

## CONSTITUENT ELEMENTS OF CRIME

### ELEMENTS OF A CRIME

The two elements of crime are mens rea and *actus reus*. Apart from these two elements that go to make up a crime, there are two more indispensable elements, namely, first, “a human being under a legal obligation to act in a particular way and a fit subject for the infliction of appropriate punishment,” and secondly, “an injury to another human being or to the society at large.”<sup>1</sup> Thus the four elements that go to constitute a crime are as follows: first, a human being under a legal obligation to act in a particular way and a fit subject for the infliction of appropriate punishment; secondly, an evil intent or mens rea on the part of such human being; thirdly, *actus reus*, i.e., act committed or omitted in furtherance of such an intent; and fourthly, an injury to another human being or to society at large by such an act.

**A Human Being:** The first element requires that the act should have been done by a human being before it can constitute a crime punishable at law. The human being must be “under a legal obligation to act, and capable of being punished.”

**Mens Rea:** The second element, which is an important essential of a crime, is mens rea or guilty mind. In the entire field of criminal law there is no important doctrine than that of mens rea. The fundamental principle of English Criminal jurisprudence, to use a maxim which has been familiar to lawyers following the common law for several centuries, is “*actus non facit reum nisi mens sit rea*.” Mens rea is the state of mind indicating culpability, which is required by statute as an element of a crime.<sup>2</sup> It is commonly taken to mean some blameworthy mental condition, whether constituted by intention or knowledge or otherwise, the absence of which on any particular occasion negatives the intention of a crime. The term ‘mens rea’ has been given to volition, which is the motive force behind the criminal act.<sup>3</sup> It is also one of the essential ingredients of criminal liability.<sup>4</sup>

As a general rule every crime requires a mental element,<sup>5</sup> the nature of which will depend upon the definition of the particular crime in question. Even in crimes of strict liability some mental element is required.<sup>6</sup> Expressions connoting the requirement of a mental element include: ‘with intent’, ‘recklessly’, ‘unlawfully’, ‘maliciously’, ‘unlawfully and maliciously’, ‘wilfully’, ‘knowingly’, ‘knowing or believing’, ‘fraudulently’, ‘dishonestly’, ‘corruptly’, ‘allowing’, and ‘permitting’. Each of these expressions is capable of bearing a meaning, which differs from that ascribed to any other. The meaning of each must be determined in the context in which it appears, and the same expression may bear a different meaning in different contexts. Under the IPC, guilt in respect of almost all offences is fastened either on the ground of intention or knowledge or reason to believe.<sup>7</sup> All the offences under the Code are qualified by one or the other words such as wrongful gain or wrongful loss, dishonestly, fraudulently, reason to believe, criminal knowledge or intention, intentional co-operation, voluntarily, malignantly, wantonly. All these words describe the mental condition required at the time of commission of the offence, in order to constitute an offence. Thus, though the word mens rea as such is nowhere found in the IPC, its essence is reflected in almost all the provisions of the code.<sup>8</sup> The existence of the mental element or guilty mind or mens rea at the time of commission of the *actus reus* or the act alone will make the act an offence.

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<sup>1</sup> Huda, *Principles of the Law of Crimes*, p. 14.

<sup>2</sup> *Staples v. United States*, 511 US 600 (1994).

<sup>3</sup> *State v. B.D. Meattle*, AIR 1957 Punj 74; 1957 CrLJ 427.

<sup>4</sup> *State of Maharashtra v. Mayer Hans George*, AIR 1965 SC 722.

<sup>5</sup> See, *R. v. Larsonneur* (1933) 23 Cr App Rep 74, CCA. Even in crimes of strict liability some mental element is required.

<sup>6</sup> *Halsbury Laws of England, Criminal Law* 11(1) (1990) p. 9-29.

<sup>7</sup> *Jyoti Parshad v. State of Haryana*, AIR 1993 SC 167.

<sup>8</sup> *V Suresh & D Nagasaila*, (ed.) *PSA Pillai's Criminal Law* (9<sup>th</sup> ed. 2000) p. 41.

Generally, subject to both qualification and exception, a person is not criminally liable for a crime unless he intends to cause, foresees that he will probably cause, or at the lowest, foresees that he may cause, the elements which constitute the crime in question. Although the view has been expressed that it is impossible to ascribe any particular meaning to the term *mens rea*, concepts such as those of intention, recklessness and knowledge are commonly used as the basis for criminal liability and in some respects may be said to be fundamental to it:

**Intention:** To intend is to have in mind a fixed purpose to reach a desired objective; it is used to denote the state of mind of a man who not only foresees but also desires the possible consequences of his conduct. The idea foresees but also desires the possible consequences of his conduct. The idea of 'intention' in law is not always expressed by the words 'intention', 'intentionally' or 'with intent to'. It is expressed also by words such as 'voluntarily', 'wilfully' or 'deliberately' etc. Section 298 IPC makes the uttering of words or making gestures with deliberate intent to wound the religious feelings punishable under the Act. ON a plain reading of the section, the words 'deliberate' and 'intent' seem synonymous. An act is intentional if, and in so far as it exists in idea before it exists in fact, the idea realizing itself in the fact because of the desire by which it is accompanied. Intention does not mean ultimate aim and object. Nor is it a synonym for motive.

