

Elements Constituting A Crime

A Crime is an unlawful Act punished by the state or any lawful authority. A crime or an offence is an act which is harmful not only to the person but also to the community, society or state. Such acts are forbidden and punished by law.

Every crime violates the law but every violation of the law does not commit a crime.

Greed, anger, jealousy, revenge or pride are the main reason for committing a crime.

The elements of a crime should be legal in nature (must be in law), Actus Reus (human conduct), causation (human conduct must cause harm), harm (to some other/thing), concurrence (state of mind and human conduct), Mens rea (state of mind and guilty), Punishment.

The essential ingredient of crime blameworthy condition of mind. Its absence cannot make a person liable.

Stages of Crime:

- 1) The intention is the first stage of a crime.
- 2) Preparation is the second stage of crime.
- 3) The third stage is an attempt. It is direct movement of an Act towards execution of an Act after preparation of the plan.
- 4) The fourth stage is the accomplishment

Act to be Voluntary

Crime is the product of our own choice and our own independent will. The Act should be voluntary. The Act done by a person must be of conscious choice to constitute a voluntary Act for which he is held criminally liable. The voluntary Act is an Act that does not fully result from independent will are committed with extreme indifference to inhuman life. A conscious person who loaded a gun at others will typically be held liable for any harm that results during accidental discharge because loading the gun is treated as a voluntary activity.

Fundamental elements of a crime

To establish criminal liability, crime can be broken down into elements which a prosecution must prove beyond a reasonable doubt. There are basically four elements of a crime are as follows:

1) Human being: Section 11

Human being must commit wrongful Act to fulfill first element of a crime that means any non living thing or animals are not considered in the category of a person or a human being whereas in ancient times when criminal law was closely dominated by the idea of ritter bit theory punishment was also inflicted on animals for the injury caused by them. For Example, if a dog bites anyone he is punished a horse was killed for kicking a man but in Indian Penal Code if animal cause injury we do not make animal liable but the owner is held liable for such injury so the first element of crime is human beings who must be given appropriate punishment and should be under legal obligation to held criminally liable. 'Person' is defined in [Section 11](#) of Indian Penal Code which includes company, association or body of persons whether incorporated or not. The word person includes artificial or juridical persons. He is a legal entity created by law which is not a natural person such as corporation created under state statute. It

is a legal entity having a distinguished identity and legal rights and obligation under the law.

2) Mens rea or Guilty intention

The second element is derived from the famous maxim *Actus Non-Facit Reum Nisi Mens Sit Rea*. This maxim is divided into two parts. The first part-

1. a) mens rea (guilty mind);
2. b) Actus reus (guilty act).

It means the guilty intention and guilty Act together constitute a crime. It comes from a maxim that no person can be punished in a proceeding of criminal nature unless it can be shown he has a guilty mind. The second element is Mens rea which can be explained in various forms a guilty mind; a guilty or wrongful purpose; a criminal intent, guilty knowledge and willfulness all constitute the same thing that mens rea.

Motive and Intention are both aspects in the field of law and justice both are very important. They are also associated with the purpose of proving or disproving a particular case or crime Wrong motive with guilty intention is necessary to prove criminal liability.

3) Actus reus or illegal Act or omission

It is the Latin term used to describe a criminal Activity. It is commonly defined as a criminal activity that was the result of voluntarily bodily movement. This describes a physical Activity that harms another person or damages property. In other words, due to guilty or wrongful intention, some overAct or illegal omission must take place. There are two types of Actus reus first is commission and the second one is an omission. The commission is as a criminal activity that was the result of voluntarily body movement. This describes a physical Activity

that harms a person or property. Against human body includes physical assault, murder, hurt, grievance, hurt etc & property includes theft, decoity, extortion etc.

The omission is another form of Actus reus as an Act of criminal negligence. An omission could be failing to warn others that you have created a dangerous situation, for eg. not feeling an infant who has been left in your care or not completing a work-related task which resulted in an accident.

4) Injury under Section 44

The fourth requirement of a crime is injury should be caused to another person or to society at large. According to [Section 44](#) of Indian Penal Code, 1860 the injury is defined as any harm illegally caused to any person in body, mind, reputation or property by another person. Elements of crime are a set of facts that must be proven to convict a defendant of a crime. Criminal elements are sets forth in criminal statutes or cases in jurisdictions that allow for common law crimes.

