

Elements of Crime

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ABSTRACT:

This paper explores the different ingredients that constitute the elements of crime. The object of the paper is to study and analyze the various principles laid down regarding elements of crime and it also aims at studying the historical development of these elements of crime. The paper aims to have a detailed study and analysis of the judicial interpretation of elements. It deals with the significance of elements of crime in holding an individual criminally liable. This research paper also critically analyzes the legal jurisprudence developed on the elements of law and why elements of crime are required to hold an individual liable for an offence.

I. INTRODUCTION

The Crime cannot be constituted if a mere criminal intention is not followed by a prohibited act; and similarly a wrongful act ceases to be a crime if it lacks mens rea. An act per se is not criminal as it only becomes criminal when it is done by an individual with a guilty mind; and no external conduct having serious consequences is generally punished unless the prohibited consequence is produced by some wrongful intent, fault or mens rea.¹ The fundamental principle of crime is that a wrongful act (actus reus)² is to be amalgamated with a wrongful intention (mens rea) to construe criminal liability. The maxim '*actus non facit reum nisi mens sit rea*' embodies this principle that an act does not make one guilty unless the mind is also legally blameworthy. Actus Reus represents the physical aspect of crime in the juristic concept, while the mens rea constitutes the mental aspect of crime, which must be criminal and concurrent to actus reus.³

During the 13th century, the modern distinction between crime and tort began, while the old compensatory payments disappeared and were replaced by 'discretionary damages' awarded by the tribunal that heard an individual's claim. The churchmen had developed the idea of moral blame as the basis of responsibility for harm done in criminal matters; because they believed that wickedness exists in the man's mind and moral blame enshrined lies with one whose thoughts or intentions are evil. However, several cultural aspects directed their attention towards the mental processes of the offender. This was the period of germination for the following new legal principles:

- The origin of the rule in tort, that a defendant's liability is normally limited to those consequences which

¹ *Mahadeo Prasad v. State of West Bengal*, AIR 1954 SC 724

² Jerome Hall, "General Principles of Criminal Law", *Bobbs-Merrill, New York*, pp. 222.

³ DJ Lanham, 'I arsonneur Revisited', *Criminal Law Review*, 1976, pp. 276

a reasonable man would have foreseen.

- The enunciation of the great principle of the common law, that a guilty mind is an essential element in criminal responsibility.

The new concept envisaged that merely to bring about a person's act under prohibited harm is not sufficient to hold a man liable to punishment, unless in addition he could be regarded as morally blameworthy came to be enshrined in the well known maxim *actus non facit res, nisi mens sit rea* (that is the act itself does not make a man guilty, unless his intentions were so.)⁴

The Penal Code has incorporated in it the maxim *actus non facit reum nisi mens sit rea* in two primary ways:

- By express inclusion of the requisite *mens rea* in the definition of an offence
- Through 'General Exceptions', enumerated in Chapter IV of the Code, some of which, such as mistake of fact, accident, infancy and insanity, deny the existence of *mens rea*.

II. ACT MUST BE VOLUNTARY

Act means a conscious or willed movement and it is a conduct, which results from the operation of the will. According to Austin, any movement of the body, which is not consequence of the determination of the will, is not a voluntary act. A voluntary act only amounts to an offence. If a person is compelled by force of circumstances to perform an act, forbidden by law, he cannot be said to do it voluntary, and therefore, he will not be held liable for the consequences of that act. This situation is known as automatism in which an act on the part of the accused is involuntary where it is beyond his control or beyond the control of his mind.

Sections 32 and 33 of the IPC define the term 'act'. Section 32 provides that in every part of the Code (except where a contrary intention appears from the context), words, which refer to 'acts done extend to illegal omissions'.⁵ Section 33 provides that the word 'act' includes 'a series of act' and the word 'omission' denotes 'a series of omissions as a single omission'.⁶ A combined effect of sections 32 and 33 is that the term 'act' takes into its fold one or more acts; or more illegal omissions. The IPC makes omissions punishable, provided that they are illegal⁷ and have caused, intended to cause, or like to cause, like acts and an *actus reus*. An act of omission attracts criminal liability only when a person is placed under duty to act recognized by the criminal law and he, with the requisite blameworthy mind, failed to fulfill it. Such legal duties to act might arise out of relationship or contracts, or might be imposed by statutes.

Section 39 of the IPC defines the term voluntary as the instance where the person is said to cause an effect

⁴ K.D. Gaur, *Criminal Law: Cases and Materials*, Universal Law Publishers, 2002.

⁵ The *Indian Penal Code*, 1860, s.32

⁶ The *Indian Penal Code*, 1860, s.33

⁷ The *Indian Penal Code*, 1860, s.43

"voluntarily" when he causes it 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.⁸ The term 'voluntarily' as defined in this section shows that a person need not intend to cause the actual effect caused, in order to be held to have voluntarily caused such an effect. If the effect is the probable consequence of the act done by him, then he is said to have caused it voluntarily. Thus, it makes no distinction between cases in which a person causes an effect designedly and cases in which he causes it knowingly or having reason to believe that he is likely to cause it.⁹ Further, if a particular effect could have been avoided by due exercise of reasonable care and caution, then the effect of such negligent act is also said to have been voluntarily caused. The question whether the effect of a particular act was caused voluntarily, is a question of fact to be determined on the basis of the facts and circumstances of each case. Some of the factors that may be taken into consideration are the nature of injury caused, the weapon used, force used and the part of the victim's body affected.¹⁰

