



LAW OF Crimes- U1 - Law of crime full notes

Law Of Crimes II (University of Lucknow)



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LAW OF CRIMES-I

UNIT I

Extent and Operation of the Indian Penal Code

The Indian Penal Code, 1860 drafted by Thomas Macaulay concerning criminal responsibility. Although attributed with complex and cumbersome nature of the English criminal law, the Indian Penal Code received high and lavish praise. However, the same was drafted more than 120 years ago. Indian Penal Code in its nature and operation has altered over the years.¹

PRIOR TO THE INDIAN PENAL CODE

The Mohomedan law was in operation in India before the East India Company framed the Indian Penal Code. The Mohomedan criminal law governed both Hindus as well as Muslims. The non-Muslim subjects were referred to as “Zimmees” and were not subject to the laws of the Muslims. The Hindus were not left undisturbed in the Governance of their personal causes by their personal laws.²

The non-muslims were made applicable on matters related to barter, sale, exchange,

contracts, etc. Also, in case either parties of a contract were subject to the Muslim law, the Mohomedan law would prevail. Brahmanic courts which functioned sparsely followed the tenets of Manu and other Hindu Lawgivers as far as the Hindu Laws were to be taken into consideration. The jurists who had complied the Mohomedan

Law were based on the fixed rule and ensured fair and uniformity of treatment for all the citizens alike.

At the time when the Indian law commission took up the task of drafting a Penal Code for

India, the systems established already in India widely differed from each other.

BRITISH INDIA

The Indian Penal Code was automatically applicable in British India in the year 1862. The Princely States did not adhere to Indian Penal Laws and had pre-established courts and legal systems of their own. The Indian Penal Code was applicable in these states from the 1940's onwards⁴. Many scholars believe that the Indian Penal Code in order to be consistent needs to be supplemented by various other codes. Based on the INDIAN PENAL CODE, the state of Jammu and Kashmir has a separate code known as the Ranbir Penal Code (RPC). Therefore, Jammu and Kashmir has a separate provision and the laws of India are not applicable on the state.

With the departure of the British, the INDIAN PENAL CODE was borrowed by Pakistan and some parts of it is used in the country too. It has evolved into the Pakistan Penal Code. After the Independence of Bangladesh, some parts of the INDIAN PENAL CODE is in force in the country also. The British had developed the colonies of Burma, Sri Lanka (then Ceylon), Singapore, Brunei and parts of Malaysia. Therefore, these countries also have parts of the Indian Penal Code in force.

CHAPTER ONE

Chapter 1 of the Indian Penal Code provides for the extent and operation of the Indian Penal

Code. It is applicable with respect to time, place and person. Therefore, regardless of offender, every person under the jurisdiction of the offence is liable for offence irrespective of the offender. The punishment is applicable irrespective of the rank, creed or caste.⁵

In British India “within and throughout”, the Penal Laws were applicable. Therefore all people under the authority of British India were governed under the Indian Penal Code. It was not accounted whether they belonged to a foreign state. Territorial jurisdiction was enough to award Penal sanctions. Anyone who accepted the protection of the laws of the land the protection of the laws, through it subjected himself to the operation of the laws and the legal punishments. It must also be taken into account that the law of any other country must not be used for punishment to such a person for his acts.

EXTRA-TERRITORIAL OFFENCES

The extra-territorial operation of law is the usage or exercise of jurisdiction outside the territorial borders. Due to advancements in science and technology the trade, commerce, communication with people have increased manifold.⁶ The Constitution of India provides for the extra-territorial operation of law. Article 245 (2) read with Article 245 (1) authorizes the Parliament with the extra-territorial operation of the law. The Indian Penal Code is also applicable on offences committed extra territorially through this offence.

Section 3 of the Indian Penal Code specifies the offences which are committed beyond India but can be tried with India. The offences

are to be tried in a manner such that they have been committed within India.

Section 4 of the Indian Penal Code provides for the extension of the code to extra-territorial offence. It provides that it would be binding for:

(i) Any person who is a citizen of India in any place without and beyond India.

(ii) Any person who is on any ship or any aircraft registered at any place within India. Illustration-A, who is a citizen of India, commits a Murder in Uganda. He can be tried and convicted of murder in any place in India in which he may be found.