**Transferred intention:** Where a person intends to commit a particular crime and brings about the elements which constitute that crime, he may be convicted notwithstanding that the crime takes effect in a manner which was unintended or unforeseen. A, intends to kill B by poisoning. A places a glass of milk with poison on the table of B knowing that at the time of going to bed B takes glass of milk. On that fateful night instead of B, C enters the bedroom of B and takes the glass of milk and dies in consequence. A is liable for the killing of C under the principle of transferred intention or malice.

**Intention and Motive:** Intention and motive are often confused as being one and the same. The two, however, are distinct and have to be distinguished. Intention is not the same thing as motive. The mental element of a crime ordinarily involves no reference to motive. Motive is something which prompts a man to form an intention and knowledge is the awareness of the consequence of the act. Intention has been defined as the fixed direction of the mind to a particular object, or determination to act in a particular manner and it is distinguishable from motive which incites or stimulates action. Sometimes, motive plays an important role and becomes a compelling force to commit a crime and, therefore, motive behind the crime become a relevant factor for knowing the intention of a person. In *Om Prakash v. State of Uttranchal*<sup>9</sup> and *State of UP v. Arun Kumar Gupta*,<sup>10</sup> the Supreme Court rejected the plea that the prosecution could not signify the motive for the crime holding that failure to prove motive is irrelevant in a case wherein the guilt of the accused is proved otherwise. It needs to be emphasised that motive is not an essential element of an offence but motive helps us to know the intention of a person. Motive is relevant and important on the question of intention.

**Intention and knowledge:** The terms 'intention' and 'knowledge' which denote *mens rea* appear in Ss. 299 and 300, having different consequences. Intention and knowledge are used as alternate ingredients to constitute the offence of culpable homicide. However, intention and knowledge are two different things. Intention is the desire to achieve a certain purpose while knowledge is awareness on the part of the person concerned of the consequence of his act of omission or commission, indicating his state of mind. The demarcating line between knowledge and intention is no doubt thin, but it is not difficult to perceive that they connote different things. There may be knowledge of the likely consequences without any intention to cause the consequences. For example, a mother jumps into a well along with her child in her arms to save herself and her child from the cruelty of her husband. The child dies but the mother survives. The act of the mother is culpable homicide. She might not have intended to cause death of the child but, as a person having prudent mind, which law assumes every person to have, she ought to have known that jumping into the well along with the child was likely to cause the death of the child. She ought to have

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<sup>9</sup> (2003) 1 SCC 648.

<sup>10</sup> (2003) 2 SCC 202.

known as prudent member of the society that her act was likely to cause death even when she may not have intended to cause the death of the child.

**Recklessness:** Intention cannot exist without foresight, but foresight can exist without intention. For a man may foresee the possible or even probable consequences of his conduct and yet not desire this state of risk of bringing about the unwished result. This state of mind is known as 'recklessness'. The words 'rash' and 'rashness' have also been used to indicate this same attitude.

**Negligence:** If anything is done without any advertence to the consequent event or result, the mental state in such situation signifies negligence. The event may be harmless or harmful; if harmful the question arises whether there is legal liability for it. In civil law (common law) it is decided by considering whether or not a reasonable man in the same circumstances would have realized the prospect of harm and would have stopped or changed his course so as to avoid it. If a reasonable man would not, then there is no liability and the harm must lie where it falls. The word 'negligence', therefore, is used to denote blameworthy inadvertence. It should be recognized that at common law there is no criminal liability for harm thus caused by inadvertence. Strictly speaking, negligence may not be a form of mens rea. It is more in the nature of a legal fault. However, it is made punishable for a utilitarian purpose of hoping to improve people's standards of behaviour. Criminal liability for negligence is exceptional at common law; manslaughter appears to be the only common law crime, which may result from negligence. Crimes of negligence may be created by statute, and a statute may provide that it is a defence to charges brought under its provisions for the accused to prove that he was not negligent. Conversely, negligence with regard to some subsidiary element in the actus reus of a crime may deprive the accused of a statutory defence which would otherwise have been available to him.

