

Course – LL.B(sem-4)
Penology (unit – 1)
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Concept of Crime

✓ 1. Crime: Meaning and Definition

Introduction: Crime is a social phenomena. It changes from time to time, from age to age and from community to community. What is crime in one place may not be a crime in another place. E.g.: Adultery is an offence in India under Sec.497 I.P.C. But, it is no crime in another Country. E.g.: Bigamy is an offence under Sec.494

Definition: It is very difficult to define crime since it is a dynamic concept. Number of jurists attempted to define crime from sociological point of view.

i) **Sociological Definition of Crime by Garofolo:** Garofolo, an eminent Italian Criminologist, attempted to give sociological definition of crime. According to him *“Those acts, -which no civilized society can refuse to recognise as criminal and redress by means of punishment”* He points out that an act to be criminal, it must be harmful to the society and it must be condemned by the society.

Thus, “Crime is an immoral and harmful act that is regarded as criminal by public opinion, because it is an injury to so much of the moral sense as it represented by one or the other of the elementary altruistic sentiments of pity and probity”.

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2. Elements of Crime

To constitute crime, there must exist four elements, namely-

- i) Human Being.
- ii) Physical act or Actus Reus (Act or Omission).
- iii) Mental element or Mens Rea and
- iv) Injury or consequence.

ii) **Physical Act or Actus Reus (Act or Omission):** The expression 'Actus Reus' denotes 'Physical Act', which includes an act or omission as well. To constitute crime, there must exist commission or omission of an illegal act. When the intention is to do a prohibited act, it is known as 'actus reus'. The term act is defined in Secs.32 and 33 of I.P.C.

Omprakash vs. State of Punjab AIR 1956 All. 241 - In this case, the accused omitted to provide food to his wife and locked her in a room. She had escaped and charged him. The Supreme Court convicted the accused for attempt to commit murder.

ii) **Mental Element or Mens Rea:** It is the most essential element, which forms basis for criminal liability. It means mental element or evil-intent. It is expressed in the Latin maxim "*Actus*

Non Facit Reum Nisi Mens Sit Rea", which means "an act itself is no crime, unless it is coupled with an evil intent". E.g. If 'A' causes 'B's death intentionally, 'A' is punishable for life imprisonment or death sentence under Sec.302 I.P.C. Suppose, 'A' causes 'B's death by an inevitable accident, 'A' is totally exempted from the criminal liability. If there is negligence on the part of 'A' in committing the accident 'A' is punished up to 2 years imprisonment under Sec.304-A. In case of the former, (intentional killing) mens rea is present and hence serious punishment is awarded. Where as in case of the latter, mens rea is absent and hence, no punishment/ small punishment is awarded. Therefore, mens rea forms basis for criminal liability.

iv) **Injury or Consequence:** The last ingredient to constitute Crime is 'Injury'. Injury means to cause harm to any person in body, mind, reputation or property. The term injury is defined in Sec.44 of I.P.C. The act by which injury is caused must be illegal.

Human Being: The first essential element of crime is that it must have been committed by a human being. Generally both the wrong doer and aggrieved/injured/deceased are human beings, hi olden days, animals also were punished for committing crimes. (At present, its owner is subject to Civil/Tortious liability - Scianter Rule. Under the Wild Life (Protection) Act, 1972, wild life (Tiger, Deer etc.) forms part and parcel of the environment. Any person, who contravenes/ violates the provisions of the Act is punishable with imprisonment for a term, which may extend to three years or with fine, which may extend to Rs.25000/- or with both).

Thank you !!!