Case: Ajay Agarwal vs Union Of India And Ors. 1993 AIR 1637.

Section 5 of the Indian Penal Code provides that the Act shall not be affected to certain people. This includes the mutiny and desertion of officers, soldiers or airmen who are providing service of the Government of India or any local law applicable.

FORGERY

Offences such as Forgery (Section 463, section 464 of Indian Penal Code), Offences against state and crimes relating to Government currencies and stamps (Section 232, Section 234

Indian Penal Code), shall be punished even if their area of commission is beyond the limits of the territory of India. The person who has committed the offence would be subject to the Indian Laws and would thereby, be subject to punishment for the acts committed.

INFORMATION TECHNOLOGY ACT

The Internet is global and consists of a variety of networks. The Cyber Legislations in India are closely related to the Indian Penal Code. It protects cyber security and criminalizes the failure to assist enforcement while various cyber-crimes are committed. The Information Technology Act confers extra territorial jurisdiction on the Indian Courts and empowers to take cognizance of offences committed outside India even by foreign nationals provided that such offence involves a computer, a computer system or a computer network which has been located in the territory of India.

Therefore, it has been shown that the Penal Code does not only provide operation of the code for extra-territorial offences, but also limits it within the code itself.

DEFINITION AND ESSENTIALS OF CRIME

Definition

An action committed or omitted, which constitutes an offence and is punishable by law is a crime. Crime is an unlawful act that is forbidden and punished by the State or the law. In other words, anything which is injurious to public welfare is a crime.

Generally speaking, crime is human conduct that the society generally disapproves. But in the modern sense, crime is any act that is prohibited by the penal law in force, and the result of this is punishment.

Definition of Crime According to Renowned Jurists

- According to Bentham, “offences are whatever the legislature has prohibited for good or for bad reasons.”

- According to Austin, “a wrong which is pursued at the discretion of the injured party and his representatives is a civil injury; a wrong which is pursued by the sovereign or his subordinates is a crime.”
- According to Paul W. Tappen, “an intentional act or omission in the violation of criminal law, without justification and sanctioned by the law as felony or misdemeanour.”
- Blackstone has defined crime in his “Commentaries on The Laws of England”. He defined it as “an act committed or omitted in violation of a public law either forbidding or commanding it.” He also defined crime as “violation of the public rights and duties due to the whole community, considered as a community, in its social aggregate capacity”. The editor of Blackstone, Stephen, has done slight changes in the definition and presented it as “a crime is a violation of a right, considered in reference to the evil tendency of such violation as regards the community at large.”
- According to Stephen, “crime is an act forbidden by law and which is at the same time revolting to the moral sentiments of the society.”

- According to Kenny, “crimes are wrongs whose sanction is punitive and is in no way remissible by any private person; but is remissible by crown alone, if remissible at law.” *(Here, the word ‘sanction’ means punishment and the word ‘remissible’ means to pardon by a crown.)*
- According to Keeton, “a crime would seem to be any undesirable act which the State finds it most convenient to correct by the institution of proceedings for the infliction of a penalty, instead of leaving the remedy to the discretion of some injured person.”
- According to Miller, crime is “to be the commission or omission of an act which the law forbids or commands under pain of a punishment to be imposed by the State by a proceeding in its own name.”
- According to Paton, “the normal marks of a crime are that the State has the power to control the procedure, to remit the penalty or to inflict the punishment.”

Observation:

From the above definitions, it can be said that there is no constant definition of the crime. **Each jurist has defined the crime differently according to his views and opinions.** Also, due to the varying nature of the content of crime, all efforts to define crime with perfection have failed.

- According to Terence Morris, “crime is not absolute like sin, that can be defined and have an existence beyond the limits of what men may say and do. **It is essentially a relative definition of behaviour that is constantly undergoing change.**”

Essential Elements of Crime

The main elements that make up a crime are:

1. A human being
2. Evil intent or guilty mind from the part of a human being. (Mens rea)
3. Any act committed or omitted in accordance with the evil intent and is forbidden by law. (Actus reus)
4. Injury

1. Human Being

The first element of a crime is a human being. Any wrongful act to be called crime must be done by a human being. There must be a

human being under a legal obligation to act in a particular way, and it must also be capable of being punished.