In *Om Prakash v State of Punjab*,¹¹ the Supreme Court was called upon to adjudge the propriety of conviction of the husband for attempting to kill his wife by deliberately failing to give her food. The accused, whose relations with his wife were strained, deliberately and systematically starved his wife and denied her food for a number of days. With the help of his relatives, he also prevented her from leaving the house. Owing to continuous undernourishment and starvation, she was reduced to a mere skeleton. However, one day she managed to escape from the house as her husband forgot to lock her room before leaving the house. She got herself admitted to a hospital, where she was found seriously ill by the doctor and the police was informed. The wife recovered after a prolonged treatment and blood transfusion. The police registered a case against the husband under section 307 of IPC. The sessions court convicted the husband for the offence under section 307 of the IPC.

The conviction was also confirmed by the High Court, while observing that the food was intentionally withheld to shorten the remaining span of her life because it can be derived from the facts that by withholding food to her, death would have resulted surely though gradually.¹² The Supreme Court appreciated the High Court's reasoning that law does not require an intention to cause death then and there. and confirmed the conviction of Om Prakash on the ground of his illegal omission.

Section 36 of the Indian Penal Code¹³ stipulates that where an act or an omission constitute an offence, the committing of the offence partly by an act and partly by an omission, would also constitute the same offence.

⁸ The *Indian Penal Code*, 1860, s. 39.

⁹ *Abdul Majeed v. State of Kerala*, (1994) Cr LJ (1404) (Ker).

¹⁰ *Bhaba Nanda Sarma v. State of Assam*, AIR 1977 SC 2252.

¹¹ *Om Prakash v. State of Punjab*, AIR 1961 SC 1782.

¹² *Om Prakash v. State of Punjab*, AIR Punj 134, para 45.

¹³ The *Indian Penal Code*, 1860, s. 36.

III. CONCOMITANT CIRCUMSTANCES

- **Act to be prohibited by Law**

Actus Reus is only constituted if a harmful or painful event is forbidden by criminal law, meaning that 'the actus must be reus' and the mere presence of mens rea and an act are not sufficient.

- **Act should not result in actual harm**

The causing of actual harm may or may not be a part of the actus reus. Necessarily a crime is not only constituted if result's in some harm; offences like treason, forgery, perjury and inchoate or incomplete crimes are per se offences, irrespective of whether they actually result in any harm or not.

- **Act to be direct cause of harm**

The harm should have a casual effect to the act and must be direct result of the act, where the harm is a requisite to an offence.

- **Other essentials of law to constitute to crime**

Sometimes for an act in order to constitute an offence, some additional circumstances are required by the law. For instance, in the offence of perjury, the accused must have been sworn as a witness; for the offence of bigamy, the person must have contracted an earlier marriage; for treason, the offender must be a citizen of India or own allegiance to the Indian State; for receipt of stolen property the goods must have been already stolen.¹⁴

IV. MENS REA

Mens Rea is a technically term, used to connote a blameworthy mental condition, the absence of which negatives the condition of crime on any particular condition. An act forbidden law only amounts to criminal offence if it is done voluntarily. Ordinarily, a crime is not committed, if, the mind of the person doing the act is innocent, because an act only becomes criminal when it is done with guilty mind. Thus, the term mens rea has been given to volition that is the force of motive behind the criminal act. Ordinarily, a crime is not committed, if the mind of the person doing the act is innocent and an act only becomes criminal when it is done with a guilty mind. There must be some blameworthy condition of mind before a person is made criminally liable. However, the requisite guilty state of mind varies from crime to crime; what is an evil intent for one kind of offence may not be so for another kind.¹⁵

The underlying principle of the doctrine of mens rea is that an act does not make an individual guilty unless the mind is also guilty, which is expressed in the Latin maxim '*actus non facit reum nisi mens sit rea*'. The mere

¹⁴ P.S.A. Pillai, *Criminal Law*, Lexis Nexis, Gurgaon, 2016, p. 26.

¹⁵ P.S.A. Pillai, *Criminal Law*, Lexis Nexis, Gurgaon, 2016, p. 26.

commission of a criminal act (or bringing about the state of affairs that the law provides against) is not enough to constitute crime, at any rate in the case of more serious crimes. The element of wrongful intent is required to constitute criminal liability.¹⁶

In the common term, intention means purpose or desire to bring about a contemplated result or foresight that certain consequences will follow from the conduct of the person. Lord Kenyon in *Fowler v. Padget* stated it is the principle of natural justice that the intent and act must concur to constitute the crime.¹⁷

Lord Goddard, C.J. in *Brend v. Wood*¹⁸ stated observed, 'It is of utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, unless a statute either clearly or by necessary implication rules out mens rea as a constituent part of a crime, the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind.'

In *P.P. v. Beard*¹⁹ it was stated that if a man throws a boy from a high tower or cuts off his head, it is obvious that he desired for the victim's death and foresaw it. Lord Atkin stated that 'a man is presumed to intend the necessary or the natural and probable consequences of his act; and this presumption will prevail, unless from the consideration of all the evidence, the Court entertains a reasonable doubt whether such intention existed or not.'

