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Indian Penal Code (IPC): Elements of Crime for DU LLB Entrance Exam

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Indian Penal Code (IPC): Elements of Crime for DU LLB Entrance Exam

Human conduct that is believed to be inimical to social interests is considered a crime. The purpose of criminal law is to express a formal social condemnation of forbidden conduct, supported by sanctions to prevent it. According to ***Blackstone***, 'a crime is an act committed or omitted, in violation of a public law either forbidding or commanding it'. Crime is basically an act which a particular social group regards as sufficiently harmful to its fundamental interests.

The maxim ***actus non facit reum, nisi mens sit rea*** (the act does not amount to guilt, it must be accompanied by guilty mind) is considered as the basic condition to charge someone against penal liability i.e. mere guilty act and mere guilty mind are independently not sufficient, there has to be a nexus between the two.

See this video on Elements of Crime (not IPC) by Wimble Don

Although the video is from Australia, it shares important principles. Good to know a different perspective.

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Following are the essential elements to constitute a crime:

1. Actus Reus- it is such a result of human conduct which law prohibits i.e. the guilty act. An act may be positive or negative (omission). A wrongful act which inflicts harm or destruction to any person or property is read as a guilty act.
2. Mens Rea- it is the guilty mind required for the commission of an offence. Mens Rea is the evil intention or knowledge to do a wrongful act voluntarily in a conscious state of mind. It is the natural result of a man's external act and not the condition of his mind.

There must be a concurrence of mens rea and actus reus to constitute a crime.

1. Punishment- in order to call a wrongful act as a crime it should not only be prohibited by the law but should also be punishable by the State. The chief aim of criminal law is to punish the offenders. The purpose of punishment is to prevent a criminal from repeating the offence.

In the case of **NATHUNI YADAV *VS.* STATE OF BIHAR** it was held that motive is not a prerequisite for conviction of an offence; it has mere evidentiary value and mere absence or presence of motive will not make a person guilty or innocent.

THEORIES OF PUNISHMENT

The purpose of criminal law is to punish the wrongdoer in order to prevent him from repeating the same offence again. Following are the theories of punishment, according to which what kind of punishment is to be given to an offender is determined:

1. Retributive theory: it is the most ancient form of punishment, it is based on the ideals of revenge or retribution i.e. the punishment should be given in equal proportion to the loss or harm caused by the wrongful act i.e. an eye for an eye, a tooth for a tooth. It considers punishment as an end itself. This theory is condemned in modern times as it is based only on vengeance and it also disturbs the peace of the society.

The death sentence can also be awarded under this theory in retribution for culpability.

1. Deterrent theory: Bentham, the founder of this theory believed that if punishment is given to one offender, it will deter the others committing the similar offence i.e. the punishment when inflicted on one will create a sense of fear amongst others and will prevent them from committing such kind of crimes. The theory supports strict punishments and is based on hedonistic concepts. Bentham believed that unpunished crimes not only leave the path open for the offender but also it paves the path for the person having such an evil motive to repeat the same offence again.

For example, if X is punished with life imprisonment for the offence of theft then it will create a sense of fear in the minds of A, B and C having such motives and prevent them from committing theft.

1. Preventive theory: the theory believes in preventing the crime rather than taking revenge for it. The makers of the theory believe that when an offender is given punishment it prevents him from committing future crimes and thus protecting society. This theory makes the attempt to an offence also punishable so as to prevent the further commission of a crime.

For example, if X is imprisoned for committing grievous hurt, then in future he will not be able to do the same with others.

1. Reformative theory: this theory is considered as the most humane theory as it focuses on reforming the offender rather than punishing him. The theory aims at rehabilitating the offender to the law-abiding citizen of the society and to bring them back from the life of crime. Modern criminology and penology support this theory. It helps the offender to reform himself by awarding rigorous punishment and realise his mistake so that he does not commit the offence again.

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TYPES OF PUNISHMENT

Indian Penal Code, 1860 (IPC) states five types of punishments. In Indian Criminal Law punishment is granted according to the gravity of offence while taking in consideration the mitigating factors i.e. the graver the offence, the stricter the punishment. Factors like intention, motive, actual loss caused, provocation etc. play an important role in the determination of the quantum of punishment. The fundamental principle to be kept in mind, while granting punishment is that it should commensurate to the offence committed by the offender.

Section 53 of IPC provides for the following punishments:

1. Death sentence: under IPC death sentence is awarded only for few offences like murder, waging war etc. In the case of BACHAN SINGH STATE OF PUNJAB it was held that death should be awarded in the rarest of the rare cases which shake the conscience of the society and harms the entire society at large. It is also known as capital punishment and in India, according to section 354(5) CrPC death sentence is executed by ‘hanging by rope’.

Venezuela is the first country to abolish the death sentence and in Burkina Faso, the death penalty was recently abolished in the year 2018.

1. Life imprisonment: the accused is sentenced rigorous imprisonment till his last breath i.e. the imprisonment continues till the existence of his natural life.
2. Imprisonment: it may be simple or rigorous. Simple imprisonment is given for small offences and the convict is not forced to do hard manual labour. However rigorous imprisonment includes hard manual labour such as digging the earth, cutting wood etc. and it is granted for

severe offences.

The imprisonment may be partly simple and partly rigorous.

1. Forfeiture of property: the property of the accused is taken away. This type of punishment is mostly awarded under civil law. However in criminal law also state may take away the property of the criminal while punishing him under section 125, 126 and 127 of IPC.
2. Fine: it may be imposed as an alternative to imprisonment or in addition to imprisonment. Fine is different from compensation as fine goes to the treasury of state whereas compensation is given to a victim. Punishment may be increased in lieu of default in payment of a fine. Visit our complete collection of legal reasoning questions and posts. Read our legal reasoning post on void agreements and the practice questions here Read CLATapult’s post on offer and acceptance here. Also, try their mocks for more legal reasoning practice questions. Visit CLATalogue for more legal reasoning practice questions for CLAT 2020. Stay tuned for the practice paper on elements of crime ipc.