

Subject: Criminology

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Paper : Fundamentals of Crime, Criminal Law and Criminal Justice

Module : Elements of Crime



ज्ञान-विज्ञान विमुक्तये

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Quadrant I- Description of the Module

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Description of Module	
Subject Name	Criminology
Paper Name	Fundamentals of Crime, Criminal Law and Criminal Justice
Module Name/Title	Elements of Crime
Module Id	10
Pre-requisites	A general understanding of the primary principles of criminal law is required for a proper understanding of this module.
Objectives	<p>To have a basic understanding of the concept of crime</p> <p>To appreciate the difference between elements of a crime which are specific to the crime in question and elements which are common in most crimes.</p> <p>To understand the foundational elements which are common to most crimes.</p> <p>To understand the meaning and dimensions of the concept of <i>mens rea</i></p> <p>To understand the meaning and dimension of the concept of <i>actus reus</i></p>
Key Words	Elements of crime, actus reus, mens rea, human being, injury, <i>Actus non facit reum nisi mens sit rea</i>

Quadrant- II- E-Text

Introduction



To understand the various essential elements of crime, it is important to first have a brief idea about the foundational concept of a crime. A crime is a designated wrong which attracts the punitive mechanism of the state against the person or persons committing the said wrong.¹ It is distinguished from a tortuous wrong or a civil wrong in a very fundamental manner.² A civil wrong or a tortuous wrong is a wrong against an individual or at times may also be against a group of individuals. The wronged individuals then have the liberty to pursue a remedy provided by the law against the wrongdoer. However, in case of a criminal wrong, though the immediate victim of the crime may again be an individual or group of individuals, the nature of the wrong is such that it is deemed to be an act against the society. Thus, a crime is not only considered harmful to the individual or group of individuals who have been the victims of the crime, it is also deemed harmful to the society at large.³ This difference is the reason behind the state taking up the responsibility to punish those who have committed a crime whereas the pursuit of a redressal for a civil or tortuous wrong is left to the discretion of the wronged individuals or group of individuals.⁴

As a crime is considered a wrong not simply against the wronged individual or group of individuals but against the society at large, the consequences attached to the commission of a crime also differ fundamentally from those that are attached to the commission of a civil or tortuous wrong. The primary remedy in case of a civil or tortuous wrong is monetary compensation that the wrongdoer must pay to the individuals or group of individuals he has wronged. Monetary compensation is deemed an adequate remedy as the specific loss the individual or the group of individuals suffer due to the wrong is deemed capable of being measured in terms of money. However, when the crime committed not simply affects the immediate victims but also the society at large, the interests of the society cannot be measured when the wrongdoers pay a monetary compensation to the wronged individual or group of individuals. Thus, the consequences attached to the commission of a crime are primarily punitive in nature⁵ which involve imprisonment, fine and at times also death.

The classification of wrongs which affect the society at large and those which do not is at the core of any criminal justice system. The principles on the basis of which this classification should be done form the foundation of the criminological debate. Some wrongs may be classified as crime due to the inherent violent nature of such acts which is against the basic societal principle of safety and security. Example of such offences are robbery, assault etc. Some acts are classified as crimes because they strike at some fundamental social institutions. One example of such a crime is the offence of bigamy. Some other acts are determined as offences because the society considers them to be inherently immoral. A striking example of such a crime is the act of engaging in homosexual acts. The choice of such principles on the basis of which criminal conduct would be classified and the determination of the exact boundaries of such principles is a subjective exercise consisting of societal influences, ideological underpinnings and value judgments.⁶ Though many crimes are almost universal in nature (theft, murder etc), the detailed classification of criminal conduct can vary from society to society, especially when the classification is based on

¹ Mishra, S.N., (2004) *Indian Penal Code* (pp. 1-4)

² Nigam, R.C., (1964) *Law of Crimes in India* (Vol. 1, pp. 26-28)

³ Vibhute, K.I., (2011) *Criminal Law* (pp. 3-5)

⁴ Mishra, S.N., (2004) *Indian Penal Code* (pp. 1-4)

⁵ Mishra, S.N., (2004) *Indian Penal Code* (pp. 1-4)