- **Intention**

Intention is a term that is not defined in the IPC and is very difficult to define. It is a common term known to everybody, but at the same time, it defies a precise definition. It can be variously said to mean the object, purpose, the ultimate aim or design behind doing an act. Intention is the conscious exercise of the mental faculties of a person to do an act, for the purpose of accomplishing or satisfying a purpose. Therefore, intention is usually used in relation to the consequences of an act, and not in relation to the act itself; because a person clearly intends a consequence if he wants that consequence to follow from his action.²⁰ The idea of intention in law is not always expressed by the words 'intention', 'intentionally' or 'with intent to'. In various sections of the IPC, intention is also expressed in the following varied expressions such as 'voluntarily', 'wilfully', 'deliberately', 'deliberate intention', 'with the purpose of' or 'knowingly'.

However, the scope of the word 'voluntarily' is bigger than that of the word 'intentionally'. The act voluntarily done in effect and substance means an act done intentionally, with the knowledge of the end result being a

¹⁶ Glanville Williams, *Textbook of Criminal Law*, Stevens and Sons, 1983, p. 30.

¹⁷ *Fowler v. Padget*, (1898) 7 TLR 509 (514)

¹⁸ *Brend v. Wood*, (1946) 62 TLR 462.

¹⁹ *P.P. v. Beard*, 1920 AC 479 (HL).

²⁰ *Sarabjeet Singh v. State of Uttar Pradesh*, AIR 1983 (SC) 529.

crime and the doer had reason to believe that the actus reus would be an offence. Section 298 of the IPC²¹ makes the uttering of words or making gestures or exhibitions with deliberate intent to wound the religious feelings punishable. The words 'deliberate intention' mean premeditated intention to wound the religious feelings; and on a plain reading of the section the words 'deliberate' and 'intent' seem to be synonymous. So while describing the scope of the words 'deliberate intent', authors of the IPC have clarified that there must not only be intent, but it should also be pre-planned, pre conceived and not a momentarily caused intention. Sections 285, 286 and 287²² consist an another variation of mental element of intention that is to knowingly or negligently omit to take sufficient care so as not to cause harm to human life in respect of possession of poisonous substance, fire, combustible matter and explosive substances an offence.

- **Intention and Motive**

Intention and motive are often confused as being one and the same; however, the two are distinct and have to be distinguished. The mental element of a crime ordinarily involves no reference to motive because a bad motive cannot be an excuse for convicting a person; similarly a good motive cannot be an excuse for acquitting him either. A person may act from a laudable motive, but if his intention causes wrongful loss, his crime is complete, irrespective of his motive.²³ 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 that incites or stimulates action.²⁴

Austin defined motive as the 'spring of action'; while intention according to him, 'is the aim of the act, of which the motive is the spring.'²⁵ A motive is something which prompts a person to form an opinion or intention to do certain illegal acts or even legal acts by illegal means with a view to achieve the intention. Motive is the reason for an action that impels a person to act, such as ambition, envy, fear, jealousy, etc.²⁶ Therefore, it is called 'ulterior intent' as it is the psychological phenomenon which impels a person to do a particular act. Motive does not affect criminal liability and is either sufficient to prove guilt of the accused²⁷ or relevant for determining his guilt or innocence; however, it being a compelling force to commit a crime, becomes a relevant factor in determination of guilt of an individual or of the quantum of punishment.²⁸ Motive is also important in the mitigation or aggravation of the offence.

In criminal law, motive may be defined as that which leads or tempts the mind to indulge in a criminal act or as

²¹ The *Indian Penal Code*, 1860, s, 298.

²² The *Indian Penal Code*, 1860, ss. 285, 286 and 287.

²³ Hari Singh Gour, *The Penal Law of India*, Law Publishers, Allahabad, 1998, p.232.

²⁴ *S. Raghbir Singh Sabdhwala v. Commr of IT*, AIR 1958 Punj 250.

²⁵ Austin, *Lectures on Jurisprudence*, 1920, p. 165.

²⁶ *Nathuni Yadav v. State of Bihar*, AIR 1997 SC 1808.

²⁷ *Hardeep Singh Sohal v. State of Punjab through CBI*, (2004) Cr LJ 4627 (SC).

²⁸ *Suresh Chandra Bahri v. State of Bihar*, AIR 1994 SC 2420.

the moving power which impels to act for a definite result.²⁹ But the fact is that the motive for a crime lies locked in the heart of person, and so it becomes difficult to know the same. Failure to bring on record any evidence regarding motive does not weaken a prosecution case, because a criminal act can be proved without a motive; though the existence of same may strengthen a case.³⁰ Where positive evidence against the accused is clear, cogent and reliable, the question of motive becomes insignificant.³¹

In *Shamsher Singh v. State of Haryana*³², wherein the evidence of eyewitnesses and the medical evidence disclosed that the death of the deceased was due to the injury caused by the accused. The Supreme Court upheld the conviction of the accused under section 302 of the IPC even though there was no direct motive to cause the homicide.

The apex court in *Om Prakash v. State of Uttaranchal*³³ has accordingly held that the motive of crime is not a necessary requirement for conviction. The Court turned the plea of absence of motive for the commission of the crime wherein the guilt of the accused is proved otherwise. The accused a domestic servant mercilessly in a cruel manner murdered three out of four of the members of the family and grievously injured the fourth. Since the manner of the killing of the three deceased and injuring the survivor of the members of the household, where the accused was working for number of years was such a ghastly and cruel nature that shocked the conscience of the society, the Supreme Court held death penalty is the appropriate sentence being a case of rarest of rare nature. The Court rightly observed that failure to prove motive is irrelevant in a case where in the guilt of the accused is proved beyond comprehension otherwise.

