

PAHUJA LAW ACADEMY

Notes on IPC for CLAT/DU.LL.B.

Lecture I – Introduction

Introduction:-

- ❖ **LAW OF CRIMES (INDIAN PENAL CODE)**
- ❖ According to **Austin** “Crime is any act or omission which the Law punishes.”
“Offence” is defined as an act punishable under the Indian penal code.
- ❖ According to **Blackstone**, a crime is an act done in violation of public law.
- ❖ Everything that is declared to be crime by law made by competent authority is crime. A list of such acts declared as crime can be found in IPC.
- ❖ An act punishable by law as forbidden by statute is known as a Crime.
- ❖ **State punishes the wrongdoers through its agency (law and order mechanisms in place), as the State is under obligation to ensure peace and security in society.**
- ❖ *To Administer Justice, Law Machinery sets general principle of Criminal liability.*



- ❖ Motive is not an essential for a crime.
- ❖ **CRIME = PERSON + MENS-REA + ACT + RESULT**

Purpose

The purpose of Indian Penal Code is to protect persons and property against intentional violence, unintended harm and the protection of property against theft, fraud or damages.

Features of Indian Penal Code

- ❖ The Indian Penal Code was enacted (to establish by law) in 1860 and was enforced (to put into execution) in 1862.
- ❖ Lord Macaulay acted as the chairman of the drafting committee of the IPC.
- ❖ Basically, IPC is a piece of substantive law.
- ❖ A substantive law merely defines various 'offences' or 'crimes' and states the maximum punishment that can be meted out in each case.
- ❖ It does not tell the procedure by which the accused is prosecuted and punished. The Code of Criminal Procedure, 1973, addresses these procedural aspects of criminal law.
- ❖ The Indian Penal Code applies to the whole of India except for the state of Jammu & Kashmir. It contains **23 Chapters and 511 Sections**. Before the Indian Penal Code came into effect, the Mohammedan Criminal Law was applied to both Mohammedans and Hindus in India.

Nature of Crime

- ❖ Place
A crime varies from place to place. Adultery is an offence in India under Sec. 497 of IPC, but not an offence in America. It is a Civil wrong in England.
- ❖ Time
A crime also changes from time to time. Consumption of Alcoholic drinks is a crime during prohibition, but not in case the prohibition is lifted.
- ❖ Harm
- ❖ Brought about by Human Conduct
- ❖ Sovereign state desires to prevent it
- ❖ Measure for prevention includes threat of Punishment
- ❖ Special proceedings employed to decide whether the accused has caused the harm and inflicting punishment

DISTINCTION BETWEEN CRIME AND OTHER WRONGS

Tort is a kind of Civil Wrong. A Civil Wrong is a Private Wrong and is redressible in a Civil Court.

- Differences between Tort and a Crime

<u>TORT</u>	<u>CRIME</u>
<i>Tort is tried in Civil Courts</i>	<i>Crimes are tried in Criminal Courts</i>
<i>A person who commits Tort is a 'tortfeasor'</i>	<i>A person who commits Crime is a 'Criminal' or 'Offender'</i>
<i>The remedy of tort is unliquidated damages or other equitable relief to the injured</i>	<i>The remedy is to punish the offender</i>
<i>Tort litigation is compoundable</i>	<i>Criminal cases are not compoundable except in case of exceptions as per Section 320 Cr.PC of IPC</i>

Distinction between Crime and Breach of Contract

A Contract is an agreement entered into between two or more parties/persons subject to certain terms and conditions for a lawful consideration.

Basic Concepts Under Criminal Law

Maxim “Actus Non Facit Reum Nisi Mens Sit Rea”

Act does not constitute guilt unless done with a guilty intent.

Ingredients of Crime:

1. *Actus Reus means an act Prohibited by Law*

2. *Mens Rea means guilty mind*

Note : Omission or commission of an act prohibited by law constitutes an offence

Existence of legal duty

“**Mens Rea**” refers to the mental element necessary to the particular crime and the mental element may be either intention to the immediate act or bring about the consequence or recklessness as to such act or consequence.

Ø Legal Presumption - a man has to have intended the Natural Consequence of his acts.

