

GENERAL PRINCIPLES OF CRIMINAL LAW

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Criminal Law ?

“In the state of nature the life of man is solitary, poor, nasty, brutish and short... the condition of man ... is a condition of war of every one against every one”

Hobbes, ‘Leviathan’

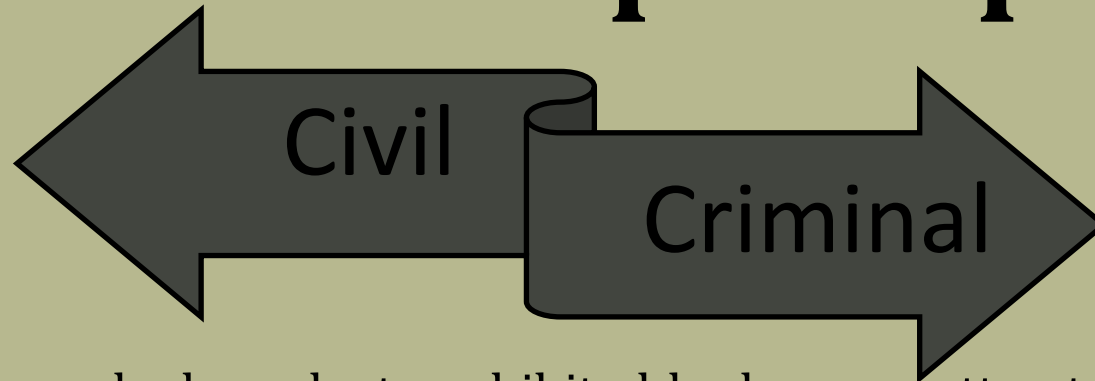


Crime?

- ❧ Section 32 IPC when a penal statute prescribes punishment for an act or illegal omission, it becomes crime.
- ❧ Crimes are invasions of primary personal rights, abhorrent to the moral sense, prescribed by positive law, crime is inherently evil.
- ❧ *Nullum crimen sine lege*
- ❧ *Nullum Poena Sine lege*



Criminal law principles



- ↻ Deviant or crooked conduct prohibited by law can attract either civil or criminal or at times both criminal and civil liabilities
- ↻ Crime has two victims: individual and society
- ↻ State wants criminal to be punished.
- ↻ Individual has a civil remedy – civil wrong, compensation,
- ↻ Damages : liquidated or unliquidated.
- ↻ Punishment is organized and legally sanctioned state revenge against the offender.

Criminals in virtual world

- Omnipresence of cyber space links online activity to physical location. Local Governments are not in a position to control online misbehavior nor have physical jurisdiction.
- While crime is individual, cyber crime generally is international and against many persons at a time.
- Criminal is invisible.
- Privacy, emotional physical safety and data security is threatened.



Civil & Criminal Justice: Differences

☞ Criminal Justice

- ☞ to punish wrongs
- ☞ purpose- penal
- ☞ Trial on Charges, guilt or innocence.
- ☞ public wrongs-More harmful
- ☞ State is a party

☞ Civil Justice system

- ☞ to enforce rights
- ☞ purpose is remedial, - heavy damage
- ☞ On issues, determining rights and liabilities.
- ☞ Pvt wrongs injury to private individuals
- ☞ between Pvt individuals

65. Tampering with computer source documents.

- Whoever knowingly or intentionally conceals, destroy, or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.
- Explanation - For the purposes of this section, "computer source code" means the listing of programmes, compute commands, design and layout and programme analysis of computer resource in any form.