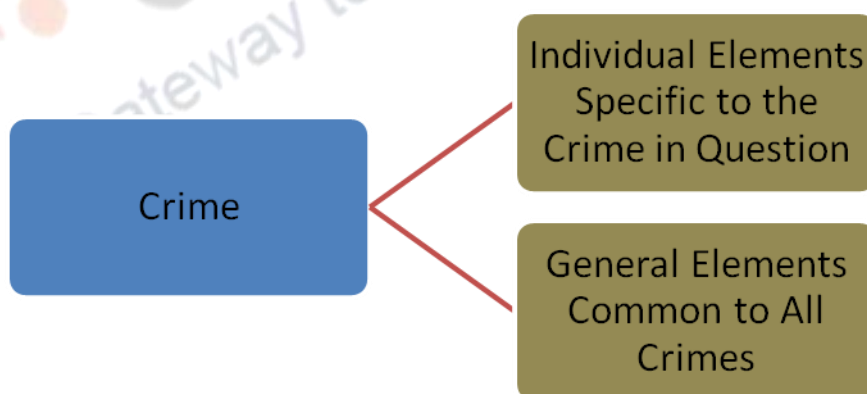
⁶ Nigam, R.C., (1964) *Law of Crimes in India* (Vol. 1, pp. 26-28)

principles of morality. Thus, an act which is considered a crime in one society may not be considered in another. For example, though engaging in homosexual acts is considered a crime in India, the same is not considered a crime in many European countries.⁷

Understanding 'Elements of Crime'

While the basic constituents of each crime would necessarily be different from that of the other, the concept of 'elements of crime' refers to a set of general characteristics which are to be found in each crime. The specific conduct which is classified as a crime is a subjective choice which may differ in identity and detail from jurisdiction to jurisdiction and from crime to crime, these general characteristics can be described as the objective elements of the crime which will almost remain common in all kinds of crime in all jurisdictions. An example of the specific element in a crime which may be called the subjective element can be understood when we consider the example of Theft and Rape. The specific element in the offence of theft is that A takes away the property of B without B's consent with a dishonest intention. The specific element in the crime of Rape is that A has sexual intercourse with B without B's consent. While Theft is about a crime against the property of a human being, Rape is about a crime against the body of a human being. However, there are certain characteristics which go beyond these subjective specifics of both the Theft and Rape and can be said to be common to both. For example, in both cases the person committing the crime is a human being. In both the cases, A is doing something which is expressly forbidden by law. In both the cases, the actions of A cannot be described as accidental and can be said to be intentional in nature.

The concept of 'Elements of Crime' deals with such foundational general principles which form the backbone of any description of criminal conduct. These elements provide the objective foundation on the basis of which the subjective specification of each individual crime is constructed.

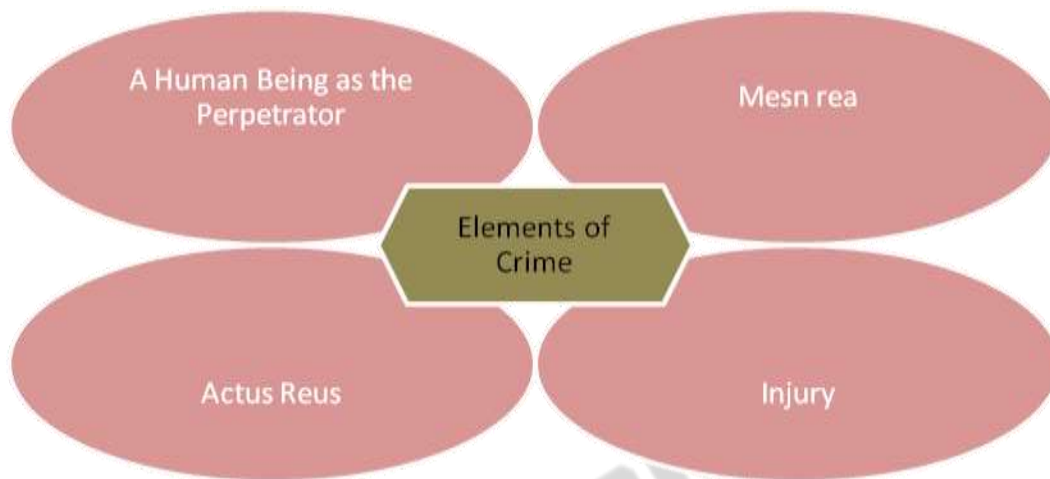


The Elements of Crime

The following four characteristics are the basic elements in all criminal conduct;