2. Mens Rea

The second essential element of a crime is mens rea or guilty mind or evil intent. Mens rea refers to the mental element that is necessary for a particular crime. Any wrongful act committed by a human being cannot be called a crime if committed without evil intent. There must be an evil intent while doing an act.

There is a well-known maxim– ‘**Actus non facit reum nisi mens sit rea**’. It means ‘**the act itself does not make a man guilty unless his intentions were so.**’ From this maxim there came another maxim- ‘actus me invito factus non est mens actus’ which means ‘an act done by me against my will is not my act at all.’

3. Actus Reus

The third element of the crime is actus reus. The criminal intent to be punishable must be obvious in some voluntary act or omission. As per Kenny, ‘actus reus’ is such a result of human conduct as the law seeks to prevent. The act committed must be the one that is forbidden or is punished by the law.

An act includes omissions also. A man is also held liable if some duty is imposed upon him by law, and he omits to discharge that duty. An omission must be a breach of a legal duty.

4. Injury

Injury is the last important, or we can say the essential element of a crime. It must be caused illegally to another human being or a body of individuals or society at large. 'Injury' has been defined in section 44 of the Indian Penal Code as 'any harm whatever illegally caused to any person in body, mind, reputation or property.'

However, there can be some crimes that may not cause any injury to anybody. For example, if you drive a vehicle without a driving license, it is a crime, even if it does not cause any injury to someone.

STAGES OF CRIME

Generally, the term criminal law refers to substantive criminal laws. Substantive criminal laws state crimes and decide punishments. In contrast, Criminal Procedure describes the process by which the courts enforce criminal laws. E.g., the law which prohibits murder is a substantive criminal law. In this article, we will look at the various stages of crime.

Introduction

Criminal law is a body that defines the acts which are illegal and can affect the individual, property, society. Crime threatens and harms public welfare and safety. Moreover, criminal law is different from civil law as the latter emphasizes more on providing resolution rather than punishment.

Whenever a crime happens and that too intentionally, there is a full-fledged process or stages behind it. In case of every crime, Firstly there is an intention to commit it, Secondly, preparation to commit it, Thirdly, attempt to commit it and Lastly the accomplishment.

Stages of Crime

1. Intention

The intention is the first stage of any offense and is known as the mental or psycho stage. In this stage, the offender decides the motive and decides his course or direction towards the offense. The ironical fact about this stage is that the law cannot punish the person just for having an intention to do any illegal act.

Moreover, being the mental concept, it is very difficult to judge if a person possesses any such intention. Just by having an intention will not constitute an offense.

2. Preparation

Preparation is the second stage amongst the stages of crime. It means to arrange the necessary resources for the execution of the intentional criminal act. Intention and preparation alone are not enough to constitute a crime. Preparation is not punishable because in many cases the prosecution fails to prove that the preparations in the question are for the execution of the particular crime.

3. Attempt

An attempt is a direct movement towards the execution of a crime after the preparation of the plan. According to law, a person is guilty of an attempt to commit an offense if he/she does an act which is more than simply preparatory to the commission of the offense. Moreover, a person is guilty of attempting to commit an offense even though the facts are such that the execution of the offense seems to be impossible.

4. Accomplishment

The last stage in the commission of an offense is its successful completion. If the accused becomes successful in his attempt to

commit the crime, he will be guilty of the complete offense. Moreover, if his attempt is unsuccessful he will be guilty of his attempt.

Examples of 'Preparation' and 'Accomplishment' as a stage of crime.

Answer: Example for Preparation: If Ram buys a gun and keeps the same in his pocket fully loaded in order to kill his enemy Rahim, but does nothing more. Ram has not committed any offense because he is at the stage of preparation and it will be impossible for the prosecution to prove that Ram is carrying the pistol in his pocket for the purpose of killing Rahim.

Example for Accomplishment: A fires at B with the intention to kill him, if B dies, A will be guilty of committing the offense of murder and if B is only injured, it will be a case of attempt to murder.

ATTEMPT

What is an Attempt to Commit a Crime?

Attempt to commit a crime occurs when a person makes a proper mindset to do a criminal act and put a step forward for fulfilling by arranging the means and methods necessary for the commission of that crime but fail to do so.

