

General Principles Of Criminal Liability : Crime Definition, Mens Rea And Actus Rea

DEFINITION OF CRIME

1. CRIMINAL SCIENCE = study of criminal law, criminology & penology.

Criminal law primarily concerns with social protection, prescribes rules of behaviour to be observed by all persons and punishes them for deviance, transgression or omission.¹

2. WHAT IS A CRIME ? Crime is an - Act or omission - defined by law - punishable in nature.

As per Indian Penal code. The word "offence" denotes a thing made punishable by this Code *S.40 OF IPC*.

COMPREHENSIVE ANALYSIS OF THE DEFINITION OF CRIME : 6 APPROACHES

THERE IS DIFFERENT APPROACHES WHICH CONSIDER - *WHAT IS A CRIME IN A SOCIETY:*

CRIME IS A PUBLIC WRONG

- Romans consider crimes as delicta publica [public wrongs]
- Blackstone = act/ omission in violation of public rights & duties = in the community.
- CRITICISM: all the acts injurious to public are not necessarily a crime (KENNY) .

CRIME AS A MORAL WRONG

- Crime = owes its roots; in greek - kromos ; in sanskrit - krama = means SOCIAL ORDER.
- those acts that go against social order and are worthy of serious condemnation.
- crime constitutes = immoral and anti-social acts.

¹ State of Karnataka v. Appa Balu Ingale and others.

	<p>GARAFALO.</p> <ul style="list-style-type: none"> • crime is an immoral and harmful act that is regarded as criminal by public opinion because it is an injury to so much of the moral sense as is possessed by a community – a measure which is indispensable for the adaptation of the individual to society.
CRIME AS A CONVENTIONAL WRONG	<ul style="list-style-type: none"> • DEFINITION GIVEN BY EDWIN SUTHERLAND: Criminal behaviour is a behaviour in violation of the criminal law. • no matter what the degree of immorality, reprehensibility, or indecency of an act, it is not crime unless it is prohibited by the criminal law. • characteristics, which distinguish this body of rules regarding human conduct from other rules, are therefore, politicality, specificity, uniformity and penal sanction. <p>CRITICISM: Crime can also be anything which is not violating criminal law.</p>
CRIME AS A SOCIAL WRONG	<ul style="list-style-type: none"> • Crime is an act that has been shown to be actually harmful to society, or that is believed to be socially harmful by a group of people that has the power to enforce its beliefs, and that places such act under the ban of positive penalties. JOHN GILLIN. <p>CRITICISM: Fails to explain the criminal behaviours. Eg : Dowry is a crime ; there is hardly any change in people attitude.</p>
CRIME AS A PROCEDURAL WRONG:	<ul style="list-style-type: none"> • Defined in the terms of nature of the proceedings: <ul style="list-style-type: none"> ✓ a wrong which is pursued by the sovereign or his subordinates is a crime. PUBLIC WRONG. AUSTIN. ✓ a wrong which is pursued at the discretion of the injured party and his representatives is a civil

	<p>injury. PRIVATE WRONG. AUSTIN.</p> <ul style="list-style-type: none"> crimes are wrongs whose sanction is punitive, and is in no way remissible by any private person, but is remissible by the crown alone, if remissible at all. <p>KENNY.</p>
CRIME AS LEGAL WRONG:	legal wrong = when a penal statute prescribes punishment for an act or illegal omission it becomes a crime. SEC.32 IPC.

DEFINITION GIVEN BY EMINENT AUTHORS/BOOKS

HALSBURY 4TH - 'PRINCIPLES OF CRIMINAL LIABILITY' -

“There is no satisfactory definition of crime which will embrace the many acts and omissions which are criminal, and which will at the same time exclude all those acts and omissions which are not. Ordinarily a crime is a wrong which affects the security or well-being of the public generally so that the public has an interest in its suppression. A crime is frequently a moral wrong in that it amounts to conduct which is inimical to the general moral sense of the community. It is, however, possible to instance many crimes which exhibit neither of the foregoing characteristics. An act may be made criminal by Parliament simply because it is criminal process, rather than civil, which offers the more effective means of controlling the conduct in question.”

