Techniques of law and Remedies

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1.Introduction

Criminal Law is based on the principles of 'Actus Reus' and 'Mens Rea'. In the previous lesson we have already studied the various purposes of punishment, like, Retribution Aims – equal harm to offender in society's name; Incapacitation Aims – get them out of society; Rehabilitation Aims – treat offenders to help them to re-enter society; Deterrence: (a) General Deterrence Aims – Everyone must see consequences of crime (b) Specific Deterrence Aims – Criminal must see consequences of crime and lastly, Public Education Aims – let society know what our shared values are.

This article will also introduce the emerging techniques of Law which is widely used by Indian citizens to prevent corruption and malad ministration. The Government of India enacted Right to information (RTI), Act, 2005 to provide information to the citizens. This Act contains six chapters, Thirty-one sections and two schedules.

2. Objectives

The objectives of this study are as follows.

1. To describe the general or the basic principles of Criminal Law;
2. To know the general 'defences' as described in the Indian Penal Code (IPC);
3. To explain the main provisions of Right to Information Act, 2005 (as amended up to Feb. 2011); and
4. To understand the process of getting the information by the citizens.

3. Criminal law-crime and general principles of criminal law

3.1 Crime

What is 'crime'? This question must be addressed before we move on to Criminal Law. A 'crime' may, therefore, be an act of disobedience to such a law forbidding or commanding it. But then disobedience of all laws may not be a crime, for instance, disobedience of civil laws or laws of inheritance or contracts. Therefore, a 'crime' would mean something more than a mere disobedience to a law, "it means an act which is both forbidden by law and revolting to the moral sentiments of the society." Thus, robbery or murder would be a 'crime', because they are revolting to the moral sentiments of the society, but a disobedience of the revenue laws or the laws of contract would not constitute a crime. Then again, "the moral sentiments of a society" is a flexible term, because they may change, and they do change from time to time with the growth of the public opinion and the social necessities of the times. Thus, Criminal Law focuses on the following equation:

4. Principles of Criminal Law

CRIME = ACTUS REUS + MENS REA (concurring in time)

Thus, from the above equation it is clear that generally 'crime' cannot be constituted either of one alone i.e. 'Actus Reus' or 'Mens Rea'. The standard common law of criminal liability is usually expressed in the Latin phrase, was first cited as a principle by Lord Kenyon C.J. in ***Fowler* v. *Pedger*** thus: "*It is a principle of natural justice and of our law that actus non facit reum nisi mens sit rea"*, which means "the act does not make a person guilty unless the mind is also guilty". Thus, in jurisdictions with due process, there must be an '*actus reus*' accompanied by some level of '*mens rea*' to constitute the crime

with which the defendant is charged. For 'crime' it is both to be present. Let us study these principles one by one:

4.1 Actus Reus

Actus Reus is a Latin term that means guilty act i.e. it may be an act of commission or an act of omission. This term has been given by Russell that means physical event. The essentials for actus reus are: the act must be voluntary, acts done while sleepwalking, epilepsy etc are not excluded except where such dangerous situations are created using the habit of the person known to the person who acts wrong. However, in some cases, law awards a punishment although the *'actus reus'* is not consummated.

They are known to us as 'attempt', 'conspiracy' or even in some cases as 'preparation', which we have discussed earlier at length. Examples, 'm' pushes 'y' in pond shows 'actus reus' whereas if 'm' and 'y' while walking near pond and 'm' slips and hit 'y' and y falls into pond does not comprise of 'actus reus'.

4.2 Mens rea

Mens rea is Latin term that means guilty mind, which is considered as a Cardinal Doctrine of the Criminal Law. Thus, while making decision it has to be made clear that whether the 'actus reus' was intentional or it was a unintentional. Thus, state of mind has to be determined only then the puzzle will be broken. The concept of 'mens rea' developed in England during the latter part of the common-law era (about the year 1600) when judges began to hold that an act alone could not create criminal liability unless it was accompanied by a guilty state of mind. Example, Murder requires.

5. General 'Defences' in criminal law

In Criminal Law there are number of 'defences' available to the accused. These defences are listed as below:

5.1 Insanity or mental disorder

It is the most common defence used by the accused at large to negate the crime effect. Here the accused is declared to be suffering from mental disorder and is not able to take any sensible decision as the accused cannot make a difference between right and wrong.

5.2 Automatism

It means there must have been a total destruction of voluntary control. This destruction of voluntary control excludes a partial loss of consciousness as the result of driving for too long. Thus, it is a state where muscles of our body act not through mind and / or loss of consciousness. Example, X fall faint as he or she by hearing a knock on the door.

5.3 Intoxication

It is a state where a person in toxicated with some drug or chemical etc and that intoxicated person lose its control on mental capabilities. Thus, the focus of the defence of intoxication aims to declare the accused denial of mens rea, which means that the mental state of the accused was not guilty for actus reus. Example, m claims defence for a crime because of drug overdose.

5.4 Mistake of fact

Mistake of fact is genuine and is accepted by law. This is yet another common defence by accused in criminal law, by saying I made a mistake" in conjunction with another defence. Example, a charge of assault on a police officer may be negated by genuine (and perhaps reasonable) mistake of fact that the person the defendant assaulted was a criminal and not an officer.