- **Intention and Knowledge as Mens Rea**

The liability for unlawful homicide is a classic example, where the IPC imposes liability on alternative bases of intention. Both the terms 'intention' and 'knowledge' appear in sections 299 and 300 of the IPC³⁴, dealing respectively with culpable homicide and murder, having different penal consequences. Intention and knowledge, though they connote different things, are used as alternate mens rea for the offences. Knowledge is awareness on the part of the person concerned, indicating his mind. Knowledge is an awareness of the consequences of the act. A person can be supposed to know when there is a direct appeal to his senses.

The demarcating line between knowledge and intention is no doubt thin, but it is not difficult to perceive that they connote different things.³⁵ Knowledge as contrast to intention signifies a state of mental realization in

²⁹*State of West Bengal v. Mohammad Khalid*, AIR 1995 SC 785.

³⁰*Meharban v. State of Madhya Pradesh*, (1996) 10 SCC 615.

³¹*Gurucharan Singh v. State*, AIR 1956 SC 460.

³² *Shamsher Singh v. State of Haryana*, (2002) 7 SCC 536.

³³ *Om Prakash v. State of Uttaranchal*, (2003) 1 SCC 425.

³⁴ *The Indian Penal Code, 1860*, ss. 299 and 300.

³⁵ *Basdev v. State of Pepsu*, AIR 1956 SC 488.

which the mind is a passive recipient of certain ideas or impressions arising in it, while intention connotes a conscious state of mind in which mental faculties are summoned into action for the deliberate, prior conceived and perceived consequences.³⁶

- **Negligence as Mens Rea**

Based on the nature of the offence, the requirement of particular statutory provisions and the object of the particular statute, the courts have to decide what is the extent or level of criminal intent that is required to convict a person of an offence. Negligence is a case of inadvertence. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable proper care and precaution to guard against any injury either to public generally or to an individual in particular. A person is negligent if he fails to exercise such care, skill or foresight that a reasonable man exercises in a situation. It is the failure of a person to act with the standard of care expected of a reasonable or a prudent person. There is no real yardstick by which one can arrive at the precise definition of the prudent person; but in law it generally includes the law-abiding, cautious, careful person, who is personification of all virtues.³⁷

Strictly speaking, negligence may not be a form of mens rea as it is not appropriate to inflict criminal liability, because generally inadvertence cannot be equated with a blameworthy mind. However, IPC imposes criminal liability on the ground of negligence, particularly when a negligent act poses a threat to life or personal safety of others. Negligence is more in the nature of a legal fault and is made punishable strictly for an utilitarian purpose of hoping to improve people's behaviour standard.³⁸

- **Crimes of Strict Liability**

There is a presumption that the doctrine of mens rea applies to all statutory crimes, but the presumption is liable to be displaced by the following ways:

- i. By the express provision of law (words of the statute creating the offence)
- ii. By necessary implication (by the subject matter with which it deals)

The Supreme Court on more than one occasion has reiterated that unless a statute either clearly or by necessary implication rules out mens rea as a constituent element of crime, a person should not be held liable for an offence, if he does not have a guilty mind.³⁹

In *State of Gujarat v. D.P. Pandey*, the Supreme Court observed the ideal rule of interpretation of penal statutes in the following words:

³⁶ *Jai Prakash v. Delhi Administration* (1991) 2 SCC 32.

³⁷ *Alister Anthony Pereira v. State of Maharashtra*, (2012) 2 SCC 648.

³⁸ P.S.A. Pillai, *Criminal Law*, Lexis Nexis, Gurgaon, 2016, p. 45.

³⁹ K.D. Gaur, *Textbook on Indian Penal Code*, Universal Law Publishing, Gurgaon, 2015, p. 53.

'The broad principles accepted by courts in this country as well as England are that where an offence is created by a statute, however comprehensive and unqualified the language of the statute, it is usually understood that element of mens rea should be imported into the definition of the crimes silently, unless a contrary intention is expressed or implied. In other words, the plain words of the statute are subject to a presumption that general rule of law that no crime can be committed unless there is mens rea, is not ousted by the particular enactment, but it may be rebutted.'⁴⁰

Thus, in exceptional cases a person may be convicted of an offence independently of any wrongful intent or culpable negligence. Such offences are termed as offences of strict liability or absolute liability. In such a case it is no defence to an accused that he honestly believed on reasonable grounds and in good faith in the existence of facts which would have rendered his conduct innocent.⁴¹ Cases to which the doctrine of mens rea does not apply may be placed under four categories:

- i. Statutory offences of abduction, kidnapping, rape and offences against the state and army.
- ii. Cases of public nuisance, libel and contempt of court
- iii. Offences created by statutes that are regulatory in nature, in which although the proceedings are criminal, it is really a mode of enforcing a civil right, for example, cases of violation of municipal laws, town planning laws, and traffic regulations, etc.
- iv. Public welfare offences which include socio-economic offences relating to food, drugs, weight and measures, hoarding and black marketing, licensing, revenue, environmental pollution and custom offences, etc. These offences are basically quasi criminal in nature.⁴²

- **Absolute Liability**

In *M.C. Mehta v. Union of India*,⁴³ a five member Bench consisting of then Chief Justices P.N. Bhagwati, R.N. Mishra, Oza, M.M. and K.N. Singh delivered the judgment on a writ petition under Article 32 of the Constitution by the Legal Aid and Advice Board and the Supreme Court Bar Association against the judgment of a three member Bench of the Court on 17th February, 1986 permitting Shriram Fertiliser Industries to restart manufacture of soda and chlorine including its by products and recovery plants like soap, glycerine and technical hard oil. Allowing the petition for closure of the plant, P.N. Bhagwati, C.J. while delivering the unanimous judgment of the court said:

'An enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat

⁴⁰*State of Gujarat v. D.P. Pandey*, AIR 1971 SC 866 (8680).