⁷ 76 countries where homosexuality is illegal (2016 November 29) Retrieved from Erasing 76 Crimes website: <https://76crimes.com/76-countries-where-homosexuality-is-illegal/>

1. Human being as the Perpetrator
2. Mens Rea
3. Actus Reus
4. Injury



Human Being

A crime can be committed only by a human being. The victims of a crime may be other human being or even animals but the perpetrator who is held liable for having committed a crime cannot be anybody other than a human being. It may be noted that in ancient and medieval times, even animals were held liable for having committed a crime. There have been several instances of trial being conducted against bull or a pig and then the bull or pig being punished for the crime.⁸ However, in modern times, it is a well accepted fact that only a human being can commit a crime. Section 11 of the Indian Penal Code defines a 'person' as including a legal person in the form of a company, association or body of persons and excludes animals from the definition.⁹

It is instructive to note that even when a legal person commits the crime, it is the natural person or group of person who are in control of the legal person who are held responsible for the crime. Thus, when a company is guilty of cheating, it is the directors and managers of the company who are imprisoned as a consequence. However, the development of law in modern times also imposes legal consequences on a legal person in the form of confiscation of property and other such measures by which companies and other such entities are held responsible.

It is also important to note that when we say that only a human being can commit a crime, he may commit the crime either himself directly or indirectly. Thus, it is possible that A injures B by setting his dog upon B. In such a case also, it is A who will be held liable for causing hurt to B as he is the one responsible for the injuries caused to B even though he might not have caused such injuries by his own hands.

⁸ Nigam, R.C., (1964) *Law of Crimes in India* (Vol. 1, pp. 38-40)

⁹ Indian Penal Code 1860, Section 11



Mens rea

The elements of 'Mens rea' and 'Actus Reus' have been derived from the Latin maxim of *Actus non facit reum nisi mens sit rea* which means; 'An act does not make a man guilty of a crime, unless his mind be also guilty.'

This maxim has formed the foundation of criminal liability in common law jurisdictions and over several centuries has acquired an irrefutable and undisputed solidity.¹⁰ In essence this maxim mandates that in order to hold person liable for any crime, two elements must be present;

1. The person must have committed an act (*Actus Reus*)
2. The person must have committed the act with a guilty mind (*Mens Rea*)

Thus, the element of *mens rea* mandates that X must not simply have done the act that he is accused of, but also must have done the act with a guilty mind. The concept of a guilty mind is not that of a malicious mind. It is the presence of such a state of mind in a person wherein he can be legitimately be held responsible for the acts committed by him under the provision of law. The element of *mens rea* implies a state of mind which is characterised by the presence of knowledge, intention, motive, negligence etc depending on the definitional requirements of the crime in question.¹¹ Thus *mens rea* is present when a person knew about the consequences of his act when under the provision of law, such awareness is sufficient to hold the person criminally liable. It is also present when a person acts negligently and fails to take the due care which a person of ordinary prudence ought to do. The fact that a person can be held mentally responsible for the acts committed by him forms the foundation of his criminal liability.¹²

It may be noted that the term *mens rea* has not been explicitly mentioned in any of the provisions of the Indian Penal Code. However, the concept pervades all the crimes enumerated therein by implication through use of words such as 'voluntarily', 'fraudulently', 'wilfully', 'intentionally', 'wrongfully', 'dishonestly', 'negligently' etc. Thus, the requisite *mens rea* in a given situation depends on the definition of the offence.

