

CHAPTER 1- FUNDAMENTAL ELEMENTS OF CRIME

INTRODUCTION.....	2
I. HUMAN BEING	2
Criminal Liability of a Corporation:.....	2
II. GUILTY MIND (MENS REA).....	3
Three kinds of wrongs:.....	3
Degrees of mens rea:.....	4
1. Intention:	4
2. Knowledge:	4
3. Negligence:.....	4
Motive:.....	4
Mens rea, when not essential.....	5
1.Strict Liability:.....	6
2.Petty offences:.....	6
3.Public Nuisance:.....	6
4.Ignorantia Juris Non Excusat.....	6
Mens rea and Indian Law.....	6
Words denoting Mens Rea in IPC.....	7
Fraudulently:.....	7
Dishonestly:.....	7
Voluntarily:.....	8
✓ Intention:.....	8
✓ Knowledge:	8
✓ Reason to believe:.....	8
Mens rea and statutory crimes.....	9
III. WRONGFUL ACT (ACTUS REUS).....	10
1. The act may be either positive or negative :.....	11
2. The act may either be internal or external	11
3. The act may be intentional or unintentional :.....	11
IV. INJURY	11

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INTRODUCTION

There are in all **four elements** that go to constitute a crime:

- i) A human being;
- ii) Guilty intention or *mens rea* on the part of such human being;
- iii) *Actus reus*, illegal act or omission; and
- iv) Injury to another human being.

I. HUMAN BEING

The first essential of a crime is a human being who

- i) must be under legal obligation to act in a particular manner and
- ii) should be a fit subject for award of appropriate punishment.

Section 2 of the IPC clearly provides that every person shall be liable to punishment under this Code for every act or omission contrary to the provisions thereof, of which he shall be guilty within India. **Section 11** of the IPC provides that the 'person' includes a company, or association or a body of persons whether incorporated or not. The word 'person', hence, includes *artificial* or *juridical* persons.

Criminal Liability of a Corporation:

In the beginning the view prevailed that Corporations entail no criminal liability. It is due to the following reasons:

- i. A corporation has no physical body of its own and so it cannot be imprisoned.
- ii. A corporation has no mind of its own and so it can never have a criminal intention. Moreover, a corporation acts only through its agent or servant and since there is nothing as vicarious liability under criminal law, no corporation can be held liable in the capacity of manner. However if individual members of a corporation entertain a criminal intent they are indictable.
- iii. The doctrine of ultra vires confines corporate activities within a defined limit. So a corporation can only be held liable for the act authorised by it. Since a corporation can never authorise the commission of a crime, the question of its criminal liability does not arise.

However, an important development took place in the case of *Lennard Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.* wherein it was held that:

CHRYsalis IAS ACADEMY

“The fault of a corporation is the fault of its superior officers who are the directing mind or will of the corporation.”

In spite of well-known decisions of English courts the law regarding criminal liability of corporations in England is not a well-defined concept. In India also, the position in this respect is not very satisfactory.

In *State of Maharashtra v. Syndicate Transport Co. Ltd.* it was held that:

“A company cannot be indicted for offences like bigamy, rape, perjury, etc. which can only be committed by a human individual or for offences punishable with imprisonment or corporal punishment. Barring these exceptions a corporate body ought to be indicted for criminal acts or omission of its director or authorised agents or servants whether they involve mens rea or not, provided they have acted or have purported to act under authority of the corporate body.”

However, for making the corporation criminally liable each case should be considered on its own facts.

Criminal liability of a corporation is an imputed liability and not a vicarious liability. As the corporation itself cannot be executed or punished the liability is to be imputed to its high managerial agents who are responsible for the conduct of its policy and business. For example, Section 17 of the Prevention of Food Adulteration Act, 1954 provides that where an offence under the Act has been committed by a company, every person who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to be punished.