KENNY – OUTLINES OF CRIMINAL LAW – 19TH EDITION -

“There is indeed no fundamental or inherent difference between a crime and a tort. Any conduct which harms an individual to some extent harms society, since society is made up of individuals; and therefore although it is true to say of crime that is an offence against society, this does not distinguish crime from tort. The difference is one of degree only, and the early history of the common law shows how words which now suggest a real distinction began rather as symbols of

emotion than as terms of scientific classification.”

And, again:-

“So long as crimes continue (as would seem inevitable) to be created by government policy the nature of crime will elude true definition. Nevertheless it is a broadly accurate description to say that nearly every instance of crime presents all of the three following characteristics:

- (1) that it is a harm, brought about by human conduct, which the sovereign power in the State desires to prevent;
- (2) that among the measures of prevention selected is the threat of punishment;
- (3) that legal proceedings of a special kind are employed to decide whether the person accused did in fact cause the harm, and is, according to law, to be held legally punishable for doing so.”

EMINENT AUTHOR - STEPHEN : “A crime is an unlawful act or default which is an offence against the public, rendering the person guilty of such act or default liable to legal punishment...”

CRIME : AS DEFINED BY SUPREME COURT OF INDIA:

DIFFERENT DEFINITIONS GIVEN BY SUPREME COURT OF INDIA : Definition of what is a crime will keep on changing based on the political, economic and social set-up of the country.² Generally, Crime involves a serious invasion of rights and liberties of some

² In Kartar Singh v. State of Punjab (1994) 3 SCC 569 this Court observed that:-

“446. What is a crime in a given society at a particular time has a wide connotation as the concept of crime keeps on changing with change in political, economic and social set-up of the country. Various legislations dealing with economic offences or offences dealing with violation of industrial activity or breach of taxing provision are ample proof of it. The Constitution-makers foresaw the eventuality, therefore they conferred such powers both on Central and State Legislatures to make laws in this regard. Such right includes power to define a crime and provide for its punishment. Use of the expression, “including all matters included in the Indian Penal Code at the commencement of the Constitution” is unequivocal indication of comprehensive nature of this entry. It further empowers the legislature to make laws not only in respect of matters covered by the Indian Penal Code but any other matter which could reasonably and justifiably be considered to be

other person or persons.³ Crime is an attack on the civilisation of the day as it affects ‘ law & order’ & disturb ‘public order’. Although individual is ultimate sufferer, every crime is considered as an *offence against the society as a whole* and not only against an individual.⁴

WHOSE RESPONSIBILITY TO PREVENT CRIMES : It is the duty of the State to take appropriate action against the offender. It is equally the duty of a court of law administrating criminal justice to punish a criminal.

OVERVIEW : From what has already been stated, it will appear that crime is

- a) either an act or an omission
- b) the act should be something forbidden by law.
- c) the omission must relate to something not performed, although law commanded its performance;

“omission” must be an illegal omission, that is, there must be a legal duty to do but it is not done. Example: The Officer-in-Charge of X Police Station, sees an accused in the police lock-up being beaten up by a Head Constable. The O.C. does not do anything. It is not only an omission but it is also an illegal omission because it is his legal duty to prevent such act. The O.C. commits a crime.

- d) The act alone is not sufficient. **The mind must be at fault.** In other words, *Mens Rea* must be there.
- e) The sanction prescribed for commission of crime is ‘**punishment**’.

criminal in nature.”

³ Yet again, in *Mohd. Shahabuddin v. State of Bihar and others*(2010) 4 SCC 653 , it has been observed that every criminal act is an offence against the society. The crime is a wrong done more to the society than to an individual. It involves a serious invasion of rights and liberties of some other person or persons.

⁴ In *State of Maharashtra v. Sujay Mangesh Poyarekar* : This Court has held that every crime is considered as an offence against the society as a whole and not only against an individual even though it is an individual who is the ultimate sufferer. It is, therefore, the duty of the State to take appropriate steps when an offence has been committed. Also, *Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.* (2008) 2 SCC 305.

