constitute a crime.

(2) The harm must be specifically outlawed. Any immoral or reprehensible behaviour is not a crime unless it has been outlawed in advance. For instance, live-in-relation is not a criminal conduct as there is no law to outlaw it.

(3) **An act (*Actus Reus*).**—There should be an act or omission to constitute a crime. Intention or *mens-rea* alone shall not constitute a crime unless it is followed by some external or overt act. Generally, omitting to do something will not amount to *actus reus* of an offence. The criminal law usually punishes individuals for positive conduct and not for inaction. There are, however, some notable exceptions. For example, a police officer may have a duty to act to prevent an assault and if he does not, he will be liable to be punished under the law.

(4) ***Mens-rea* or guilty mind.**—*Mens-rea* is one of the essential ingredients of a crime. It may, however, be direct or implied. The implied *mens-rea* is otherwise termed as constructive *mens-rea*.¹

Mens rea implies that there must be a state of mind with respect to an *actus*

1. The maxim '*actus non facit reum nisi mens sit rea*' means that an act alone does not constitute a crime unless it is accompanied by guilty intention. The doctrine had been discussed elaborately by Will., J. in *Tolson's case* (1869) 23 QBD 168.

reus, that is, an intention to act in the proscribed fashion. It is, however, important to distinguish *mens rea* from motive. Thus if a person steals away a few loaves of bread from someone's kitchen to feed a child who is dying of hunger, the motive here may be honourable and understandable, nevertheless the *mens rea* being to commit the theft, the person would be convicted for theft. His motive may, however, be taken into account in sentencing and he may be less severely punished because of his good motive. In short, motive should be taken into consideration at the sentencing stage and not at the time of deciding the question of *mens rea*.

(5) **Prohibited act.**—The act (conduct) should be prohibited or forbidden under the existing penal law. An act, howsoever immoral, shall not be an offence unless it is prohibited by law of the land.

(6) There must be casual relation between the voluntary misconduct (act or omission) and the resulting harm. For instance where the accused shot at a person and the person (victim) while being treated for injuries caused by gun-shots, suffocates while in hospital recovering from the wound, there is no direct relationship between conduct and harm in this case as the death is caused due to suffocation and not injuries caused by the accused.

(7) **Punishment.**—The act in order to constitute a crime should not only be prohibited by the law but should also be punishable by the State. The punishment is usually set out in terms of a maximum and the actual punishment in any particular case is left to the discretion of the judge. Both, the defence and the prosecution have a right to appeal against the quantum of sentence.

As a result of extensive analysis of crimes Jarome Hall also agrees that there are seven inter-related characteristics of a crime, namely, (1) harm, (2) harm must be outlawed, (3) conduct (act or omission), (4) *mens rea* (criminal intent), (5) concurrence of *mens rea* and conduct, (6) casual relation between conduct and harm, and (7) punishment.

There are, however, certain exceptions to this generalisation and there may be offences for which *mens rea* may, not be an essential element. These are called strict liability cases. For instances, offences like adulteration, traffic violations etc. may be punishable regardless of *mens rea* or intention of the offender.

Fundamentals of Modern Criminal Law

The fundamental principles of modern criminal law are founded on rules of equity, justice and fair play. These rules provide adequate guidelines for the formulation of a rational penal policy and at the same time ensure even-handed dispensation of justice to litigants.

The fundamental principles governing criminal law administration may briefly be summarised as follows :—

(1) An 'act' in order to become a crime must be committed with criminal intent which is legally termed as *mens rea*. This principle is contained in the well known Latin maxim, 'actus non facit reum nisi mens sit rea'. It is to be noted that *mens rea* or criminal intent consists in doing some act voluntarily with the knowledge that it is fraudulent, dishonest or injurious to another. However, an act done under a *bona fide* belief, though criminal, shall be a good defence.¹ Thus, no act shall be a crime without *mens rea* or guilty mind of the doer. It must be stated that the *mens rea* in case of a murder consists in malice forethought, for rape in forcible connection with a woman without her consent, for theft in an intention to steal and for procuring stolen goods with the knowledge that the goods was a stolen one. The cases of *D.P.P. v. Smith*²; *Shaw v. D.P.P.*,³ *State v. Dr. Vimladevi*,⁴ can be cited in support of this connection.

It must be noted that the juristic concept 'actus reus' represents the physical aspect of crime while *mens rea*, its mental aspect. The concept of *mens rea* comprises several other states of mind, namely, will, intention, motive and so on. Thus, it covers a wide range of mental attitudes and conditions the existence of which would give rise to *actus reus*. Sometimes *mens rea* refers to foresight of the consequences of an act and at others it consists in the act *per se* irrespective of its

consequences.¹

In some cases *mens rea* also denotes inattention of the doer of the criminal act which can otherwise be called his recklessness. Thus, in case of manslaughter by negligence, the accused causes death of the victim due to his negligence, nevertheless, he is held criminally liable.²

Though *mens rea* is an essential ingredient of every offence, it can be dispensed with in the following exceptional cases :—

- (i) Cases not criminal in any real sense but for punishment in view of the public welfare.
- (ii) Public nuisance.
- (iii) Cases which are criminal in form but for which summary mode of enforcement shall be adequate in view of the urgency and importance of the protection of civil rights violated thereby. Thus, a legitimate exercise of the right of private defence³ may exclude many intentional acts which would otherwise be offences. Again, a delicate surgical operation being the only remedy to save the life of a patient, if done with this object but with full knowledge that it can also be fatal, would not be an offence because the intention of the operating surgeon is to save the life of the patient.

