

CLAT 2019

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# Law of Crimes

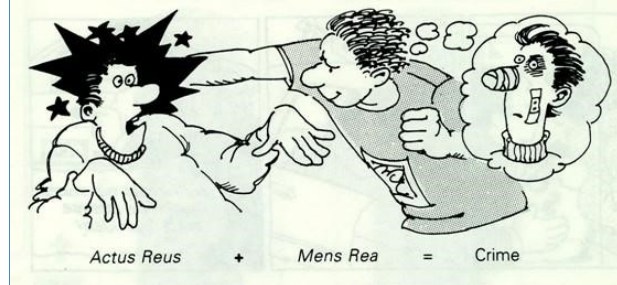
Session 2 : Elements of Crime, Intention vs Motive

Law of Crimes

## 2

**Elements of Crime: Guilty Act and Guilty Mind**

- **CRIME = Actus Reus + Mens Rea**  
“*actus non facit reum, nisi mens sit rea*”
- This latin maxim means that an act does not make one guilty unless the mind is also legally blameworthy.
- In other words, for a physical act to be termed a crime, it must be accompanied by the necessary mental element. **Unless this mental element is present, no act is usually criminal in nature.** So, all crimes have a physical element and a mental element, usually called *actus reus* and *mens rea* respectively.



## What is actus reus?

- The word **actus** connotes a 'deed' which is a physical result of human conduct.
- The word **reus** means 'forbidden by law.'
- **actus reus** in common parlance means a 'guilty act'. It is made up of three constituent parts, namely: -
  1. An action or a conduct
  2. The result of that action or conduct
  3. Such act/conduct being prohibited by law
- Therefore, one can say that actus reus is an act which is bad or prohibited, blameworthy or culpable.

- Now, there are certain unique situations when the act in itself may appear to be a criminal act, yet it cannot be termed as "**actus reus**".

### Illustrations:

- An executioner's job is to hang (no actus reus)
- An army man kills as a part of his duty (no actus reus)

## Does an act in actus reus include omissions?

- An omission is nothing but inaction or not doing something. Section 32 of the Indian Penal Code (IPC) clarifies that acts which may be considered as Crime include "illegal omissions".
- ***But mere moral omissions of not doing something would not complete the requirement of actus reus.***
- **Illustration** : A man is sinking in the swimming pool of a resort. A boy who is beside the pool does not make any attempt to save this man. This is a moral omission of not saving someone's life. The boy cannot be held criminally liable for such an omission.
- But in the same scenario, if there is a lifeguard on duty at this resort, and if he does not make any attempt to save the man sinking in the pool, then he can be held criminally liable for such omission.

## Mens Rea: guilty mind/ intent

- ***mens rea*** generally means 'ill intention'.
- The constituents of mens rea are:
  - 1. There must be a mind at fault/intention to constitute a crime.
  - 2. The act becomes criminal when the actor does it with a guilty mind.
- Note: causing injury to an assailant in self-defense is not a crime, but the moment injury is caused with intent to take revenge, the act becomes criminal.
- Therefore for any crime to exist, the physical element of crime needs to be complemented by the mental element.
- The concept of mens rea evolved in England during the 17th Century. During this period, the judges began to hold that an act alone could not create criminal liability unless it was accompanied by a guilty state of mind.

In India, the word *mens rea*, as such, is not defined in the IPC, but its essence is reflected in almost all the provisions of the Code.

**Words used:**  
**fraudulently, knowingly,**  
**dishonestly,**

## ***Strict Liability:***

- There are some exceptions to the thumb rule of mens rea to be present for an act to be considered as crime.
- These are generally the offences which arise due to a 'strict liability'.
- These offences are also termed vicarious or deemed liability offences.
- Examples of such offences can be found in Special Acts such as the Negotiable Instruments Act, 1881, the Customs Act, 1962, and the Information Technology Act, 2000, which provide for deemed offences by directors / responsible officers of a company, if a company has committed a contravention / offence.
- Such deemed liability disregards whether there was actually any mens rea or not on the part of the person concerned.