FOUR STAGES OF CRIME – AN INTRODUCTION : REFER 1.2. MODULE.**STAGE 1 : Intention****STAGE 2 : Preparation****STAGE 3: Attempt****STAGE 4: Commission of the crime**

Ordinarily, the first two stages (intention and preparation) do not give rise to any form of criminal liability. This implies that merely having an intention to commit a criminal act is not punishable, nor is making preparation for the same. Liability in criminal law arises when one goes beyond the stage of preparation and attempts to do the forbidden act.

What constitutes attempt is again a tricky and complicated question which is an area of intense study. However, it can be stated that save in some exceptional circumstances, criminal liability arises only when the crime has reached the stage which is gone beyond preparation and has entered into the domain of attempt.

Elements of Crime: Guilty Act and Guilty Mind : ACTUS REA + MENS REA :

To be classified as a crime, the act of doing something bad (actus reus) must be usually accompanied by the intention to do something bad (mens rea).

The principle of actus reus and mens rea are embedded in a Latin maxim, which is: *“actus non facit reum nisi mens sit rea”*. This latin maxim means that an act does not make one guilty unless the mind is also legally blameworthy. There can be no crime without an evil mind. It is principle of almost all legal systems that the essence of an offence is a wrongful intent without which it cannot exist.

Elements of Crimes.

- **PHYSICAL ELEMENT** - The physical elements are collectively called as Actus reus.
- **MENTAL ELEMENT** - the accompanied mental state is called the Mens rea

TWIN REQUIREMENT - In order to commit a crime an actor must possess both *Mens rea* and *Actus reus*. The crime is the combination of both, and is a single unity.

To put it in simple language, **a completed offence** requires both physical overt act as also a guilty state of mind. In crimes, requiring mens rea as well as actus rea, *the physical act must be contemporaneous with the guilty mind*, it is not enough that a mentally innocent act is subsequently followed by mens rea.

DEFINITIONS

In the words of *K.D.Gaur* - "Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, *actus non facit reum, nisi mens sit rea*. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called *actus reus* and *mens rea* respectively."

Halsbury's Laws of England - "a person is not to be convicted of a crime unless he has, by voluntary conduct, brought about those elements which by common law or statute constitute that crime. In general a person does not incur criminal liability unless he intended to bring about, or recklessly brought about, those elements which constitute the crime.

To put it in the classic words of Lord Kenyon C.J. in *Fowler v. Padget* [1798] 101 ER 1103 at 1106. "*The intent and the act must both concur to constitute the crime.*"

ACTUS REUS :

MEANING :

- *ACTUS* – An Act/ a deed which is a physical result of human conduct
- *REUS* – Forbidden by law.

INGREDIENTS OF ACTUS REUS

1. An action or a conduct
2. The result of that action or conduct
3. Such act/conduct being prohibited by law.

Therefore, one can say that *actus reus* is an act which is bad or prohibited, blameworthy or

culpable. Now, there are certain unique situations when the act in itself may appear to be a criminal act, yet it cannot be termed as actus reus .

Illustrations:

- *An executioner's job is to hang (no actus reus)*
- *An army man kills as a part of his duty (no actus reus)*

ESTABLISHING ACTUS REUS : To establish Actus reus, a lawyer must prove that the accused party was responsible for a deed prohibited by criminal law.

DEFINITION : *Actus reus* is commonly defined as a criminal act that was the result of voluntary bodily movement. This describes a physical activity that harms another person or damages property. Anything from a physical assault or murder to the destruction of public property would qualify as an Actus reus. **Omission** is another form of *Actus reus*. It lies on the opposite side of the spectrum i.e, it involves **not taking an action that would have prevented injury to another person.**

EXCEPTION: The exception to Actus reus is **when the criminal actions are involuntary**. This includes acts that occur as a result of a *spasm or convulsion*, any movement made while a person is *asleep or unconscious*, or activities participated in while an individual is under a hypnotic trance. In these scenarios a criminal deed may be done, but it is not intentional and the responsible person will not even know about it until after the fact.