For example, Section 321 provides that when X causes hurt to Y by doing something with the intention to cause hurt to Y, he is said to 'voluntarily cause hurt'. The same is punishable under section 323. Thus, when X intentionally throws a rock at Y, he is aware about the physical consequences of the rock hitting Y. He would be liable for causing hurt to Y even

¹⁰Definition of Actus Reus Non Facit Reum Nisi Mens Sit Rea (2016 September 6) Retrieved Frome Duhaime website: <http://www.duhaime.org/LegalDictionary/A/ActusReusNonFacitReumNisiMensSitRea.aspx>

¹¹ J.C. Smith, (1960) *The Guilty Mind in Criminal Law* (L.Q.R 1 pp.76-77)

¹² Nigam, R.C., (1964) Chapter 4, *Law of Crimes in India* (Vol. 1)



though he was not meaning to hurt Y was only joking around. In this case, the awareness in X about the physical consequences of his act is sufficient *mens rea* to attract criminal liability.

When an act is an offence when committed with a dishonest intent, *mens rea* is present if the person had the dishonest intent. The person would not be liable simply because he did the act intentionally as long as he was not acting dishonestly. For example, section 378 of the Indian Penal Code defines theft as X taking dishonestly the movable property of Y without the consent of Y. In this case, it is not sufficient that X was aware about the physical consequences of taking a movable property of Y (for example a book) to his own house. It is also necessary that he must have done the act with a dishonest motive. Thus, when X has taken the book of Y innocently to read it and then return it, he is not guilty of theft as the *mens rea* as required under section 378 is absent. On the other hand, if X has taken the book with a view to gift it away to one of his cousins, he is guilty of theft as the requisite dishonest motive is present.

It is important to understand that for *mens rea* to be present, it is not necessary that a person intended for a specific crime. What is important to prove is he intended to commit the acts that he committed and was aware of the possible physical nature of the consequences, even though he might not have known that his acts constitute a crime.

For example, X, a private citizen captures a notorious thief (Y) and shoots Y in the head without there being any immediate threat or danger from Y. Here, as long as X was aware about the physical consequences of shooting a person in the head, he has committed a crime even though in his mind he was dispensing justice and not committing a murder.

Thus, in terms of intention, *mens rea* does not mean the intention to commit a crime but the intention to commit an act being aware about the physical consequences of the act. This is best exemplified by the illustration to section 39 which defines the term 'voluntarily'. According to section 39, X is said to do something voluntarily when X causes an effect by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it. The illustration to section 39 provides a scenario where for the purpose of facilitating a robbery, X sets fire to a residential house at night in an inhabited town. Due to the fire, a person (Y) who was sleeping in the house died. Here, the main purpose of X was to facilitate a robbery and he might not have intended to commit the offence of murder by causing the death Y but he will still be liable for the same as he knew such a consequence to be likely when setting fire to a residential house at night.

The element of *mens rea* can be also understood by exploring the situations where it is absent. Thus, when a person does something not voluntarily but under some coercion, *mens rea* is absent in such a situation. This is underscored by the maxim of *actus me invito factus non est mens actus* which is considered an accompanying principle to the fundamental principle of *Actus non facit reum nisi mens sit rea*. Literally, it means; an act done by me



against my will is not my act.¹³ This principle is also recognised in the Indian Penal Code under Section 94 wherein a person is excused from criminal liability when he commits the crime (other than murder or an offence against the state punishable with death) under threat to his life.

Also, *mens rea* is said to be absent when the act is committed under the influence of insanity or involuntary intoxication of a nature which deprives the person of the capacity to know the nature of his act. Similarly, an infant is excused from criminal liability due to the lack of maturity in understanding the nature of the acts committed by him. A person is also excused from criminal liability when the act committed is by mistake or due to an accident.

Exception to the Requirement of *Mens rea*

It is important to remember that though the element of *mens rea* is traditionally an inherent part of most definitions of crime, there are certain exceptions to the rule. There are certain situations where a person will be held guilty of a crime even though it may not be possible to hold him responsible for the alleged act. These are known as rules of strict liability when the commission of the act is itself a conclusive proof of the fault of the accused and the state of his mind plays no part in the determination of his guilt.

Actus Reus

Actus reus refers to the act forbidden by the law for the commission of which a person is held to be criminal liable. It is the other important element which is derived from the maxim of *Actus non facit reum nisi mens sit rea*. While the element of *mens rea* refers to the state of the mind of the accused while committing a physical act, the element of *actus reus* focuses on the very physical act which forms the subject matter of the crime. For example, when X takes a movable property from the possession of Y without the consent of Y with a dishonest motive, he is said to commit theft. Here the requisite *mens rea* consists of the dishonest motive on the part of X. The *actus reus* consists of the taking away of a movable property from the possession of Y. In simple terms, *actus reus* refers to the conduct (act or omission) which is forbidden by the law wherein the person engaging in the forbidden conduct is punishable by a sanction.