Mens Rea is not required in following offences. Exceptions to “Mens Rea”

(i) Offences against state: Waging War, Sedition

(ii) **Kidnapping** (Whoever conveys any person beyond the limits of India without the consent of that person or of some person legally authorized to consent on behalf of that person, is said to **kidnap** that person from India) and **Abduction** (Whoever by force

compels, or by any **deceitful means** induces, any person **to go from any place** is said to abduct that person.)

(iii) Counterfeiting Indian coins

Maxim “Ignorancia Juris Non Excusat”

- Ø Ignorance of law is not an excuse in criminal Law.
- Ø Mistake of fact is allowed but Mistake of Law can't be ignored.
- Ø Lex Loci : Even a Foreigner must know Law of the land.

When does an act constitute a crime?

- **Act has to be a voluntary** act - Act means a conscious or willful movement. It is only voluntary act that amounts to offence if at all.
- **An act per se does not constitute crime.** In order to constitute criminal liability, it is not sufficient that there is *mens rea* or that there is some action; the *actus* must be *reus* i.e. the act should be prohibited by law, and there should be *mens rea* or guilty intention behind the act
- **Act should result in harm.** Exceptions exist: it is not necessary that act should result in harm in case of offences like treason, forgery - these are *per se* offences.
- **Act to be direct cause of harm** - Causation. When the causing of harm is a requisite of an offence, then such harm should have a causal effect of the act.

The harm must be a direct result of the act i.e. *causa causans* - the immediate cause. It is not enough that it may be the proximate cause

Mens Rea + Actus Reus

Mens rea is criminal intention while Actus Reus is the criminal action. It is important that the criminal act must be accompanied by guilty intent. Without bad intention, there can be no crime even if there is harm caused by an action that fits the description of an offence/crime.

For instance,

X as a part of prank on Y, took away Y's notebook with him to his home with the intention to return it later. Here X cannot be said to have committed theft as there is no guilty intention.

• Criminal Act

The criminal act *per se* is termed as *Actus Reus*. *Actus reus* includes all the acts specified in the rule of law as constituting a forbidden act.

It's basically the whole of crime except the mental element.

- **Guilty intention**

The term *mens rea* refers to the volition, which is the motive force behind the criminal act. An act becomes criminal only when it is done with guilty mind.

- However, cases of negligence stand as an exception. A negligent state of mind is a guilty state of mind – as long as the negligence is deliberate or reckless or involves careless disregard for lives or properties of others.

- **Negligence** is a case of inadvertence. A person is negligent if he fails to exercise such care, skill or foresight as a reasonable man in his situation would exercise.

Example:

A doctor forgets to take off a morphin drip inserted into the vein of a patient after he is sufficiently sedated. A doctor knows that such negligence can result in death or paralysis of the patient. Such reckless disregard for the life of the patient is enough to establish guilty state of mind.

General Defences

A person is generally responsible for his act accompanied by *mens rea*. However, there are certain exceptions. Accused can use these general defenses to escape liability.

Accident - Nothing is an offence which happens due to accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper caution and care

Mistake of fact - Nothing is an offence which is done by a person who is, or who by reason of mistake of fact and not by reason of a mistake of law in good faith believes himself to be bound or justified in doing such act.

Act of child (tender age) - Nothing is an offence which is done by a child below 7yrs of age. Such a child is excused because he does not have sufficient maturity or understanding to judge the nature and consequences of his act and conduct. Between 7 and 12 years of age culpability depends on whether the child understood the nature and consequences of his action. Above 12 years of age a child is presumed to understand the nature and consequence of his acts.

Insanity - Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act.

However, to be benefited by this defense, it is necessary that the person is unable to understand the nature and consequences of what he is doing.

For instance,

X is of unsound mind and is accused of slashing Y's throat. According to X, he just wanted to play prank with Y, he wanted to hide Y's head while Y was sleeping and that is why he took it and planned to return Y's head once he got up. Here X can claim defense of Insanity as he is unable to understand the nature and consequences of his act.

Intoxication - Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or the fact that what he is doing is wrong or contrary to law.