DOES AN ACT IN ACTUS REUS INCLUDE OMISSIONS?

An omission is nothing but inaction or not doing something. Section 32 of the Indian Penal Code (IPC) clarifies that acts which may be considered as Crime include "illegal omissions". But mere moral omissions of not doing something would not complete the requirement of actus reus.

Illustration : A man is sinking in the swimming pool of a resort. A boy who is beside the pool does not make any attempt to save this man. This is a moral omission of not saving someone's life. The boy cannot be held criminally liable for

such an omission. But in the same scenario, if there is a lifeguard on duty at this resort, and if he does not make any attempt to save the man sinking in the pool, then he can be held criminally liable for such omission.

OMISSIONS/DUTY TO ACT :

When failure to act **may result in criminal prosecution? When you have a ...**

1. Special Relationship to the victim. Such as **parent/child relationships, husband/wife relationships and employer/employee relationships.**
2. Duty to act under statutory law.
3. Duty to protect/care under a private contract.
4. Defendant **voluntarily aid the victim in a bad situation, but leaves the situation making worse than before.**
5. Defendant puts the victim in way of harm. Here failure to help the victim can **result in criminal liability**

MENS REA

MEANING : Mens rea generally means 'ill intention'. Mens rea is a legal phrase used to describe the *mental state of a person*, he must have been in the situation - while committing a crime for it to be intentional. It can be *general intent* to break the law or a *specific intent* viz., premeditated plan to commit a particular offense. The act becomes criminal when the actor does it with a guilty mind.

- To convict an accused person of a wrong doing, a criminal prosecutor must show *beyond any reasonable doubt* that the suspect ***actively and knowingly*** participated in a crime that harmed another person or their property.
- In order to receive a conviction, the lawyer must prove that the accused party had some ***intention or willingness to end the life of another person.***
- On the other hand, if evidence shows the death to be *accidental and unavoidable*, the suspect must be declared innocent and set free.

ESTABLISHING MENS REA :

As intention is an abstract idea, it is difficult to establish it and the help is taken of

surrounding facts or factors -

(i) Previous relation between the accused and the victim, any object of hostility between them.

(ii) Existence of instigation, i.e. Whether accused was hired and what prompted him to commit crime; and

(iii) Whether the accused had something to gain out of the whole affair.

Thus, guilty intention is always preceded by a motive or real causal factors.

VERY IMPORTANT : COINCIDENCE OF ACTUS REUS AND MENS REA: CONTEMPORANEITY RULE

The intent and act must both concur to constitute the crime' -Fowler v. Padget (1798).

- Where an offence requires Mens rea the prosecution must prove that the accused had Mens rea at the time he did the act which caused the actus reus.
- It is a general principle in criminal law that for a person's liability to be established it must be shown that the defendant possessed the necessary Mens rea at the time the Actus reus was committed in other words the two must coincide. This is also known as the contemporaneity rule.
- In some cases a literal interpretation of this rule would manifestly lead to injustice, and the courts have developed ways of finding coincidence of Mens rea and Actus reus (a) when the events take place over a period of time, and (b) where they constitute a course of events.

TRACING THE ORIGIN OF CONCEPT OF MENS-REA:

CASE 1: The early stages of its development are illustrated by the decision in **REGINA V. PRINCE**.

FACTS: Henry Prince was accused of abducting a 14-year-old girl, Annie Phillips, having believed her to be 18 years old. Such an act was at that time in violation of Article 55.

Prince argued that he had made a reasonable mistake in regards to Phillips' age. Despite his excuse for the crime, he was ultimately convicted.

- **MAJORITY HELD:** Lord Bramwell found the conduct of the defendant was generally immoral. **Defendant was convicted for offence of Kidnapping and Rape.**
- **DISSENTING OPINION:** Lord Brett - defendant at least have intended to do something that **was criminal, not just immoral.**

CASE 2: A somewhat more demanding requirement is expressed in **REGINA V. FAULKNER.**

FACTS OF THE CASE : In the process of stealing rum from the hold of a ship, a sailor named Faulkner accidentally set the ship afire, destroying it.