Actus Reus

Meaning

It is a Latin term for the guilty Act. The Act you need to commit an offence. It must be a voluntary Act Actually doing something eg taking a bracelet in a theft. It is not an involuntary Act. An example of an involuntary Act given in the case of [Hill vs Baxter](#) was someone losing control of a car because they are attacked by a swarm of bees or because they have a heart attack.

Actus reus is such a result of human conduct as law seeks to prevent. It should be prohibited by law. It is a physical aspect of the crime. There are basically two main components of criminal law is Actus Reus and Mens Rea.

Actus Reus is the wrongful Act or task committed by a person and Mens Rea is the state of mental aptitude behind such Acts. Mens rea is a term from which a famous Latin maxim Actus Non-Facit Reum Nisi Mens Sit Rea had been derived. Actus Non-Facit Reum Nisi Mens Sit Rea further explains as to how Mens Rea is applicable in committing an offence or a crime. It states that if a guilty mind or intent is accompanied by a wrongful Act then only the person will be held liable. This maxim is used to determine whether an Act committed by a person is an offence or crime or not. Severe penal Actions are required for crimes committed with specific intentions and not for unanticipated or unintentional Acts. However, no breach of law cannot be unpunished. To differentiate between intentional and unintentional criminal Act this legal maxim is established so that the type of punishment can be decided accordingly. There can be no crime and no suit for damages can arise without a guilty Act.

General Principles Of Actus Reus

The general rule of Actus Reus is no liability for failing to Act unless at the time of failure to Act the defendant was under a legal duty to take positive action.

The duty arises from statute- Children and young persons Act,1933 (UK), omission culpable by people over the age of 16 failing to look after a child under 16.

The duty arises from a contract- Failure to perform the contractual duty in question can perform the basis of criminal liability.

The duty owed to family members-

[R VS Gibbons and proctor](#) 14 Crapp-man and his wife were guilty of murder by failing to feed the man daughter.

A Mere omission to Act cannot be lead to criminal liability unless a statute specifically provides or a common-law imposes a duty on it. Moral duty should be distinguished from the legal duty of an Act.

Causation in Crime

Causation doctrine can be boiled down to the question of whether the defendant illegal Action was an operative and substantial cause of harm which resulted. The question which the court asked was 'but for'. 'But For' defendant Action, the harm has occurred. For example, Albert poisoning victoria when victoria dying of a heart attack before the poison takes effect to put events in another way around however it does make a difference shooting the life of someone with terminal illness causing their death because without the illegal conduct they would not have died at the time and in those circumstances.

The 'But For' doctrine however still involve a lot of potential causes also we also ask for legal causation that is whether the defendant Action is the operative and substantial cause of harm. This is most significant where the Action and inAction of another person or the victim themselves change the normal course of events. This is known as nervous Actus intervenes and a new intervening Act. Professor hard and honour develop this principle using the distinction between those circumstances that are apart of factual background or conditions and those who are causes. They point out that in order to start a fire u need a drop match, oxygen, and combustion material but we will only the cause of that fire. In this case, oxygen and flammable material are normal ways whereas causes the dropped match is abnormal and in their view, abnormal things can only be causes. The question of what things are abnormal. It was emphasized that only

free voluntarily and an informal Act of a third party can be abnormal and break the chain of causation.

In the case of **R vs Smith** defendant, a soldier got in a fight at an army and stabbed another soldier the injured soldier was taken to a hospital but was dropped twice at route .once their treatment given was described as wrong .they failed to diagnose that his lung was punctured and the soldier died. The defendant was convicted of murder and the appeal contended that if the victim was given correct medical treatment he would not have died. It was held that the stab wound was an operating cause of death and therefore conviction was upheld. In such cases, the court was reluctant to lead the defendant complaints that their victim was have survived if they had received proper medical care.

Causa causes

Causa causes literally means the primary cause or the originator of Action. It is the reason for all the causes. Damages that resulted from all the causes are generally referred by causa causes. To get the damages the defendant illegal Act must cause harm that should be proved by the claimant. There is no need to prove the original cause of harm by the defendant. However, while determining the cause of harm the court will consider the proper explanation given by the defendant for the original cause of the harm.