However, the thing that intoxicated him should have been administered to him without his knowledge or against his will.

The person who has voluntarily intoxicated himself cannot take the defense of intoxication for the acts committed in intoxicated state.

For instance,

X had a break up, to solace him, X's friend took him to a bar and got him drunk. While returning from bar, X ran over someone walking on a footpath due to reckless driving. During prosecution X took the defense of Intoxication. However, the defense of intoxication cannot be availed by X as the thing which intoxicated him was not administered to him against his will or without his knowledge.

Private defense - The right of private defense is based on the cardinal principle that it is the primary duty of a man to help himself. Self preservation is the prime instinct of every human being.

- Nothing is an offence which is done in the exercise of the right of private defence
- Every person has the right to protect his own body and the body of other persons against any offence against the human body.
- Every person has the right to protect property of himself or others against any offence falling under the definition of theft, robbery etc.
- Private defense upholds the principle of self preservation. However, to get the benefit of private defense acts done in private defense should be proportionate to the harm faced.
- **For instance,**

X showed a knife to Y and asked Y to handover all the valuables he is having to X. Y took out a revolver from his pocket, after seeing the knife, and Y started running away. In spite of that X fired from the revolver, hitting Y on his back which caused his death.

Here the force used by X on pretext of self defense was not proportionate to the threat possessed by Y. Hence, he cannot claim the benefit under the right of self defense

Other Defences- Necessity, Act done in good faith.

Offence

- ❖ Since there is no satisfactory definition of Crime, the Indian Penal Code, 1860 uses the word '**Offence**' in place of **Crime**.
- ❖ Section 40 of the IPC defines Offence as an act punishable by the Code. An Offence takes place in two ways, either by commission of an act or by omission of an act.
- ❖ When a Crime is done, any member of the public can institute proceedings against the person accused of the offence. Only in certain exceptional cases, the persons concerned alone can institute the criminal proceedings.
- ❖ Example of such crimes include Matrimonial cases, dowry cases, defamation etc.

Types of crime:-

Types Of Crime

- Crimes against human body and life
- Crimes against property
- Crimes against public peace and order (treason, sedition ,etc)
- Crimes against religion
- crimes against the family and moral of family institution (eg. Bigamy, Adultery,etc)

Stages Of Crime:- (Commission of a crime involves **FOUR** stages.....)

STAGES OF CRIME

Stage I - Intention

Stage II - Preparation

Stage III - Attempt

Stage IV - Accomplishment

I. Offences in which **INTENTION** is punishable

- Abetments , Criminal Conspiracy
- **Section 121 to 123** : Waging war against the Govt.
- **Section 124** : Sedition

- **Section 402** : Mere assembly of persons for committing the dacoity without further preparation

II. Offences in which **PREPARATION** is punishable

- **Section 122** : Collecting arms, etc., with intention of waging war against the Government of INDIA
- **Section 126** : Committing depredation on territories of Power at peace with the Government of INDIA
- **Section 399** : Making preparation to commit dacoity
- **Section 276** : Sale of drug as a different drug or preparation
- **Section 233 to 235 & 257** : Preparation for Counterfeiting coins & Govt. stamps
- **Section 242 , 243, 259, 266 & 474** : Possession counterfeit coins, false weight or measurement and forged documents

III. Offences in which **ATTEMPT** is punishable

- **Section 307** : Attempt to murder
- **Section 308** : Attempt to commit culpable homicide
- **Section 309** : Attempt to commit suicide
- **Section 326B** : Attempt to acid attack
- **Sector 393** : Attempt to commit robbery
- **Sector 398** : Attempt to commit robbery or dacoity when armed with deadly weapon
- **Sector 511** : Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment

⇒ Difference between preparation and attempt:

Preparation consists in devising /arranging the means necessary for the commission of the offence. Attempt is a direct movement towards the commission after the preparation is made.

Example:

A person buys a gun, loads it and declares his intention to shoot a person, but until some movement, is made to use the weapon upon his intended victim, there is only preparation and not an attempt.

IV. Offences in which **ACCOMPLISHMENT** is punishable

- **All offences except those specified under List-I, II and III.**