HELD: Lord Brett's conception find its way in this judgement. Lords Fitzgerald and Palles conclude that the Mens rea requirement means that Faulkner (*Accused*) must have at least intended to do something criminal that might reasonably have been expected to have led to the actual harm for which he is charged. Thus, Faulkner ought not be liable for the offense of burning a ship when he intended only to steal rum from it; such conduct, in the normal course of things, does not lead one to reasonably foresee that a ship will be destroyed.

ANALYSIS : This judgement marked the development of concept of mens rea for the conviction of the criminal, rather depending on immoral or other grounds. It also meant that *each offence will have its own distinct mens rea to gain conviction of the accused.* Here in *Faulkner* case, **it meant that offense of burning a ship is different from the Mens rea required for the offense of theft.**

MENS REA IN THE INDIAN PENAL CODE

APPLICABILITY: In India, doctrine of *mens rea* is not strictly applicable. And, there is no mention 'mens rea' in entire of IPC. However, we can say that essence of *mens rea* is reflected in almost all the provisions of the Code. **HOW DO YOU SAY THAT ?**

REASON ONE : All offences in IPC are carefully defined so as to include the precise evil intent which is the essence of a particular offence. Offences are defined with requisite state of mind of the accused like "intentionally", "dishonestly", "voluntarily", "fraudulently", "malignantly", "maliciously" and likewise. So it becomes clear that IPC **does not negate mens rea but requires mens rea of a specific kind which differs from offence to offence.** (similar to Faulkner Judgement)

REASON TWO: Even where certain acts/ omissions may constitute as offence/crime – can be cease to be offence/crime. This is done under IPC (Chapter IV of IPC – General exceptions) by expressing the absence of *mens rea* to acquit the criminal. This chapter controls all offences in IPC by dealing with the general conditions which negative *mens rea* and thus exclude criminal responsibility.

DEGREE OF MENS REA : The degree of *mensrea* plays a significant role in determining the culpability of any offence and has a direct relation to it.

- The highest degree of *mens rea* is '**intention**'. Any crime committed with the intention of committing such a crime, attracts the highest penalty prescribed for that offence.
- Any act done with the '**knowledge**' of the forbidden consequences but without malafide intent attracts a slightly lesser punishment.
- The other degrees of *mens rea* are '**negligence**' which denotes a want of due care and caution and '**rashness**', which implies a mental indifference to some obvious risk.

The punishment for acts done rashly or negligently is less than acts done intentionally or knowingly.

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 circumstances of the case will then determine the criminal **intent** and it will be a matter of a proper inference from them.
- The idea of 'intention' in law is not always expressed by the words - 'intention', 'intentionally' or 'with intent to' but also with words such as 'voluntarily', 'wilfully' or 'deliberately' etc.
- Mere intention to commit an offence not followed by any act, cannot constitute an offence. The obvious reason for not prosecuting the accused at this stage is that it is very difficult for the prosecution to prove the guilty mind of a person.

TRANSFERRED INTENTION:

Transferred intent/malice is a legal doctrine refers to a situation where the intention to harm one individual inadvertently causes a second person to be hurt instead, the perpetrator is still held responsible

EXAMPLE : 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. This doctrine is applicable in India. It was applied by Supreme Court of India in *State of Rajasthan vs. Ram Kailash*(2016).

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. The mental element of a crime ordinarily involves no reference to motive.

MOTIVE IS SOMETHING WHICH PROMPTS A MAN TO FORM AN INTENTION.

- **MOTIVE-** It incites or stimulates action.
- **INTENTION** – It is determination to act in a particular manner

EXAMPLE: A low paid employee, while under severe financial strain, has not money. His wife is critically ill and will die if a particular injection is not administered to her immediately. He steals that medicine from a pharmacy in order to save the life of his wife.

MOTIVE: He wants to save his wife by giving that particular Injection.

INTENTION: With this motive, as he does not have money, he steals that particular injection. He is convicted of theft. His motive, however, pure it may be, will not excuse him from the criminal charge of theft.