Minimal Causation

Moti Singh v. the State of UP

Moti Singh and Jagdamba Prasad appellants together with five other persons were convicted by the session judge of Unnao of offences under Section 148, Section 302, read with Section 149 and Section 307. Each of them was sentenced to life imprisonment under Section 302 read with Section 149 of the

Indian Penal Code. It was alleged that the accused party members fired with guns and pistols both from inside and outside the room on the other side of passage when the victim party passed along with the passage. The evidence relied on for the conviction of Moti Singh consists of the dying declaration Ex Kha 75 of Gaya charan and presumably also of the statements of the prosecution witnesses as HC has not specifically stated so. Again, HC relied on exhibit Kha 75, the alleged dying declaration of Gaya charan as deciding factor in deciding the number of persons who had taken part in firing from the room and from the platform. The result is that the statement of Gaya charan Ex Kha 75 is inadmissible in evidence. It was a mainstay of the judgement of HC upholding the finding of the session. Appellants were among the persons who had fired from room and platform. It therefore accordingly allowed appeals the order of the HC and acquit Moti Singh and Jagdamba prasad of the offences they were convicted of and hold that Moti Singh and Jagdamba prasad have not been to have taken part in that incident. It was directed that they are released forthwith, if not required to be detained under any process of law. Appeal allowed by the court.

Rewarm v. the State of MP

In this appeal, the conviction was challenged by appellant rewarm. Under sec 302 of the Penal Code for which he has been sentenced to imprisonment for life for committing the murder of this wife. The prosecution case is four children and appellant resided with deceased Gyanwati Bai in the house of Bhurkin Bai. It was found that the appellant was standing close to her and she was lying close to her bed in the pool of bed. Dr Mahajan performed post mortem examination and found numerous incised wounds on the persons of the deceased. As per the report, in the ordinary course of nature to cause death he opined that injury no 5 as written in the report was sufficient. Due to effective medical treatment, Gyanta bai had recovered from the shock. SHRI Datt relied upon a decision of this court in NOOR Khan vs the state of MP. In that case, the medical evidence was used to refer to the injuries sustained. In the result, the appeal was not

allowed and not implemented. Under Section 302 of the Penal Code, the conviction of the appellant Rewaram with a sentence of imprisonment for life is confirmed.

Unexpected Interventions

Harjinder Singh v. Delhi administration

In this case, a fight took place between Dalip Kumar and Harjinder Singh, appellant near the water tap in front of a tin factory in Zamirwali lane, Delhi. Harjinder Singh was badly injured in the fight and he then left the place holding out a threat that he would teach a lesson to Dalip Kumar. The appellant returned with his brother Amarjit Singh to go away but either these two or Dalip Kumar pulled out of the house into the lane and gave him beating near lamp post in Zamirwali lane. It seems to us that High Courts has not considered whether the third ingredient has been proven in this case or not. In our opinion, the circumstances justify the inference that the accused did not cause to intend the injury. When the appellant struck the deceased with the knife, he must have known that the deceased being than being in a bent position. In these circumstances, he struck the deceased with the knife with the intention to cause an injury likely to cause death was quite legitimate. The appeal is allowed and conviction is altered from Section 302 to Section 304.

Mens rea

An Act becomes a crime when it is committed with evil intention. Evil intention or guilty mind is essential to commit a crime otherwise a person cannot be held liable and punished. Mens rea is based on a well-known maxim. Actus non facit reum nisi mens sit rea which means Act does not make a man guilty unless his intention was so. Earlier in English criminal law, there was no distinction between crime and tort. Criminal law was based on strict liability and

punishment in those days was mainly in the form of monetary compensation. Therefore mental element in crime was irrelevant but later bodily punishment came in substitute of damages. Now from here, mens rea got importance. Mental element in crime was recognised as this time With the passage of the time, mens rea become an element in deciding crime. For any criminal liability, the Act should be voluntarily committed. No person can be held liable for an Act done under any fear or compulsion. For example, A points revolver on B and say to open the lock of the house of C. Here B Act is not voluntary but it was against his will. Intention and motive is a different element of a crime Motive may be good or bad but if the Intention is not good then the person is held liable for the crime.

For example, if A steals bread from a shop due to hunger. Here the motive is good but still, he is liable for stealing.