II. GUILTY MIND (MENS REA)

The fundamental principle of penal liability is that an act alone does not amount to a crime. It must be accompanied by a guilty mind, as laid down by the Latin maxim, *actus non facit reum nisi mens sit rea*. Therefore, if a person is to be punished under criminal law, it is generally necessary that he must have done some criminal act and he must have done such act with a guilty mind (*mens rea*). No person can be punished merely because his act has led to some mischievous result. The law must inquire into the mental attitude of the person doing the act.

Three kinds of wrongs:

Looked at from the angle of mens rea, wrongs are of three kinds:

- (a) Intentional or willful wrongs, where the offender does an act intending to do it. In such cases, *mens rea* amounts to intention, purpose or design.

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- (b) Wrong of negligence, where there is no wrongful intention, but a failure to take proper care and precaution.
- (c) Wrongs of strict liability, where the law does not require the presence of *mens rea*.

Degrees of *mens rea*:

To ascertain the degree of *mens rea* the following two factors need to be examined:

- [1] You know it will happen
- [2] You want it to happen

1. Intention:

It is the strongest *mens rea* where there is knowledge as well as assurance that the person will be harmed for sure.

2. Knowledge:

You know it will happen but you don't want it to happen.

3. Negligence:

You neither know it will happen nor want it to happen.

It may further be noted that *mens rea* must extend to all the three parts of an act:

- (a) the physical doing or not doing,
- (b) the circumstances; and
- (c) the consequences.

If the *mens rea* does not extend to any part of the act, there will be no guilty mind behind the act.

Motive:

An intention is the immediate desire and foreknowledge behind an act. Such a desire might be a means for another desire. Such ulterior mental condition is known as the *motive* for the act.

Motive is not to be confused with intention. Motive means anything that can contribute to, give birth to, or even prevent, any kind of action. Motive alone does not determine the criminality of the act.

- A legal act may be done with a malicious motive, but that alone does not make the act illegal. For instance, X has a flourishing toy business, and Y, an arch rival of X, sets up a similar business in the vicinity of X's business, with the malicious motive of reducing X's profits. Now, such an act does not become illegal, as freedom of trade or profession is granted to everyone, subject to certain restrictions.
- On the other hand, an act which is unlawful cannot, in law, be excused in the ground that it was committed with a good motive. For instance, X cannot justify his act of killing Y, his

CHRYSALIS IAS ACADEMY

friend, on the ground that Y was terminally ill and Y could not bear to see him suffer pain, and the hence, he acted with a humanitarian motive.

Motive may serve as a clue to the intention.

For example, A intentionally shoots at B, and kills him. He has killed B with the motive of eliminating a political rival. In this case, the act of shooting was done with an intention, and such intention was the result of the desire of the wrong-doer to eliminate his political rival. The immediate mental condition, that is, killing the man, is called intention, and the ulterior desire to do away with a political rival is called the motive.

In the case of every wrongful act, these two questions arise;

1. *Firstly*, whether the act was done intentionally or accidentally.
2. Secondly, if the act was done intentionally, why it was done?

The first question refers to the **intention** and the second to the **motive** of the person.

In *Emperor v. Apaji Yadavrao*, the sweepers of a certain village, had been suspended from their office for some months. A meeting of the villagers was held at the house of the Patel (headman) at which the Patel was present, to consider the question of their restoration to office, and an agreement was arrived at that they should be restored on their paying Rs. 300 to the Patel, to be used for the repair of the village temple. It was held that Patel, being a public servant had committed an offence under S. 161 of the Indian Penal Code (public servant accepting illegal gratification). The fact that the money went to the temple, and not to the accused's pocket, was held to be irrelevant; the accused's motive may have been noble, but that is irrelevant in criminal law.

In *Emperor v. Raghunath Rai*, Hindus of a particular locality apprehended that X, a Mohamedan, who owned a calf, was going to sacrifice that calf, and an agreement was arrived at, under which X consented that the calf might be tied up in Y's house, which was close by to Z. Z, a Hindu who arrived on the scene subsequently, carried away the calf without the consent of X or Y, to prevent all chances of the calf being sacrificed. X prosecuted Z for theft. It was held that he was guilty of theft, however, laudable his motive might be.