5.5 Necessity/lesser harm

It means that when a criminal act is justified by highlighting that it was done to prevent much more harm that could have been done and faced. Example, 'X' claims that 'Y' was critically injured by 'X', as 'Y' a trespasser intended to put on fire the property of 'X'.

5.6 Lawful capacity of office and / or legal duty

This defence is primarily used by the public servants to justify their act as covered and empowered by their authority. Example, a paramedic who forcibly enters a house or building in answer to an emergency call cannot be charged with breaking and entering. Likewise, when a policeman arrests a person on account of carrying of a gun in public that it was feared that the accused possibly could harm some innocent person(s), is not held guilty.

5.7 Self-defence

It is an act where a person takes a course of action and while in course of that action the defendant is injured. The accused may use the defence of self-defence in this case. Example, 'X' claims that 'Y' intended to kill him/her. As a defence 'Y' claims that its course of action was an act of self-defence. 'Y' claims that 'X' is a burglar and forcefully barged into his house and to protect its property 'Y' attacked 'X' and 'X' lost one of its limbs.

According to Indian Penal Code, accused may plead that he/she committed the alleged offense for justified causes that are socially accepted or that conform to moral principles.

1. Statutory Excuses that Exclude Transgression: Justifiable Defence and Averting Danger in an Emergency
2. Legally Prescribed Excuses for Mitigation:

6. The list of defences of the Indian Penal Code (IPC) can be categorized as follows:

- Judicial Acts
- Mistake of fact
- Accident
- Absence of criminal intent
- Consent

7. List of 'Defences' of the Indian Penal Code (IPC)

- Trifling acts
- Private defence

1. Act of a person bound by law to do a certain thing
2. Act of a Judge acting judicially
3. Act done pursuant to an order or a judgment of a Court
4. Act of a person justified, or believing himself justified, by law
5. Act caused by accident
6. Act likely to cause harm done without criminal intent to prevent other harm
7. Act of a child under 7 years
8. Act of a child above 7 and under 12 years, but of immature understanding
9. Act of a person of unsound mind
10. Act of an intoxicated person and partially exempted
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer
12. Act not intended to cause death done by consent of sufferer
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian
14. Act done in good faith for the benefit of a person without consent
15. Communication made in good faith to a person for his benefit

16. Act done under threat of death
17. Act causing slight harm
18. Act done in private defence

6. Types Techniques/Theories of Punishments

The types of punishments are based on the various theories of punishments. These are as follows:

6.1 Deterrent Theory

A punishment is primarily deterrent when its object is to show the futility of crime and thereby teach a lesson to others. The philosophy behind this theory and type of punishment is to give a clear message that "a crime is an ill bargain to the offender". Thus, followers of this theory advocates capital punishments to the offenders.

6.2 Preventive Theory

This Theory aims to disable the wrong-doer and creating a fear of punishment in the mind of the wrong doer. This Theory works in the following three ways:

- By inspiring all perspective wrong doers with the fear of punishment;
- By disabling the wrong doer from immediately committing any crime; and
- By transforming the offender by a process of reformation and re– education, so that he/she would not commit crime again.

6.3 Reformative Theory

According to this Theory a 'crime' is committed as a result of the conflict between the character and the motive of the criminal. This Theory aims at strengthening the character of the wrong doer, so that he/she does becomes an easy victim to its own temptations and curing the mental state of the wrong-doer. Thus, this Theory works on the dictums, "you cannot cure by killing" and "Crime is like a disease". This theory also uses rehabilitative techniques to reform the wrong-doers. These techniques are used to motivate the wrong-doers by opening the doors of employment and self-employment for them. This way wrong-doers start earning that uplifts their economic status, which in return takes off the motive of committing crime.

Some of the punishments advocated by the followers of this philosophy are – jail, probation, reformatory homes, vocational training etc.

A very important point is to be borne in mind regarding the concepts imprisonment and jail. Usually, these two terms are used interchangeably, as these are treated synonyms. Yet there is difference between these two terms, which is as follows:

Jail is a place where a wrong doer spends short term sentences, while in imprisonment there is long term sentences. Jail has fewer amenities in comparison to prison. In jail offenders get only food, stay and security whereas in prison offenders get much more amenities.

6.4 Retributive Theory

According to this Theory any rational system of administration of justice must attempt to satisfy this emotion of retributive indigenous. This kind of punishment will not only satisfy the primitive spirit of private vengeance in the wronged, but also quench a similar feeling in the society at large. This Theory is based on the idea of vindictive justice, or a tooth for a tooth and an eye for an eye. The principle is that if a man/ woman has caused the loss of a man's/women's eye, his/her eye one shall cause to be lost; if he/she has shattered a man's limb, one shall shatter his/her limb; if a man/woman has made the tooth of a man/woman that is his/her equal fall out, one shall make his/her tooth fall out. *Kant's retributive theory of punishment, punishment is not justified by any good results, but simply by the criminal's guilt. Criminals must pay for their crimes; otherwise, an injustice has occurred. Furthermore, the punishment*

must fit the crime. Kant asserts that the only punishment that is appropriate for the crime of murder is the death of the murderer. As he puts it, "Whoever has committed a murder must die."

6.5 Compensation Theory

According to this Theory the object of punishment must not be merely to prevent further crimes but also compensate the victim of the crime. This Theory further believes that the main spring of criminality is greed and if the offender is made to return the ill gotten benefits of the crime, the spring of criminality would be dried up.

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