## 3

**Distinction between Intention and Motive**

- The meaning of doing an act intentionally in criminal law means something that is done wilfully and not accidentally or mistakenly.
- The person doing the act is well aware of the consequences or the outcomes of his action or omission.
- That is all what is required for affixing criminal liability.
- It does not matter, as we say in ordinary language, whether an act was done with good intent or bad intent.
- If the act which is so prohibited (*actus reus*) is done wilfully, knowingly or with awareness of the resulting consequences then the same will cause liability in criminal law.

In Re Sreerangayee case (1973) 1 MLJ 231, the woman in sheer destitution and impoverishment attempted to kill herself after failing in all the ways to arrange for food for her starving children, but since she knowingly (*mens rea*) did a prohibitive act of attempting suicide (*actus reus*), she was held guilty by the court.

## 3

**Distinction between Intention and Motive**

- Motive is the ulterior objective behind doing an act.
- It is the driving force behind intention or commission of an act.
- **The criminal law does not take into account motive** in affixing criminal liability or in determining criminal culpability.
- This is the reason why the criminal law does not care whether one has stolen a loaf of bread to feed a starving person or stolen medicine to save someone's life, as long as it is a prohibited act, done knowingly.



BASIS FOR COMPARISON	INTENTION	MOTIVE
Meaning	Intention refers to a purposeful action and a conscious decision to perform an act, that is forbidden by law.	Motive alludes/refers to the ulterior cause, that induces a person to do or abstain from doing a particular act.
What is it?	Objective	Driving force
Purpose	Expressed	Implied
Criminal liability	It is substantial to determine criminal liability.	It is insubstantial to determine criminal liability.

## Criminal Law in India

1

### Objectives of Criminal law:

- Five objectives are widely accepted for enforcement of the criminal law by punishments:

**Retribution, Deterrence,  
Incapacitation, Rehabilitation and  
Restoration.**

- **Retribution** - This theory basically deals with 'righting of balance'. If a criminal has done a wrong towards a person or property he needs to be given a penalty in a manner which balances out the wrong done. For example, if a person has committed murder, he can be delivered capital punishment to balance out the suffering caused to the victim and his or her family.
- **Deterrence** - Deterrence serves as a major tool in maintaining the general law and order in the society, especially from the perspective of Crime. Criminal acts are penalized so as to deter individuals from repeating it or even entering into it in the first place.
- **Incapacitation** - The objective of this theory is to segregate the criminals from the rest of the society. For the crimes committed, they suffer a kind of banishment by staying in prisons and in some cases they are also subject to capital punishment.
- **Rehabilitation** - Aims at transforming an offender into a valuable member of society. Its primary goal is to prevent further offense by convincing the offender that their conduct was wrong.
- **Restoration** - This is a victim-oriented theory of punishment. The goal is to repair, through state authority, any injury inflicted upon the victim by the offender. For example, one who embezzles will be required to repay the amount improperly acquired. Restoration is commonly combined with other main goals of criminal justice and is closely related to concepts in the civil law, i.e., returning the victim to his or her original position before the injury.

2

## What is Criminal Law?

- The purpose of Criminal Law in India is
- 1. To define a variety of crimes** e.g. theft, cheating, murder, etc.
  - 2. To prescribe appropriate punishment for each crime** e.g. imprisonment or fine, and
  - 3. To lay down suitable investigation and trial procedures.**

## 3

**Sources of Criminal Law**

There are many Law but Two important sources are:

- **The Indian Penal Code, 1860**, which defines various crimes such as murder, theft, etc.
- **Code of Criminal Procedure, 1973**, which lays down the procedure for both the police to investigate crimes and for trial of offences.

**In addition the following legislations are important:**

- **The Indian Evidence Act, 1872**, which stipulates the kind of evidence admissible in court.
- Special Criminal Laws passed by the Parliament or State Legislatures such as the **Prevention of Corruption Act, Food Adulteration Act, Dowry Prevention Act, Commission of Sati Act** etc. Each of these laws defines crimes that are in addition to those defined under the IPC.

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