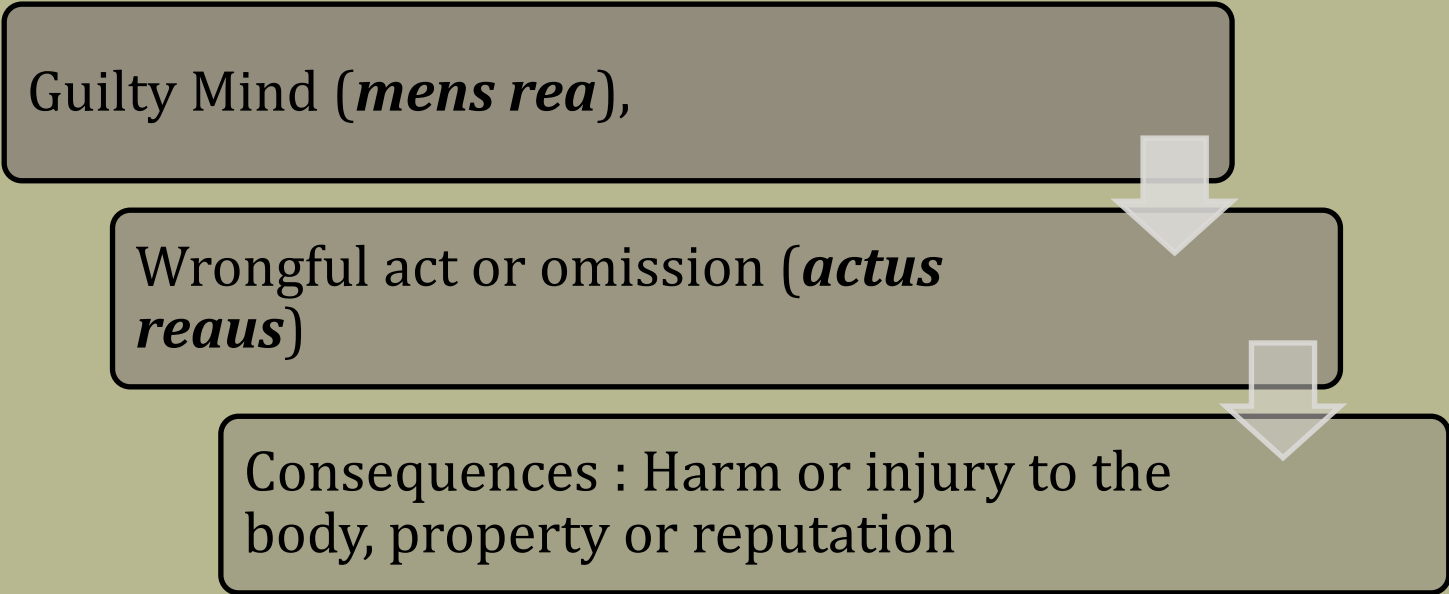
What is an offence?

Essentials of crime

Who can commit a Offence?
Human being, Corporation.

When an act becomes an offence?

Guilty Mind (***mens rea***),



Wrongful act or omission (***actus reus***)

Consequences : Harm or injury to the
body, property or reputation

Stages of commission of crime:

intention,

preparation,

attempt,

accomplishment.



Who has to prove the Offence?

Burden of proof : Prosecution.

Dowry death and Rape cases: Shift of the burden.

What is the Standard of Proof?

Standard of proof: Proof beyond reasonable doubt. (Mallimath Committee report) High standard of proof.

Constitution and criminal law rights of the accused

- Article 20: *Expost facto laws*: No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act **charged as an offence**, nor be subjected to a penalty greater than that which might have been **inflicted under the law** in force at the time of the commission of the crime.
- *Double jeopardy*: No person shall be prosecuted and punished for the same offence **more than once**.
- *Doctrine against self incrimination*: No person accused of any offence shall be **compelled to be a witness against himself**.
- Art 21: No person shall be deprived of life or personal liberty **except according to procedure established by law**.

ACTUS REUS
GUILTY ACT/OMISSION

Circumstances –

- Actus reus includes following circumstances as per definition of IPC
- Place: Housebreaking ss 441-462
- Time: housebreaking by night
- Person: Kidnapping or abduction of minor ss 359-374. (minority of person is essential)
- Consent of victim: Rape 376 absence of consent is actus reus.

Participation & causation

- ✧ It is participation and causation of crime including indirect participants like accessories, abettors, conspirators,
- ✧ Participation may be thru innocent agents
- ✧ CAUSATION : CONNECTION BETWEEN THE ACT AND THE CONSEQUENCE.
- ✧ More than one participants in the commission of crime.
- ✧ **A gave poison to B, while B was unconscious C shot him in the arm and X left the unconscious B on the national high way, Y who was driving a truck ran over B.**

Mensrea/guilty mind

Will and act

- ☞ Actus me invito factus non set mens actus= an act against my will is not my act.
- ☞ It is not actus and reus alone that makes it a crime but the involvement of mind too.
- ☞ In early primitive societies mensrea was not existent, liability was absolute.
- ☞ Dolus and culpa of Roman Law of 13th cen. influenced the English criminal law.