In short, in a criminal case, the end cannot justify the means, i.e., the motive does not justify the intention. Hence, a righteous motive is not a good defence when the intention of the person is criminal.

Mens rea, when not essential

In modern criminal law, there are some special circumstances under which the law imposes a strict liability, and such cases may be treated as exception to the doctrine of mens area.

CHRYSA LIS IAS ACADEMY

The following are the four important cases where *mens rea* is not required in criminal law:

1. Strict Liability:

Where a statute imposes strict liability, the presence or absence of a guilty mind is irrelevant. Several modern statutes passed in the interests of public safety and social welfare impose such strict liability. In matters concerning public health, food, drugs, etc. such strict liability is imposed, e.g., under The Motor Vehicle Act, The Arms Act, Prevention of Food Adulteration Act, licensing of shops, hotels, restaurants and chemicals establishments.

2. Petty offences:

When it is difficult to prove *mens rea*, where the penalties are petty fines, and where a statute has done away with the necessity of *mens rea* on the basis of expediency, strict liability in criminal law may be imposed. In such petty cases (as for instance, parking offences), where speedy disposal of cases is necessary and where the proving of *mens rea* is not easy, the accused may be fined, even without any proof of *mens rea*.

3. Public Nuisance:

The third exception to the doctrine of *mens rea* is in the cases of public nuisance. The justification of this exception is the same as in the case of the first exception. In the interest of public safety, strict liability must be imposed, and if one causes public nuisance with or without a guilty mind, he becomes punishable.

4. Ignorantia Juris Non Excusat

Another exception is related to the maxim "Ignorance of the law is no excuse." If a person violates a law without having knowledge of the law, it cannot be said that he has intentionally committed an act which is prohibited by law. In such cases, the fact that he was not aware of the rule of law and that he did not intend to violate it, is no defence, and he would be liable as if he was aware of the law.

Mens rea and Indian Law

Every offence under the Indian Penal Code is defined and definition states not only what the accused must have done, but also the state of his mind with regard to the act when he was doing it. Each definition of the offences is complete in itself. The word *mens rea* have nowhere been used in the IPC but they have been applied in two different ways:

- i. While defining offences, words used indicate actual criminal intent required for the offence. The expressions fraudulently, dishonestly, voluntarily, intentionally, etc. used in the definitions indicate criminal intent.

Eg. – Theft must be committed dishonestly.

CHRYSALIS IAS ACADEMY

Eg. – Cheating must be committed fraudulently.

Eg. – Murder must be committed either intentionally or knowingly.

- ii. The IPC contains a separate chapter on General Exceptions (Sections 76-106) which indicates the circumstances where absence of criminal intent may be presumed. This negative method of applying mens rea in the IPC has been found to be very useful.

The doctrine of mens rea has been applied by courts in India and it is now firmly settled law that mens rea is an essential ingredient of an offence.

Words denoting Mens Rea in IPC

Fraudulently:

According to Section 25 “A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise”. The expression ‘defraud’ involves two elements, viz., deceit and injury to the person deceived. According to Sir James Stephen, a particular conclusive test as to the fraudulent character of a deception for criminal purposes is this: Did the author of the deceit derive any advantage from it which he could not have had if that truth had been known? If so it is hardly possible that advantage should not have had an equivalent in loss or risk of loss, to someone else, and if so, there was fraud. The word as used in the Code is used in its ordinary and popular acceptance.

In *Shashi Bhushan v. King-Emperor*, the accused applied for admission to L.L.B. (Final) class in Benaras University alleging that he had attended LL.B. (Previous) class in Lucknow Canning College. He was admitted and required to produce a certificate in support of proof of having passed LL.B. (Previous) examination. He produced a forged certificate and it was held that he acted fraudulently.

Dishonestly:

‘Dishonestly’ according to **Section 24** means, “Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another, is said to do that thing dishonestly”. According to **Section 23**, “Wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled and wrongful loss is the loss by unlawful means of property to which the person losing it is legally entitled.