Advertent negligence is commonly termed as wilful negligence or recklessness. In other words, inadvertent negligence may be distinguished as simple. In the former the harm done is foreseen as possible or probable but it is not willed. In the latter it is neither foreseen nor willed. In each case carelessness, i.e. to say indifference as to the consequences, is present; but in the former this indifference does not, while in the latter it does prevent these consequences from being foreseen. The physician who treats a patient improperly through ignorance or forgetfulness is guilty of simple or inadvertent negligence; but if he does the same in order to save himself trouble, or by way of a scientific experiment with full recognition of the danger so incurred, his negligence is wilful. It may be important to state here that the wilful wrong doer is liable because he desires to do the harm; the negligent wrong doer is liable because he does not sufficiently desire to avoid it. He who will excuse himself on the ground that he meant no evil is still open to the reply: - Perhaps you did not, but at all event you might have avoided it if you had sufficiently desire to do so; and you are held liable not because you desired the mischief, but because you were careless and indifferent whether it ensued or not. It is on this ground that negligence is treated as a form of mens rea, standing side by side with wrongful intention as a formal ground of responsibility.

**Actus Reus:** To constitute a crime the third element, which we have called actus reus or which Russell<sup>11</sup> has termed as "physical event", is necessary. Now what is this actus reus?<sup>12</sup> It is a physical result of human conduct. When criminal policy regards such a conduct as sufficiently harmful it is prohibited and the criminal policy provides a sanction or penalty for its commission. The actus reus may be defined in the words of Kenny to be "such result of human conduct as the law seeks to prevent."<sup>13</sup> Such human conduct may consist of acts of commission as well as acts of omission. Section 32 of our Penal Code lays down: "Words which refer to acts done extend also to illegal omissions."

It is, of course, necessary that the act done or omitted to be done must be an act forbidden or commanded by some statute law, otherwise, it may not constitute a crime. Suppose, an executioner hangs a condemned prisoner with the intention of hanging him. Here all the three elements obviously are

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<sup>11</sup> Russell, *op. cit.*, p. 27

<sup>12</sup> It includes not only the result of active conduct (i.e. a deed), but also the result of inactivity.

<sup>13</sup> Kenny, *Outlines of Criminal Law* (17<sup>th</sup> Ed.), p. 14.

present, yet he would not be committing a crime because he is acting in accordance with a law enjoining him to act. So also if a surgeon in the course of an operation, which he knew to be dangerous, with the best of his skill and care performs it and yet the death of the patient is caused, he would not be guilty of committing a crime because he had no mens rea to commit it.

As regards acts of omission which make a man criminally responsible, the rule is that no one would be held liable for the lawful consequences of his omission unless it is proved that he was under a legal obligation to act. In other words, some duty should have been imposed upon him by law, which he has omitted to discharge. Under the Penal Code, Section 43 lays down that the word “illegal” is applicable to everything which is an offence or which is prohibited by law, or which furnishes a ground for a civil action; and a person is said to be “legally bound to do whatever it is illegal in him to omit.” Therefore, an illegal omission would apply to omissions of everything which he is legally bound to do. These indicate problems of *actus reus* we have discussed in detail elsewhere. However, the two elements *actus reus* and mens rea are distinct elements of a crime. They must always be distinguished and must be present in order that a crime may be constituted. The mental element or mens rea in modern times means that the person’s conduct must be voluntary and it must also be actuated by a guilty mind, while *actus reus* denotes the physical result of the conduct, namely, it should be a violation of some law, statutory or otherwise, prohibiting or commanding the conduct.

**Injury to Human Being:** The fourth element, as we have pointed out above, is an injury to another human being or to society at large. This injury to another human being should be illegally caused to any person in body, mind, reputation or property.<sup>14</sup> Therefore, it becomes clear that the consequences of harmful conduct may not only cause a bodily harm to another person, it may cause harm to his mind or to his property or to his reputation. Sometimes, by a harmful conduct no injury is caused to another human being, yet the act may be held liable as a crime, because in such a case harm is caused to the society at large. All the public offences, especially offences against the state, e.g. treason, sedition, etc. are instances of such harms. They are treated to be very grave offences and punished very severely also.

We may state again that there are four essential elements that go to constitute a crime. First, the wrongdoer who must be a human being and must have the capacity to commit a crime, so that he may be a fit subject for the infliction of an appropriate punishment. Secondly, there should be an evil intent or mens rea on the part of such human being. This is also known as the subjective element of a crime. Thirdly, there should be an *actus reus*, i.e. an act committed or omitted in furtherance of such evil intent or mens rea. This may be called the objective element of a crime. Lastly, as a result of the conduct of the human being acting with an evil mind, an injury should have been caused to another human being or to the society at large. Such an injury should have been caused to any other person in body, mind, reputation or property. If all these elements are present, generally, we would say that a crime has been constituted. However, in some cases we find that a crime is constituted, although there is no mens rea at all. These are known as cases of strict liability. Then again, in some cases a crime is constituted, although the *actus reus* has not consummated and no injury has resulted to any person. Such cases are known as inchoate crimes, like attempt, abetment or conspiracy. So also, a crime may be constituted where only the first two elements are present. In other words, when there is intention alone or even in some cases there may be an assembly alone of the persons without any intention at all. These are exceptional cases of very serious crimes which are taken notice of by the state in the larger interests of the peace and tranquillity of the society.

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<sup>14</sup> Indian Penal Code, section 44.