⁴¹*State of Maharashtra v. M.H. George*, AIR 1965 SC 722.

⁴²*Indo-China Steam Navigation Co. Ltd. v. Collector of Customs*, AIR 1964 SC 1140.

⁴³*M.C.Mehta v. Union of India*, AIR 1987 SC 1086.

to the health and safety of the persons working in the factory and residing in the surrounding areas owes absolute and non delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of activity it has undertaken. The enterprise must conduct and follow the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely held liable to compensate for such harm and the enterprise cannot take the excuse that it had taken all reasonable care and harm occurred without any negligence on its part.⁴⁴

The Supreme Court authoritatively ruled that the operation of common law doctrine of strict liability enunciated in 1868 in *Ryland v. Fletcher*⁴⁵ because it has no application in India. As regards the measure of damages the court said that the damages by way of compensation must have deterrent effect and must be correlated to the magnitude and capacity of the enterprise. The judgement is not confined only to enterprises which are engaged in industry for profit; it extends to all enterprises which are engaged in hazardous or inherently dangerous activities such as the state enterprises, scientific, research institutions, under or outside the auspices of state, etc.

- **Civil Liability for Nuclear Damages Act, 2010**

Taking into consideration the inadequacy of law which resulted in settlement for a meagre sum of 470 million U.S. Dollar in *Union Carbide Corporation v. Union of India*⁴⁶, against all claims of all victims of world's biggest industrial disaster on December 2. 1984 in which thousands of people lost lives and million became incapacitated; the Parliament enacted the Civil Liability from Nuclear Damages Act, 2010 for operation of India's civil nuclear deal with the United States and other nuclear supplier countries to India. The Bill was finally given assent to by the President of India and has become the Act.

The Act envisages providing for prompt compensation to the victim of a nuclear incident through a no fault liability regime channelling liability to the operator, appointment of Claims Commissioner, and establishment of Nuclear Damage Claims Commission and for matters connected therewith or incidental thereto.

The act consists of 49 sections divided into 7 chapters. Chapter 1 is Preliminary, it consists of two sections. Section 1⁴⁷ extends the operation of the Act to the whole of the India and section 2⁴⁸ gives definition of various terms used in this act. Section 2(g) defines 'nuclear damages' in very wide terms that include the following:

- i. Loss of life or personal injury.
- ii. Loss of or damage to, property.

⁴⁴*M.C. Mehta v. Union of India*, AIR 1987 SC 1109 (1110).

⁴⁵*Ryland v. Fletcher*, (1868) 19 LT 220.

⁴⁶*Union Carbide Corporation v. Union of India*, AIR 1992 SC 248.

⁴⁷ The *Civil Liability for Nuclear Damages Act*, 2010, s. 1.

⁴⁸ The *Civil Liability for Nuclear Damages Act*, 2010, s. 2,

- iii. Any economic loss.
- iv. Costs of measure of reinstatement of impaired environment caused by nuclear incident.
- v. Loss of income.
- vi. The costs of preventive measures
- vii. Any other economic loss.

Section 2(h) defines 'nuclear fuel' as any material which is capable of producing energy by a self sustaining chain process of nuclear fission.

Chapter II in section 3 to 8⁴⁹ has fixed absolute liability for nuclear damages. Section 6 provides liability in respect of each nuclear incident in rupee equivalent of three hundred million and Special Drawing Rights or such higher amount that the Central Government may specify by notification.

Section 9 to 12 of Chapter III⁵⁰ provide for establishment of claim commissioner, where a person can make redress in case of nuclear damage. Chapter IV in sections 13 to 18⁵¹ provide provisions for claims and awards. Sections 19 to 38⁵² of the Chapter V provide for constitution of Nuclear damage claim commission, if the Central Government having regard to the injury or damage caused by a nuclear incident consider appropriate to expedite the claim etc., in public interest.

The Act in Chapter VI in sections 39 to 42⁵³ fixes penal liability in case of contravention of the provision of the rule which may extend up to five years of imprisonment. Section 40 fixes personal liability for the commission of offence on the senior officers of the company such as Director, Manager, Secretary or other officers.

- **Public Welfare Offences and Mens Rea**

Mens rea as a universally accepted principle is essential element or ingredient of crime, though it is not without its limitations. In the contemporary times, an entire range of social or public welfare litigations have been conceived in a manner that no mens rea or legal fault is required for imposing criminal liability because the law makes the mere omission or commission of acts punishable. In other words, no mens rea or legal fault is required for imposing liability in public welfare offences.⁵⁴

The state in order to ensure that the public at large is not put to risk or cheated in the profit making ventures of the industries, has enacted certain Acts and Courts have held that mens rea is not essential for offences under

⁴⁹ The *Civil Liability for Nuclear Damages Act*, 2010, ss. 3,4,5,6,7 and 8.