A person is said to gain wrongfully when he either retains or acquires wrongfully. Similarly losing wrongfully means that the person is either wrongfully kept out of any property or is deprived of property. The gain or loss must be material and not remote.

CHRYsalis IAS ACADEMY

Voluntarily:

According to **Section 39**, “A person is said to cause an effect voluntarily when he causes it by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.” In its ordinary sense, the word ‘voluntarily’ means an act done without influence or compulsion. The section, therefore, emphasises the well-known rule of law that a man is presumed to intend the probable consequences of his acts.

Voluntarily causing an effect embraces,

- i) with intention to cause the effect,
- ii) with the knowledge of likelihood of causing the effect, and
- iii) having reason to believe that the effect is likely to be caused.

✓ **Intention:**

It means to have in mind a fixed purpose to reach a desired objective, so it indicates that a man is consciously shaping his conduct so as to bring about a certain event. In simple words intention is the purpose or design with which an act is done. ‘Intention’ differs from motive and law takes notice of intention only. If intention is criminal, law provides punishment even though the act is done with the best of motive. In *Emperor v. Raghu Nath Rai*⁴⁹, a Hindu took away a calf from a Mohammedan’s house without his knowledge and consent in order to save it from slaughter. The accused was held guilty of theft and rioting although he acted with the best of motive to save the life of the sacred cow. Motive is relevant only in ascertaining the guilt of the accused as it is directed to the ultimate end, good or bad, which a person hopes to secure. As such motive, object or design of a person should never be confused with his intention.

In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge.

✓ **Knowledge:**

It means having mental cognition of a thing or it is the awareness or expectations of the consequence of the act. The main difference between knowledge and intention is that in the former the consequence is not desired whereas in the later it is desired.

✓ **Reason to believe:**

According to Section 26, means, “A person is said to have reason to believe a thing if he has sufficient cause to believe that thing but not otherwise.”

In short, the word ‘voluntary’ as used in Section 39 is very important and does not mean willingly but knowingly or intentionally.

CHRYsalis IAS ACADEMY

Mens rea and statutory crimes

The application of doctrine of mens rea to statutory offences was uncertain up to 1947.

In **R. v. Prince(1875)**, Prince Henry was tried for having unlawfully taken away an unmarried girl, below the age of 16 years, out of the lawful possession and against the will of her father, under the belief that she was eighteen. The jury found upon evidence that before the defendant took her away, the girl had told him that she was 18. It was held that the prisoner's belief about the age of the girl was no defence. It was argued that the statute did not insist on this knowledge of the accused that the girl was under 16 as necessary for conviction, the doctrine of mens rea, should, nevertheless, be applied and conviction be set aside in the absence of criminal intention. Sixteen judge tried the case and all but one unanimously held the prince guilty. Brett J. who gave a dissenting judgment, was of the view that in order to constitute an offence mens rea is essential and it was necessary for the prosecution to prove mens rea on the part of the accused. Bramwell J. said that in offences which are legal wrongs (*malum prohibitum-wrong only because it is prohibited*) it is the duty of the prosecution to establish mens rea, but in offences which are *malum in se(wrong in itself)* both moral as well as legal harm, mens rea is presumed and it need not be proved specifically. Thus, the accused was convicted as he had committed an act which was forbidden by the statute and it was not only a legal wrong but also a moral wrong.

The decision is very controversial and has been the subject of criticism by many writers. Jerome Hall, an American jurist said that the decision was evidently influenced by the concern for the protection of young girls from sex offenders and the judges who decided this case shared the indignation with the public in such cases. The decision has been regarded as unsatisfactory by Russel, as it is in conflict with the established principles of criminal law.