Legal presumption

- ☞ A man is deemed to have intended the natural consequences of his act.
- ☞ Mens rea may be either
 - ☞ intention to do the immediate act or bring about consequences
 - ☞ Knowledge.
 - ☞ Recklessness / negligence as to such act or consequence



Intention

- ❧ Desire coupled with his own actual conduct
- ❧ To intend is to have in mind a fixed purpose to produce a particular result
- ❧ It indicates state of mind who not only intends but also desires consequences of his conduct
- ❧ Desire distinguishes intention from negligence



Dishonest Intention

- ☞ S 24 defines: intention of causing wrongful gain to one person or wrongful loss to another, dishonestly refers to property
- ☞ S 25 : A person is said to do a thing fraudulently, if he does that thing with intent to defraud but not otherwise
- ☞ Legal fraud includes intention to injure besides deception.

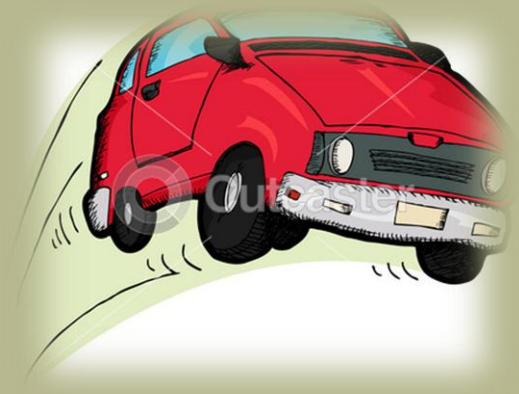
Negligence

- ✧ Blameworthy inadvertence, a state of mind, A carelessly throws stone on to public road from window. A is negligent, but did not intend or desire a particular person,
- ✧ Guilty, because indifferent to consequences, as a reasonable person he ought to have known that some one would be injured by stone.



Recklessness

- ☞ Attitude of mental indifference to obvious risks, eg driver furiously driving his car into the midst of is neither intention nor desire, but sufficient foresight
- ☞ Recklessness is legally equal to intention
- ☞ Not mere desire but foresight of consequence makes his act a crime



Knowledge

- Personal information about consequences of his act
- State of mental realisation, conscious awareness of facts
- Test of ordinary reasonable man.
- Degree of probability.



No mens rea/ strict liability

- ☞ 'Doer of the deed' responsible. Exclusion of *mensrea*
- ☞ Criminal liability independent of wrongful state of mind or culpable negligence
- ☞ Strict or absolute liability principles
- ☞ Three kinds of crimes which do not require legal fault on accused:
- ☞ Public welfare offences: quasi criminal in nature, drugs, foods, weights & Measures, licensing, traffic, revenue offences etc.
- ☞ In offences like waging war, s 121, sedition s 124A counterfeiting of coins s 232 etc *mens rea* is avoided totally
- ☞ Separate chapter on General Exceptions ss 76 – 106 indicate circumstances where absence of criminal intent may be presumed it is negative method of applying *mens rea* in IPC

Punishment

- ☞ *nullum pena sine lege*
- ☞ Retributive, reformative, preventive, expiatory theories.
- ☞ Capital punishment, imprisonment, life, death, solitary confinement, fine, imprisonment in lieu of fine.
- ☞ Restorative justice programs
- ☞ Community sentence
- ☞ US ... exemplary fines.
- ☞ Shall fit the crime....Shall serve a purpose.....
Proportionate
- ☞ Lenient sentences



Criminal procedure

Inchoate Crimes

- ✧ Abetment : to instigate, aid or willful concealment (107)
- ✧ Conspiracy : agreement between two or more people to commit an offence (120A)
- ✧ Attempt : step towards the commission of offence with an intention to commit crime.

Problems vis-à-vis procedure in a Criminal Case

- ⌘ How to initiate the proceedings?
- ⌘ What is the process of Investigation?
- ⌘ Where the trial would be conducted?
- ⌘ What is the forum?
- ⌘ How the Trial is conducted ?