⁵⁰ The *Civil Liability for Nuclear Damages Act*, 2010, ss. 9,10,11 and 12

⁵¹ The *Civil Liability for Nuclear Damages Act*, 2010, ss. 13,14,15,16,17 and 18.

⁵² The *Civil Liability for Nuclear Damages Act*, 2010, ss. 19 to 38

⁵³ The *Civil Liability for Nuclear Damages Act*, 2010, ss. 39,40,41 and 42.

⁵⁴ LH Leigh, *Strict and Vicarious Liability*. Sweet and Maxwell, 1982.

these laws; such as the Prevention of Food Adulteration Act, 1954⁵⁵, and the Essential Commodities Act, 1955⁵⁶.

The Courts have taken similar view in respect of the following Acts:

- i. Foreign Exchange Regulation Act, 1947⁵⁷ (now called Foreign Exchange Management Act, 1999) designed to safeguard and conserve the foreign exchange is essential to safeguard the economy.
- ii. The protection of Civil Rights Act, 1955⁵⁸ and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989⁵⁹ enacted to protect the rights of dalits or the Scheduled Castes and Scheduled Tribes.
- iii. The Contempt of Courts Act, 1971⁶⁰ which recognises the inherent power of courts to punish persons who obstruct or interfere with the administration of justice.

- **Vicarious Liability**

The principle of vicarious liability plays an important role in law of torts and civil law; generally should not be extended to criminal law because under criminal law the underlying principle is that a man should only be punished for his misdeeds and not others. However; the English law has recognised two exceptions to this rule of non-liability:

- i. A master is vicariously liable for libel published by his servant. However, it is open to a master proprietor to show in defence that the libel was published without his authority and with no lack of care on his part.
- ii. A master is vicariously responsible for a public nuisance committed by his servant.⁶¹

It is within the power of the legislature to make certain to make a certain illegal act or omission penal and fix an absolute liability upon the person, if a breach of certain enactment is made. Acts or defaults of a servant or agent in the ordinary course of his employment makes the master or principle employee liable, once the absolute liability is fixed, then the particular intent or state of mind is not the essence of offence; although he was not aware of acts or defaults and might have been against his orders.⁶² However, such liability must be specifically imposed by the terms of the statute or at least the fact of implied liability must be sufficiently

⁵⁵ *Sarjoo Prasad v. State of Madhya Pradesh*, AIR 1961 SC 631.

⁵⁶ *State of Madhya Pradesh v. Narayan Singh*, AIR 1989 SC 1789.

⁵⁷ *Director of Enforcement v. M/s MCTM Corpn Pvt Ltd*, AIR 1996 SC 1100.

⁵⁸ *State of Karnataka v. Appa Balu Ingale*, (1995) Supp 4 SCC 469.

⁵⁹ K I Vibhute, *Right to Live with Human Dignity of Scheduled Castes and Schedule Tribes Legislative Spirit and Social Response*, Journal of the Indian Law Institute, 2002, p.469.

⁶⁰ *Saibal Kumar Gupta v. BK Sen*, AIR 1961 SC 633/

⁶¹ P.S.A. Pillai, *Criminal Law*, Lexis Nexis, Gurgaon, 2016, p.51 and 52.

⁶² Hari Singh Gour, *The Penal Law of India*, Law Publishers, Allahabad, 1998, p. 145.

discernible from the provisions of the statute. No person can be vicariously liable if a provision to this effect does not exist in the statute concerned.⁶³ In fact, strict liability clauses in statutes might result in the agents being made liable for the act of the master. In *Sarjoo Prasad v. State of Uttar Pradesh*⁶⁴, the appellant who was an employee, was convicted under the Prevention of Food Adulteration Act 1954 for the act of master in selling adulterated oil.

- **Criminal Liability of a Corporation**

Originally the prevalent view was that a corporation or a body incorporate, which is separate legal entity, because of procedural difficulties cannot be charged of offences. The obvious reasons were that a corporation could not be either arrested or compelled to remain present during criminal proceedings; and neither it could form the required intention to commit a crime, owing to the absence of mind. However, in with the course of time the concept of corporate criminal responsibility evolved to the extent that the non liability of a corporation soon gave way to the idea that it can be made liable for omission to act. The corporation or body incorporate can be convicted for a statutory offence, if a statutory duty casted upon the corporation or a body corporate is not performed.⁶⁵

The evolution of corporate criminal responsibility is striking instance of judicial change in law. Viscount Haldane LC in *Lennard's Carrying Co Ltd v. Asiatic Petroleum Co Ltd*, enunciated the so called alter ego or organic theory of the corporate criminal liability and observed:

'A corporation is an abstraction. It has no mind of its own any more than it has a body of its own, its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation. The Board of directors are brains of a company which is the body and the company can and does only act through them.'⁶⁶

In *Standard Chartered Bank v. Directorate of Enforcement*⁶⁷, a five judge constitution bench of the apex court reiterated that a corporation or a company, by virtue of sections 2 and 11 of the IPC, is a 'person' and it, theoretically, can be prosecuted for an offence punishable under law. The apex court ruled that there is no immunity to a company or corporation from prosecution mainly because the prosecution is in respect of offences for which the punishment prescribed is mandatory punishment. The court stressed that company or corporation should not be allowed to go scot free merely on the ground that it technically cannot be punished by way of imprisonment. The apex court ruled that a company or corporation can be charged with offence

⁶³ *Maksud Saiyed v. State of Gujarat and others* (2008) 5 SCC 668, 2007.