In the other case of **R. v. Tolson(1889)**, the accused was tried under Section 57 of the Offences against the Person Act 1861 for having committed the offence of bigamy. Under this section it was an offence for a married person to contract a second marriage during the lifetime of the husband or wife as the case may be. In this case Mrs. Tolson was married to Mr. Tolson in 1880 and after one year in 1881 she was deserted by her husband. She made all possible enquiries about him and ultimately came to know that her husband had been destroyed in a ship bound for America. Therefore, supposing herself to be a widow she married another man in 1887. The whole story was known to the second husband and the marriage was not a secrecy. In the meantime, Mr. Tolson suddenly reappeared and Mrs. Tolson was charged accordingly. In the trial court she was convicted for one day's imprisonment on the ground that a belief in good

CHRYSLIS IAS ACADEMY

faith and on reasonable facts about the death of her husband is no defence to the charge of bigamy. The accused went to the higher court by way of appeal.

The question before the Court of Appeal was whether Mrs. Tolson had guilty intention in committing the offence of bigamy. The court by majority set aside the conviction on the ground that a bona fide belief about the death of the first husband at the time of second marriage is a good defence in an offence of bigamy. The court also laid down that the doctrine of *mens rea* would be applied in statutory offences also, unless the same is ruled out by the statute either expressly or by necessary implication.

Thereafter there had been much confusion about the application of the doctrine to statutory offences and it had been said that there is an eclipse of *mens rea* in statutory offences.

The doctrine was resurrected in the case of *Brend v. Wood* (1946), wherein it was held that *mens rea* is an essential element of crime in every penal statute unless the same is either expressly or by necessary implication ruled out by the statute.

This position of law was followed in India post-independence too. In the case of *Nathulal v. State of MP*, it was held that *mens rea* by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated. 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 good grains and sent returns to the licensing authority who on checking found that it was in excess of the quantity permitted by Section 7 of the M. P. Food Grains Dealers Licensing Order, 1958. The accused on being prosecuted was, however, acquitted on the ground that he had no guilty mind. The Supreme Court in its judgment observed:

“The accused was under a bona fide impression that the licence in regard to which he had made an application was issued to him though not actually sent to him. The fact that the licensing authority did not communicate to him the rejection of his application confirmed the accused’s belief. It was on that belief that he stored the food grains and was sending returns to the authorities concerned. He could not, therefore, be said to have intentionally contravened the statutory provisions.”

III. WRONGFUL ACT (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. Professor Jerome Hall said that something in addition to a *mens rea* is required to produce a criminal harm. There must also be

CHRYSLIS IAS ACADEMY

a manifestation of *mens rea* in the external world. Thus *mens rea* can manifest itself in the form of the following acts:

1. The act may be either **positive or negative**:

- Positive - wrongdoer does that which he ought not to do
- Negative – wrongdoer omits to do that which he ought to do.

2. The act may either be **internal or external**.

- Internal - acts of the mind. Eg – To think
- External - acts of the body. Eg – To speak

Every external act involves more or less an internal act which is related to it although the converse is not always true.

3. The act may be **intentional or unintentional**:

- Intentional - when it is the outcome of a determination of the persons will directed to the end or when it is foreseen and desired by the doer.
- Unintentional - when it is not the result of any determination of the will and when it is not desired.

Every act is made up of the following three factors:

- i) *its origin in some mental or bodily activity*
- ii) *its circumstances*
- iii) *its consequences*

For example, the act of shooting involves all these factors.

- Firstly, there is a physical doing.
- Secondly, a person is in the range of the revolver and also the revolver is loaded.
- Thirdly, the consequences follow namely, the trigger falls, the bullet is discharged and the bullet enters the body of the victim.

Where the law prohibits an act it prohibits an act in respect of its origin, its circumstances and its consequences. Circumstances and consequences may be relevant or irrelevant. Out of the numerous circumstances and the endless chain of consequences, the law selects some as material and they alone constitute the wrongful act the rest being irrelevant.

IV. INJURY

The fourth requirement in crime is the injury to another person or to society at large.

According to **Section 44** of IPC the word “injury” denotes any harm whatever illegally caused to any person in body, mind, reputation or property.

Thus the injury should be:

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- illegally caused to any person
- in body, mind, reputation or property.

The word injury is of wide connotation and includes all injuries caused by tortious act.

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