ANALYSIS : A crime is generally not committed for the sake of crime itself. There is always an ulterior objective. In the context of a crime, if you ask why it was committed the answer is what may be called as "Motive".⁵ It should be agreed that intention is different from motive. Motive is what prompts a person to form an intention.

ROLE OF MOTIVE IN COMMISSION OF CRIME:

- 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.
- *Motive is not an essential element of an offence but motive helps the court to know the intention of a person. Motive is relevant and important on the question of intention.*⁶

EVIDENTIARY VALUE : Evidence of motive is relevant but not essential for the establishment of a crime. *Failure to prove motive is irrelevant in a case when the guilt of the accused can be proved in any other means.* Absence of Intention may be a defence at a criminal trial but absence of motive is not. It is because of the fact that – motive is only known to the criminal & actual commission of crime should be punished regardless its motive. However, motive will be taken into account in **determining the nature and quantum of punishment.** Motive, however, pure or laudable it may be, will not exonerate the criminal.

KNOWLEDGE

Knowledge is the mental cognition of a thing or state of affair. To know a thing means to have a mental cognition of it. Every man is supposed to intend the natural consequence of his act. Sometimes it may be certain and sometimes it may be probable. When it is

⁵ Nankaunoo v. State of U.P

⁶ Om Prakash v. State of Uttaranchal [(2003) 1 SCC 648] and State of UP v. Arun Kumar Gupta [(2003) 2 SCC 202.

certain we may call it as knowledge. When it is, only a probability we call it as belief. **Knowledge is the highest degree of the speculative faculties and consists in the perception of the truth of the affirmative or negative proposition.**

Section 26 of the Indian Penal Code states that “a person is said to have reason to believe a thing if he has sufficient cause to believe that thing, but not otherwise.”

INTENTION V. KNOWLEDGE : A man may be aware of the consequence of an act, though he may not intent to bring them about.

KNOWLEDGE	INTENTION
It is awareness on the part of the person concerned of the consequence of his act of omission or commission, indicating his state of mind.	It is a desire to achieve a certain purpose.
Knowledge is bare awareness.	Intention is to know certain consequences should ensue.
As compared to ‘knowledge’, ‘intention’ requires something more than the mere foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end.” The demarcating line between knowledge and intention is no doubt thin, but it is not difficult to perceive that they connote different things.	
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-in-laws. The child dies but the mother survives. 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. <u>The act of the mother is culpable homicide. It is not murder, as she did not intend to kill the child.</u>	

RECKLESSNESS

The term recklessness means a *form of indifference* to the realised possible risk and consequences of one’s action. Here the man may foresee his possible/probable

consequences; yet not desire it, but it the end that undesired consequence is the result. This state of mind is known as 'recklessness'. It is an attitude of mental indifference to obvious risk. It also involves the wrongful assumption of a risk.

NEGLIGENCE

CIVIL NEGLIGENCE V. CRIMINAL NEGLIGENCE:

(Civil) Negligence is an omission to do something which

- ✓ a *reasonable man*, guided upon those considerations which ordinarily regulate the conduct of human affairs, *would do*, or
- ✓ doing something which a *prudent and reasonable man would not do*.

What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. **For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree.**

CRIMINAL NEGLIGENCE : Negligence in a criminal case must be *culpable and gross* and not the negligence which is merely based upon an error of judgment, or arises because of defect of intelligence.⁷ Criminal negligence is the gross and culpable neglect or ***failure to exercise reasonable care and proper precaution*** imperative to be adopted by a person to avoid causing of injury to the public or a person or an individual. Criminal negligence is culpable carelessness.

NEGLIGENCE UNDER INDIAN PENAL CODE : Under the Indian Penal Code only a few negligent acts have been made penal, when they affect the safety of the public, such as *rash driving on the public road, rash navigation of vessel, negligently conveying for hire any persons by vessel.*

TEST OF NEGLIGENCE : Criminal liability based on the negligence is also based on either intention or recklessness and, faced with the need *to establish recklessness as the default mens rea for guilt*. In order to hold the existence of criminal rashness or criminal negligence it shall have to be found out that the *rashness was of such a degree as to*

⁷ Syad Akbar v. State of Karnataka (1980) 1 SCC 30

amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent.⁸

RASHNESS V. NEGLIGENCE : Negligence is the genus, of which rashness is the species. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the conduct of accused amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection, which a prudent and reasonable man would consider sufficient, considering all the circumstances of the case.