(2) Another important principle of criminal law is embodied in the maxim "*ignorantia facit excusat, ignorantia juris non excusat*". It suggests that mistake of fact is a good defence⁴ in law of crime but not the mistake of law. Thus, a man before going to Church left his gun unloaded. After he left, another man used it for a shoot and thereafter kept it loaded. On return of the first man from the Church, still thinking the gun to be unloaded as he left it, pulled the trigger with the result his wife was shot dead. The Court held that he was not liable for murder under an excuse of mistake of fact.⁵ But there are certain statutory absolute liability cases which afford no excuse to the accused for his ignorance of fact. Thus, in *R. v. Prince*,⁶ the accused took an unmarried girl under the age of sixteen years out of the possession, and against the will of her father. The defence of the accused that he *bona fide* and honestly believed that the girl was older than sixteen as appeared from her physical built, was not accepted as the taking of the girl was unlawful. In such cases the law imposes a strict duty and holds the offender liable under criminal law. If a man trespasses on someone's land thinking that land to be his own, he shall nevertheless be liable.

As regards mistake of law, the criminal law affords no defence but it is a good evidence of mental condition of the offender. The reason for non-admissibility of mistake of law as a defence is that if it were so, everyone would plead it and

criminal law administration would be reduced to a sheer farce.¹

(3) The law of crimes does not permit *ex post facto* legislation. That is to say, all those acts which may lead to punishment shall be duly notified and no one can be punished for an act which is not listed as crime at the time of its commission, but has become so subsequently.

(4) Another important principle of criminal law is that everyone shall be presumed innocent unless his guilt is specifically proved within the provisions of law. This is intended to afford every possible opportunity to the accused to defend himself.

(5) Under the criminal law an accomplice is treated at par with the principal accused and is punished equally.

(6) There are certain rights and protections afforded to the accused person not only during trial but also before and after trial. They and protections aim at providing a fair trial to an accused and eliminate possible abuse of judicial process resulting into miscarriage of justice. They include right to be produced before the Magistrate,² right to bail,³ release on bond,⁴ right to counsel and legal aid⁵ etc.

The safeguards extended to an accused in course of trial are protection against self-incrimination and double jeopardy.⁶ The former suggests that no person accused of any offence shall be compelled to be a witness against himself while the latter makes it clear that no person shall be punished twice for the same offence. This is expressed in the well known Latin maxim *nemo debet bis vexari si constat curiae quod sit pro una et eadem causa*.

Modern legislation on criminal law permits sufficient discretion to judicial authorities to meet the exigencies of time thus making the law more elastic and adaptable. Likewise, there has been a tendency to substitute indeterminate sentence for determinate one through correctional methods such as probation, parole, reformatories, open air camps, etc. Justifying this approach Prof. Vold observes: "it is not the humanity within the criminal but the criminality within the human being, that needs to be crushed, the wrongdoer must be given a chance to improve". Dr. Freud, however, suggests that law in fact is one of the agencies of social control, the efficient enforcement of which entirely rests with the institutions such as the police, prosecutors, courts, judges, jurors, probation officers, etc. It is for this reason that effectiveness of criminal law cannot be

The purpose of Criminal Law

The functioning of the criminal justice system is wide enough to achieve its goals and objectives. Its ultimate goal is undoubtedly to make the society safer for its people. More specific and generally accepted aims of criminal law include :—

1. The enforcement of criminal law should reflect the society's disapprobation for criminals activity through apprehending, convicting and punishing offenders.
2. Detering criminals from indulging in criminal activities and at the same time advising citizens as to how to avoid falling a victim to a crime.
3. Criminal law should be beneficially used to rehabilitate the corrigible offenders and incapacitating those who might otherwise prove to be a potential danger to the society.
4. Ensuring safety and security of people through maintenance of law and order.
5. Helping the victims to get adequate compensation from the offender wherever possible or ensuring their rehabilitation in any other way as the circumstance may warrant.
6. Efficient and fair application of law ensuring proper treatment of suspects, defendants, those who are held in custody and witnesses. Also ensuring that the innocents are acquitted without harassment and the guilty are duly punished.
7. Ensuring that criminal justice system is accountable to the society.

The Concept of Crime

As stated earlier, crime has been defined as an anti-social, immoral or sinful

behaviour which is contrary to the cherished norms, beliefs, customs and traditions of a given society. According to another school of thought, crime is an act which a particular social group regards as sufficiently menacing to its fundamental interests to justify formal reaction to restrain the violation. *Stephen* has defined 'crime' as an act which is both forbidden by law and revolting to the moral sentiments of the society.

According to the legal definition, crime is any form of conduct which is declared to be socially harmful to a State and as such, forbidden by law under pain of some punishment.

Paul W. Tappen has defined crime as "an intentional act or omission in violation of criminal law, committed without defence or justification and sanctioned by law as felony or misdemeanour".

Broadly speaking, crime may be explained as social deviance in many ways. It is an act or omission which is socially injurious and legally punishable.

Text As the function of criminal law is to reprimand the offender and prevent the incidence of crime, it becomes necessary to investigate into the nature of crime. Broadly speaking, every criminal behaviour must respond to the following tests in order to be reckoned as a crime—

- (1) There should be an external act (*actus*);
- (2) It should be done with some criminal intent (*mens rea*);
- (3) It should be a prohibited conduct under the existing law; and
- (4) It should carry with it some kind of sanction or punishment.)