Criminal Justice System

- ☞ *Due process model* and *Crime Control Model* CJS.
- ☞ Inquisitorial and adversarial.
- ☞ Presumption of innocence
- ☞ Fair trial....Free legal aid.....open court.....right to go for appeal.



Definitions

- ❧ Cognizable offence and non cognizable offence Sec 2 (c) Cr.P.C.
- ❧ 2 (a)Bailable Sec 436 and Sec 436(A) (2005 Amendment) and Non-Bailable offence Sec 437 .
- ❧ Compoundable and non compoundable Offence(Sec 320 of Cr.P.C).
- ❧ Sec 2 (h) Investigation: proceedings for the collection of evidence by the police officer.
- ❧ 2(x) Warrants Case: imprisonment exceeding two years.

Remedy if Police refuses Complaint": 2(d) (Private Complaint)

“any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report”.

Explanation. A report made by a police officer in a case, which discloses, after investigation, the commission of a non-cognizable offence shall be deemed a complaints and the police officer by whom such report is made shall be deemed to be the complainant;

PUBLIC PROSECUTOR

☞ Appearance by Public Prosecutors.

without any written authority prosecutor incharge of the case can appear in the court.

Police officers are permitted (no investigation).

Sec 301

Sec 302

Accountability of Prosecutors.

System in US and UK.

Plea Bargaining.

Criminal Procedure

CrPC

- ❧ Lodging FIR : Sec 154
- ❧ Cognizable (Sec 156) and non-cognizable offence (Sec 157).
- ❧ Issue of process Sec 204
- ❧ Private complaint Sec 2(d), Sec 200-204
- ❧ Arrest: memo of arrest: powers of police
- ❧ Investigation
- ❧ Interrogation-sec 161
- ❧ Search and seizure
- ❧ Confiscation of goods

Place of Trial

- ✧ A kills B in Nagpur and was arrested in Bombay.
Sec 177 : Where the offence is committed.
- ✧ A kidnaps B from Calcutta, confined B in Delhi and kills in Bombay.
Sec 178: any of the places where the offence is committed.
- ✧ Mr Kishore calls Mr Sanjay from Nagpur and asks him to plant bomb in the parliament
Sec 179 : where the consequence ensued.
- ✧ Mr Kapoor writes a letter from Nagpur to Sonipat through which the cheating took place.
Sec 182: Place where the delivery of the property took place.
- ✧ Miss Shetty was travelling from Nagpur to Delhi and commits a theft in Bhopal.
Place where the offence is committed Sec 183
- ✧ State Government can order for the trial in any place Sec 185 and 186.
- ✧ Power to issue summons beyond local jurisdiction Sec 187.

F.I.R

First Information Report

☞ Cognizable Case : Sec 154.

application in writing.

Telephonic messege, email, letter.

police officer refuses complain to the higher authority.

anyone can complain.

Police officer arrest and proceed to the investigation.

☞ Non Cognizable Case: Sec 155.

No investigation without the permission of the magistrate

☞ Delay in lodging of FIR.

Arrest

☞ Who can Arrest?

- 1) Police Officer S 41 (without warrant).
- 2) Judge S 44
- 3) Any person S 43

☞ How to arrest ?

- 1) Submission by word or deed
- 2) Evading the arrest use necessary force.
- 3) Accused committed an offence punishable by death or life imprisonment, police can cause death.
- 4) Woman and children shall not be called to the police station
- 5) Produced before the Magistrate within 24 hours, medical examination, inform the grounds of arrest, inform friends and relatives, provide free legal assistance.
- 6) Nilabathi behera, Khatri v. Union of India (Bhagalpur blinding case).