A corporation aggregate cannot be fastened with criminal liability. Critically examine.

SECTION UNDER IPC :

- Section 11 of Indian Penal Code, 1860 (the Code) define person. It reads “the word person includes any Company or Association or a body of persons, whether incorporated or not.”
- Further section 2 of the Code provides that “Every person shall be liable to punishment under this Code.” Thus, section 2 of the Code without any exception to body corporate, provides for punishment of every person which obviously includes a Company. Therefore, by reading of these two provision concept of corporate criminal liability can be derived, though it is not the sole legislation which provides for the punishment of corporate body, Companies Act, 2013, Income Tax Act, etc.

The question that arises for consideration was whether a company or a corporate body could be prosecuted for offences for which the sentence of imprisonment is a mandatory punishment?

- *The Assistant Commissioner, Assessment-II, Bangalore & Ors. v. Velliappa Textiles* by a majority decision it was held that the company cannot be prosecuted for offences

⁸ Syad Akbar v. State of Karnataka (1980) 1 SCC 30.

which require imposition of a mandatory term of imprisonment coupled with fine. It was further held that where punishment provided is imprisonment and fine, the court cannot impose only a fine.

- The doctrine of corporate criminal liability in India was made crystal clear in the recent groundbreaking judgement in 2005 of the Apex Court in the case of *Standard Chartered Bank and Ors. etc. v. Directorate of Enforcement and Ors* : . . The bench by a majority of 3:2 held that a corporation can be punished and is criminally liable for offences for which the mandatory punishment is both imprisonment and fine. In case the company is found guilty, the sentence of imprisonment cannot be imposed on the company and then the sentence of fine is to be imposed and the court has got the judicial discretion to do so. This course is open only in the case where the company is found guilty but if a natural person is so found guilty, both sentence of imprisonment and fine are to be imposed on such person.
- The judgment of the Supreme Court in *Iridium India Telecom Ltd. v. Motorola Inc.* on 20 October 2010 merely reiterated the principles laid down previously in the Standard Chartered Bank case.

'Although the requirements of mens rea related is, general throughout the criminal law, there are numerous exceptions to it'. Explain with illustrations.

Exceptions to Mens rea :

- In Indian criminal law also, a mere intention to commit a crime is not punishable except in some exceptional cases where the law takes notice of an intention to commit a crime as '*Waging War against the Government*' under Section 121 to 123 of Indian Penal Code and '*Sedition*' under Section 124 A of Indian Penal Code etc as they have been considered to be the serious offences and mere preparation of it is punishable as it is to be checked or prevented at the earliest stage.
- Besides it, a mere '*Assembly of Persons for Committing the Dacoity*' is punishable under Section 402 of Indian Penal Code.
- Similarly, the persons who have been engaged in the '*Criminal Conspiracy*' specified under Section 120 A of Indian Penal Code shall be liable to be punished although he has not himself committed the impugned act.

- **PREPARATION TO COMMIT – SEGMENT** : There are some exceptional cases provided under the Indian Penal Code, where mere *preparation to commit the offences is punishable as these offences are considered to be grave and serious offences*. These offences are as follows:- (i) Preparation to wage war against the Government (Section 122). (ii) Preparation to commit depredation on territories of a power at peace with Government of India (Section 126). (iii) Preparation to commit dacoity (Section 399). (iv) Preparation for Counterfeiting of Coins (Section 233 to 235) (v) Preparation of Government Stamps (Section 255 and 257) (vi) Possessing Counterfeit Coins, False Weight or Measurement and Forged Documents (Section 242, 243, 259, 266 and 474).
- **GENERAL EXCEPTIONS** : Chapter IV - General exceptions can also constitute an exception to the rule of Mens rea under IPC.