It is important to remember that there is nothing inherently criminal in an act unless the same has been forbidden by the law. For example, X, an executioner, executes Y, a prisoner by hanging him. Here X is not guilty of murder as his conduct is not forbidden by law but warranted by law.

It is important to remember that the *actus reus* constitutes not only of the actual commission of a forbidden act but also of the attempt to commit the forbidden act. Thus, when theft is a forbidden act, attempt to commit theft is also a forbidden act. On certain occasions, the attempt to commit a crime has been specifically described as a crime under the Indian Penal Code. For example, section 393 specifically provides that an attempt to commit robbery is a crime. Otherwise, section 511 of the Indian Penal Code lays down the general rule that

¹³ Nigam, R.C., (1964) *Law of Crimes in India* (Vol. 1, pp. 72-74)

whenever any offence is punishable with life imprisonment or imprisonment of any other kind, the attempt to commit such an offence is also punishable.

Injury

Lastly, in order to constitute a crime, there must be an injury ensuing to other individuals or to the society at large. The nature of the injury may vary depending on the nature of the conduct which is criminalised. Thus, the injury may be in the form of injury to the body, mind reputation or property of another human being. Crimes such as causing of hurt, commission of rape are injurious to the body of another person. Causing of mental harassment and infliction of mental cruelty are crimes against the mind of person. Defamation is a crime against the reputation of a person. Theft, robbery, trespass, misappropriation etc are crimes against the property of another person.



On certain occasions, the injury may not be one to a definite person or group of person but to the society at large. For example, a seditious speech may not in effect harm another individual but is sedition is considered one of the most grave offences under criminal law.

Summary

1. A crime is not only considered harmful to the individual or group of individuals who have been the victims of the crime, it is also deemed harmful to the society at large.
2. While the basic constituents of each crime would necessarily be different from that of the other, the concept of 'elements of crime' refers to a set of general characteristics which are to be found in each crime.
3. The concept of 'Elements of Crime' deals with such foundational general principles which form the backbone of any description of criminal conduct. These elements provide the objective foundation on the basis of which the subjective specification of each individual crime is constructed.
4. The four basic elements of crime are; a human being as the perpetrator, *mens rea*, *actus reus* and injury.
5. A crime can be committed only by a human being. The victims of a crime may be other human being or even animals but the perpetrator who is held liable for having committed a crime cannot be anybody other than a human being.



6. The elements of 'Mens Rea' and 'Actus Reus' have been derived from the Latin maxim of *Actus non facit reum nisi mens sit rea* which means; 'An act does not make a man guilty of a crime, unless his mind be also guilty.'
7. *Mens rea* is the presence of such a state of mind in a person wherein he can be legitimately be held responsible for the acts committed by him under the provision of law.
8. The element of *mens rea* implies a state of mind which is characterised by the presence of knowledge, intention, motive, negligence etc depending on the definitional requirements of the crime in question.
9. It may be noted that the term *mens rea* has not been explicitly mentioned in any of the provisions of the Indian Penal Code. However, the concept pervades all the crimes enumerated therein by implication through use of words such as 'voluntarily', 'fraudulently', 'wilfully' 'intentionally', 'wrongfully', 'dishonestly', 'negligently' etc.
10. Though the element of *mens rea* is traditionally an inherent part of most definitions of crime, there are certain exceptions to the rule. These are known as rules of strict liability when the commission of the act is itself a conclusive proof of the fault of the accused and the state of his mind plays no part in the determination of his guilt.
11. While the element of *mens rea* refers to the state of the mind of the accused while committing a physical act, the element of *actus reus* focuses on the very physical act which forms the subject matter of the crime.
12. It is important to remember that the *actus reus* constitutes not only of the actual commission of a forbidden act but also of the attempt to commit the forbidden act.
13. In order to constitute a crime, there must be an injury ensuing to other individuals or to the society at large. The injury may be in the form of injury to the body, mind reputation or property of another human being.