⁶⁴ *Sarjoo Prasad v. State of Uttar Pradesh*, AIR 1961 SC 631

⁶⁵ P.S.A. Pillai, *Criminal Law*, Lexis Nexis, Gurgaon, 2016, p.54.

⁶⁶ *Lennard's Carrying Co Ltd v. Asiatic Petroleum Co. Ltd.* (1915) AC 705

⁶⁷ *Standard Chartered Bank v. Directorate of Enforcement*, AIR 2005 SC 2622.

punishable with mandatory fine and imprisonment, but the punishment can only be limited to a fine.

V. ACTUS REUS

The term actus reus has been given a much wider meaning by Glanville Williams in his Criminal Law:

'The technical term actus reus includes all the external circumstances and consequences specified in the rule of law as constituting the forbidden situation. Reus must be taken as indicating the situation specified in the actus reus as on that, given any necessary mental element, is forbidden by law. In other words, actus reus means the whole definition of the crime with the exception of the mental element and it even includes a mental element in so far as that is contained in the definition of an act. This meaning of actus reus follows inevitably from the proposition that all the constituents of crime are either actus reus or mens rea.'⁶⁸

Actus Reus includes all external circumstances and consequences specified in the rule of law as constituting the forbidden situation. The requirement of actus reus with reference to place, fact, time, person, consent, the state of mind, possession or preparation; varies depending on the definition of the crime.

The requirements of actus reus varies depending on the definition of the crime. Actus reus may be with reference to the following:

- i. **Place:** In the offence of criminal trespass, house breaking or in the aggravated forms thereof, the actus reus is in respect of place (sections 441-462 IPC).⁶⁹
- ii. **Time:** In the offences of lurking house trespass or house breaking by night in order to commit an offence or after preparation for hurt, assault, or wrongful restraint, etc. (Sections 456-458 IPC)⁷⁰, the actus reus is in respect of both place and time.
- iii. **Person:** In offences of kidnapping and abduction, procuring of a minor girl, etc., the actus reus is in respect of the person (sections 359-374 IPC).⁷¹
- iv. **Consent:** In the offence of rape, consent is the actus reus.
- v. **State of Mind of the Victim:** In offences relating to religion (sections 295-298 IPC)⁷², or where rape is committed when consent has been obtained by putting the victim in fear of death or of hurt (section 375 IPC)⁷³, the actus reus is with reference to the state of mind of the victim.

⁶⁸Glanville Williams, *Criminal Law: The General Part*, Stevens and Sons, 1961, p. 18.

⁶⁹ The Indian Penal Code, 1860, ss. 441-462.

⁷⁰ The Indian Penal Code, 1860, ss. 456-458.

⁷¹ The Indian Penal Code, 1860, ss. 359-374.

⁷² The Indian Penal Code, 1860, ss.295-298.

⁷³ The Indian Penal Code, 1860, s.375.

- vi. **Possession:** Possession of stolen property constitutes the actus reus in certain offences (section 410-412 IPC).⁷⁴
- vii. **Preparation:** Section 399 of IPC⁷⁵ makes preparation to commit dacoity an offence; therefore, the preparation itself constitutes actus reus.

VI. INJURY AND HUMAN BODY

In ordinary language 'injury' means a wound or hurt to the human body. But section 44 has defined injury in a much wider sense to include not only bodily harm, but also harm to one's mind, reputation or property. In other words, the word injury in section 44 denotes any harm illegally caused and includes every tortuous act. Thus, an unlawful detention of a cart at a toll gate, caused as a result of illegal demand of toll amounts to threat of injury. Similarly, a threat to employ the process of law with the object of obtaining more money than is actually due, is a threat of injury.⁷⁶ The threat of decree that cannot be executed by competent authority is a threat of harm or injury within the meaning of section 44 of IPC.

The illegality of the harm is the gist of the offence. Thus, if the injury is not illegal, it is not injury within the meaning of this section because it must imply an illegal act or omission. An injury may be caused to person through another as in the case of adultery, or it may be caused to property as in the case of mischief or theft.⁷⁷

In *D.P.P. v. Collins*,⁷⁸ (2006) the respondent, a man aged 61, made a number of telephone calls over two years from January, 2002 to January, 2004 to offices of Mr. David Taylor, the member of Parliament for North West Leicestershire, whose constituent the respondent was. In telephone calls and recorded messages the respondent who held strong views on immigration and asylum policy; shouted and made references to 'wogs' (foreigners of a dark skinned race) 'Pakis', 'Black Bastards' and 'niggers'. Some of those who received the calls and heard the messages described themselves as shocked, alarmed and depressed by the respondent's language. The Lordships of the House of Lords held that the messages were grossly offensive to whom they related and the accused held criminally liable.

VII. PUNISHMENTS

Criminal Law reflects those fundamental social values that express the way people live and interact with each other in the society. It uses the stick of punishment as a means of reinforcing those values and securing compliance therewith. In this way criminal law seeks to protect not only the individual, but also the very

⁷⁴ The *Indian Penal Code*, 1860, ss. 410-412.

⁷⁵ The *Indian Penal Code*, 1860, s.399.

⁷⁶ K.D. Gaur, *Textbook on Indian Penal Code*, Universal Law Publishing, Gurgaon, 2015, p. 66.

⁷⁷ *Habibul Razzak v. King Emperor*, ILR 1923 426 ALL 81.