A person with a proper mindset to commit a crime and also put a step forward to commit that crime by arranging the means and methods necessary for the commission but fails. Then we will say that the person has attempted to commit a crime.

Why is an Attempt to Commit a Crime Punishable?

An attempt to commit a crime is a crime under the Indian Penal Code. Every attempt, falls short of success must create a threat in the mind of people which by itself is an injury and the moral guilt of the offender is the same as if he had succeeded. According to Section 511 of the IPC, only half of the punishment is awarded because the injury is not as great as if that crime had been committed.

An Attempt to Commit a Crime – An Inchoate Crime?

The term “inchoate” means “undeveloped”, “just begun”, “incipient”, “in an initial or early stage”.

Inchoate offences cannot be understood in isolation and must be read in conjunction with substantive offences. A characteristic feature of these offences is that they are committed even if the substantive offence does not reach a stage of completion and no consequence ensues.

Thus, if the offence of crime has not been completed, even then a person can be guilty of an attempt to commit a crime.

Actus reus and mens rea are essentials for a commission of any crime.

Actus reus: Action or conduct which is an element of a crime,

Mens rea: The intention or knowledge of wrongdoing that constitutes part of a crime.

Here, actus reus to commit a crime is not completed but mens rea to commit the same crime is completed in an attempt and therefore attempt itself would be said to have been committed at this stage.

However, some scholars disagree with the usage of the term “inchoate” because according to them, offences like a conspiracy, attempt, and incitement are complete in themselves although they form steps in the process of reaching an end, that is Actual commission.

Attempt: Essential Elements

An attempt is defined in the case of Aman Kumar v. State of Haryana as follows:

- Attempt consist in it the intent to commit the crime.
- If any person failed to achieve that intention.

Abhayand Mishra v state of Bihar

In this case, the Supreme Court has described essential elements of 'Attempt' as follows:

- i) Accused has an intention or means rea to commit the intended offence.
- ii) He has taken a step forward (that is an act or step which was more than preparatory to the commission of the intended offence towards the commission of the contemplated offence).
- iii) He failed to commit that intended offence by any reason.

When does Preparation end and Attempt Begin?

In **Aman Kumar v State of Haryana**, the Supreme Court held that the word 'Attempt' is to be used in its ordinary meaning. There is a difference between intention to commit offence and preparation. Attempt begins and preparation ends. It means when any step is taken towards committing that offence is considered as ends of preparation and begins of attempt.

Tests for Determining Whether an Act Amounts to a Mere Preparation or an Attempt to Commit an Offence

At what stage an act or series of acts is done toward the commission of act intended would be an attempt to commit an offence. Some principles have been evolved to solve that issue:

(a) The Proximity Rule: Proximity in Relation to Time and Action or to Intention?

The Proximity test examined how much the defendant close to completing that offence. Measured difference is the distance between preparation for the offence and successfully completion of that offence. In the case of *Commonwealth v. Hamel*, it was held that the proximity rule amount left to be done, not what has already been done, that is analyzed.

(b) The Doctrine of Locus Poenitentiae

It deals with those cases in which an individual made preparation to commit the crime but changes his mind at the end, thereby pulling out at the last instant. Such intentional withdrawal prior to the commission or attempt to commit the act will be termed as mere preparation for the commission of the crime and no legal liability will be imposed.

(c) The Equivocality Test

'Equivocality Test' is used to differentiate between preparation and attempt in a criminal case. When a person's conduct, in itself, shows that the person actually intends to carry out a crime without reasonable doubt, then the conduct is a criminal attempt to commit that crime.

An act is proximate if it indicates beyond reasonable doubts what is the end towards which is directed. The Act to commit a specific crime is constituted when an accused person does an act which is a step towards the commission of that crime and doing of such an act cannot reasonably be regarded as having another purpose than the commission of that specific crime.

(d) Attempting an Impossible Act

If a person attempts to commit a crime which is impossible, then also it will be punishable under the Indian Penal Code.

If a person attempts to kill someone by empty gun, or steal something from an empty pocket, or steal jewels from empty jewel box. Then it is considered as an impossible attempt of committing that crime but here intention to commit the crime is present and also a step is taken towards completion of that crime. Thus it is considered as 'attempt to crime' under Section 511 of the IPC.