Investigation of Offences & Access to computers

Power to investigate contraventions [section 28 & section 29]

- ❖ lies with the Controller/any officer authorised by him in this behalf
- ❖ who shall exercise the like powers which are conferred on Income-tax authorities under Chapter XIII of the Income-tax Act, 1961 subject to such limitations laid down under that Act
- ❖ have access to any computer system, any apparatus, data or any other material connected with such system, for the purpose of searching or causing a search to be made

78 Power to investigate offences (Amended Vide ITAA 2006)

- ☞ §(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a police officer not below the rank of Deputy Superintendent of Police Inspector shall investigate any cognizable offence under this Act. (Amended Vide ITAA 2006/8)
- ☞ §(2) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence under this act, he shall cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. **(Inserted vide ITAA-2006)**
- ☞ §(3) Any Police officer receiving such information may exercise the same powers in respect of investigation (except the power to arrest without warrant) as an officer in charge of the police station may exercise in a cognizable case under section 156 of the Code of Criminal Procedure, 1973. **(Inserted vide ITAA-2006)**

Power of police officer and other officers in respect of search, etc [Section 80]



Any police officer[not below the rank of a Deputy Superintendent of Police or any other officer of the Central Government / State Government authorised by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected or having committed or of committing or of being about to commit any offence under this Act

Cognizable, Bailable...

- If punishable with death, imprisonment for life or imprisonment for more than 7 years: cognizable, Non- Bailable, Court of Session
- If punishable with imprisonment for 3 years and upwards but not more than 7 years: Cognizable, Non-Bailable, Magistrate of First Class
- If punishable with imprisonment of less than 3 years: Non-Cognizable, Bailable, Any Magistrate (or Controller of CAs)

Compounding offences

- ❧ Compounding offences, Except those which are punishable with imp for more than three years and life, are compoundable offences, Sec 77A
- ❧ Offences with three years shall be cognizable, others not. 77B
- ❧ Inspector rank officer to investigate, 78

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77 B Cognizance of offences under Sections 66, 66 A, 72 and 72 A (Inserted vide ITAA-2006)

☞ Taking cognizance of offence Sec 190

- ☞ ☐ Offences with three years imprisonment to be cognizable**
- ☞ ☐ No Court shall take cognizance of an offence punishable under sections 66, 66A, 72 and 72 A, except upon a complaint made by the person aggrieved by the offence.**
- ☞ ☐ (1) Notwithstanding anything contained in Criminal Procedure Code 1973, the offence punishable with imprisonment of three years and above shall be cognizable and the offence punishable with imprisonment of three years shall be bailable.**

Confiscation

76 of IT Act

- ☞ Any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, in respect of which any provision of this Act, rules, orders or regulations made thereunder has been or is being contravened, shall be liable to confiscation:
- ☞ **Provided** that
- ☞ where it is established to the satisfaction of the court adjudicating the confiscation that the person in whose possession, power or control of any such computer, computer system, floppies, compact disks, tape drives or any other accessories relating thereto is found is not responsible for the contravention of the provisions of this Act, rules, orders or regulations made thereunder, the court may, instead of making an order for confiscation of such computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, make such other order authorised by this Act against the person contravening of the provisions of this Act, rules, orders or regulations made thereunder as it may think

Hierarchy of courts

- ☞ Magistrate Court – Chief Judicial Magistrates – upto seven years
- ☞ Metropolitan Magistrates – Chief Metropolitan Magistrate
- ☞ Sessions Court – till death penalty – subject to approval of the high court
- ☞ High Court
- ☞ Supreme Court

COMPOUNDING OF OFFENCES

- ✧ WITHDRAWAL OF THE COMPLAINT BY THE COMPLAINANT
- ✧ SEC 320

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77 A Offences under sections 66, 66A, 72 and 72A to be compoundable (Inserted vide ITA-2006)

[?] Compounding of Offences

- ☞ [?] (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences under sections 66, 66A, 72 and 72 A may be compounded by the aggrieved person
- ☞ [?] Provided that the provisions of this section does not apply where the accused is ,by reason of his previous conviction, liable to either enhanced punishment or to a punishment of a different kind for such offence.
- ☞ [?] A Court of competent jurisdiction may compound offences other than offences for which the punishment for life or imprisonment for a term exceeding th ree years has been provided under this Act.
- ☞ [?] Provided that the Court shall not compound such offence where the accused is by reason of his previous conviction, liable to either enhanced punishment or to a punishment of a different kind.
- ☞ [?] Provided further that the Court shall not compound any offence where such offence affects the socio-economic conditions of the country or has been committed against a child below the age of 18 years or a woman.
- ☞ The person accused of an offence under this act may file an application for compounding in the court in which offence is pending for trial and the provisions of section 265 B and 265 C of Code of Criminal Procedures, 1973 shall apply.

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