⁷⁸ *D.P.P. v. Collins*, (2006) 4 All ER 602 (HL).

structure and fabric of the society from undesirable, nefarious and notorious activities and behaviour of such individuals and organisations who try to disrupt and disturb public peace, tranquility and harmony in the society. The object of criminal legislation is to prevent the perpetration of acts classified as criminal because they are regarded as being socially damaging. The transgression of such harmful acts in modern times is prevented by a threat or sanction of punishment administered by the State. In other words, punishment is the sanction imposed on the accused for the infringement of the established rules and norms of the society.

The object of punishment is to protect society from mischievous and undesirable elements by deterring political offenders, by preventing the actual offenders from committing further offences and by reforming and turning them into law abiding citizens. It is also asserted that respect for law grows largely out of opposition to those who violate the law. The public dislikes a criminal and this dislike is expressed in the form of punishment. The protection of society and security of person's life, liberty and property is an essential function of the state. This could be achieved through instrumentality of criminal law by imposing appropriate sentence and stamping out criminal proclivity (tendency). Law as cornerstone of the edifice of 'order' should meet the challenges confronting the society.⁷⁹

Section 53⁸⁰ prescribes punishments of death, imprisonment for life, rigorous or simple imprisonment, forfeiture of property and fine to be meted out to a person convicted of a crime under the Code, depending on the nature and gravity of the offence. The Indian Penal Code (Amendment) Bill, 1978 proposed to add five new forms of punishment to the existing ones in Section 53 of IPC with a view to deter particular types of criminals. The following proposed punishments have a more psychological, social and moral impact on the criminals and go a long way in curbing crimes:

- i. Externment
- ii. Compensation to the victims of crime
- iii. Public censure
- iv. Community service
- v. Disqualification from holding public office.

VIII. CAUSATION OF CRIME

An event is very often the result of a number of factors, that cause the very particular event and without these factors the event would not have happened. Thus, the actus reus is said to have been done by the man, if the very act constituting the crime would not have occurred without his participation, as there is casual relationship

⁷⁹K.D. Gaur, *Textbook on Indian Penal Code*, Universal Law Publishing, Gurgaon, 2015, p.70.

⁸⁰The *Indian Penal Code*, 1860, s. 53.

between the conduct and prohibited result; and usually a man is only held criminally liable for the consequences of his conduct that he foresees. The act constituting the crime must be the *causa causans* meaning that there must be an immediate cause of the effect.

- **Causation and Negligence**

In cases of Negligence the difficulty of causation arises very often. The *actus reus* should be causally connected to the act that should be proved negligent; so it is necessary to establishing that the conduct of the person was negligent and the accident would not have occurred without the negligent act of the accused.⁸¹

- **Minimal Causation**

When the death of a person is caused after medical treatment, it cannot be said that the treatment was not proper or inadequate, or had better treatment been given, the death would not have taken place; because the intervention of the doctor is in the nature of minimum causation and hence this intervention would have played a minor part in causing death.

Explanation 2 of Section 299 of the Indian Penal Code, 1860⁸² specifically states that if an act causes death, even if death could have been avoided by proper remedies and skilful treatment, the act shall be deemed to have caused death and the person will be criminally liable. If death results from an injury voluntary caused, the person who causes the injury is deemed to have caused the death, although the life of the victim might have been saved if proper medical treatment was given the competent physician or surgeon who failed to provide proper treatment, but administered the treatment in good faith save the life of the victim.⁸³

IX. CONCLUSION

Criminal Law is concerned with results emanating from human conduct and with the cases which the criminal policy of a given community has singled out as sufficiently harmful to it to prohibit them, with sanctions for disobedience to the prohibition. The ancient maxim *actus non facit reum, nisi mens sit rea* has remained unchallenged as a declaration of principle at common throughout the centuries up to the present day which envisages that no man should be convicted of a crime unless the two requirements of *actus reus* and *mens rea* are satisfied in every crime.

The prosecutor needs to prove beyond a reasonable doubt each element of crime that involves criminal liability, thus, reflecting the ordinarily structure of criminal law. Currently, crimes are more accurately defined in the present period, some of them involve a subset of principles of liability; but these are rare and are called 'crimes

⁸¹ P.S.A. Pillai, *Criminal Law*, Lexis Nexis, Gurgaon, 2016, p.28 and 29.

⁸² The *Indian Penal Code, 1860*, s. 299.

⁸³ P.S.A. Pillai, *Criminal Law*, Lexis Nexis, Gurgaon, 2016, p.30

of criminal conduct'. On the other hand there are crimes that involve all principles of liability and these are called 'true crimes'. Criminal liability requires a concurrence of actus reus that involves an act or physical element which is done voluntary to inflict harm; with mens rea that is the guilty mind. The principle of actus reus and mens rea are considered distinct elements of crime, and are required to be present in order to constitute a crime; and are distinguishable from each other.

Mens rea is not a unitary concept. Depending on the nature of the crime, mens rea be present in different forms. Thus, law has developed various levels of mens rea such as negligence, recklessness, knowledge and purpose. Based on the nature of the offence, the requirements of particular statutory provisions and the object of the particular statute, the courts have to decide what is the extent or level of criminal intent that is required to convict a person of an offence.

The necessity for mens rea has been dispensed with in respect of social or welfare legislations. All these laws have been enacted for the larger good of the society. Insisting upon the existence of mens rea to punish persons for violation of these enactments, may frustrate the purpose of the Acts, and the objects for which they have been enacted.