R VS PRINCE

Prince took away a girl below 16 yrs of age from the position of father and against the will of her father. Prince argued that the girl told him that she was of 18 yrs and the intention was bonafide as she was looking like 18 yrs or above. In this case, the court has held that he cannot be given the benefit of the doctrine of mens rea because this is the case of mistake of law, taking away a girl below 16 yrs is unlawful hence he was held guilty.

General Principles

Actus Non-Facit Reum Nisi Mens Sit Rea – An Act does not itself make one guilty unless the mind is also guilty This guilty mind is known as Mens Rea. There are two elements of mens rea first one is intended to do Act and the second one is knowledge of the circumstances that make the Act a criminal offence. Mens rea takes on different types in the different surrounding that is

what is evil intent for one type of criminal offence may not be so for another kind. For example, in case of murder intent to go is mens rea then in case of theft intent to steal is mens rea.

Other Forms of Mens Rea:

- 1) Intention;
- 2) Motive;
- 3) Knowledge;
- 4) Recklessness;
- 5) Negligence.

These all refer to different types of mental aptitude which constitutes mens rea.

Mens rea in the Indian Penal Code 1860

Kartar Singh v. the State of Punjab

The SC held that statutory penal provision must be read with the elements of mens rea unless a statute either expressly or by necessary implication rules it out.

Intention

It is the purpose or design for which an Action has been done. The intention is basically Position of mind at a particular time in committing an offence and will of accused to see the effects of his unlawful effect.

Hyam Vs DPP

D, in order to frighten Mrs booth put burning newspaper in the letterbox of booth house fire spread and two children, died D not meant to kill, but foreseen death or grievous bodily injury as a high probable result D is guilty she knew about the result of her conduct sufficient mens rea for murder. The intention not only means a specific intention but also generic intention. Section 39 of IPC defined term voluntarily a person is said to cause an effect voluntarily when he causes it by means whereby he intended to cause it or by means which at the time of employing those means he knows or had reason to believe to be likely to cause it.

Intention and Motive

The motive works as the fuel for the intent. The motive is the reason why someone is going to do something. It is the fountain from which the Actions, spring whereas intent is the goal to which they are directed. Intention means the purpose of doing something motive determines the reason for committing an Act. The intention is the basic element for making a person liable for a crime which is commonly contrasted with motive. The intention is the product of motive in fact motive is not a legal element of a crime. Motive plays a significant role because without an understanding of why people commit certain crimes in the way they do we are left to begin at whether they have done with a good motive or bad.

Knowledge as Mens rea

Knowledge is the awareness of the consequences of the Act. The term Knowledge is used in [Section 307](#) (attempt to murder) instead of mens rea The knowledge and intention are on the same footing with a guilty mind Therefore knowledge is also component which includes mens rea. Therefore the Indian Penal Code recognizes Mens rea as knowledge.

Om Prakash vs Punjab

Defendant does not give the food to his wife for several weeks and he is now liable for murder because Act must be done with intent or knowledge of the scarcity of food.

Negligence as Mens rea

The third form of mens rea is negligence. Negligence is the duty to take care of. In other words, a person when he is negligent if he fails to exercise the duty or caution while performing a lawful Act. The concept of reasonable negligence is not defined anywhere. Test of reasonable care depends on the view of the prudent man therefore who is able to fail to take care of reasonable care and if his Actions cause harm anyone it is called the negligent Actions of a person this negligent Act is considered as a mens rea for criminal liability of a person.

Vicarious Liability

According to the principle of vicarious liability when a person is liable for the wrongful acts done by another person, then that first person is known as vicariously liable for the actions of the second person. Here the relationship between the two of them is a must.

There should be some relationship between A and B then only the liability of A will can arise towards B for doing some Act.

The relationship can be in the form of:

- (a) Principal and agent.
- (b) Partners of the partnership firm.

(c) Masters and servant.

The principal is liable committed by his agent during the course of employment. The plaintiff has the choice to sue the principal or agent or both of them.

The exception to General Rule of Vicarious Liability

A person who does any wrongful Act through another person(servant/agent) by hiring them and hired person does that wrongful Act in the course of employment.

There are two Latin maxim in which Vicarious Liability evolve out:

Respondeat superior: Let the master be liable.

Qui facit per alium facit per se: Master will be liable for the work of his servant.

Conclusion

Actus reus and mens rea both play a significant role in an offence. Criminal guilt is an essential element for violation of criminal law. Therefore, Wrongful intention should be present in any offence.