

LL.M 2nd Year (3rd sem)

Criminal Law Group

History and Basic Principles of Criminal Law

L-3009

Nature and Definition of Crime

Introduction-crime is a social evils. crime is a such act which is prohibit by law. It is a myth to think of a crimeless society. This is the fact that there can be no society without the problem of crime and criminals. The concept of crime is essentially concerned with the social order. Everyone owes certain duties to his fellow men and at the same time has certain rights and privileges, which he expect others to ensure for him. Personal safety particularly security of life, liberty and property, is of utmost importance to any individual. State protect of all human being, and maintain law and order in the land, so that its subjects can lead a peaceful life with no fear of injury to their lives, limbs or property.¹

Concept of crime :The concept of crime is essentially concerned with the social order. Problem and crime are essential part of human being .Commenting on this aspect of crime problem ,Emile Durkheim in his treatise “crime as a normal phenomenon” says a society composed of persons with angelic qualities would not be free from violations of the norms of that society. In fact crime is a dynamic concept changing with the social transformation. He argues that crime is a necessary feature of every society as it is a fundamental condition of social organization. during the 12th and 13th centuries included only those acts as crime which were committed against the state or the religion .thus ,treason ,rape and blasphemy were treated as crime where as “murder” was not crime.

Any act, which is a crime today ,may not be a crime tomorrow, if the legislature so decides. To understand the meaning and concept of crime in its correct perspective, There are some definition related to concept of crime.²

- 1) As a public wrong
- 2) As a moral wrong

¹ Pillai P S A, Criminal Law ,Lexis Nexis,14 Edition 2019, p.1.

² Paranjape Prof. N. V. Criminology &Penology with Victimology, Central Law Publication,16th Edition 2014 Reprinted 2015,P.1.

- 3) As a conventional wrong
- 4) As a social wrong
- 5) As a procedural wrong
- 6) As a legal wrong

1)As a public wrong- Blackstone defines crime in two ways –

In the first place –

Crime is an act committed or omitted in violation of a public law forbidding or commanding it.

This definition appears the scope of crime to violation of a public law. As such this definition would cover only political offence i.e. offence against the state. If public law is taken as equivalent to positive or municipal law, the definition too wide and would cover all legal wrongs, while in fact every legal wrong is not a crime. Blackstone visualized the inadequacy of his definition of crime, so he modified his definition and said :

“A crime is a violation of the public rights due to the whole community, considered as a community”.

The definition is not free from error. It narrows down the scope of crime to the violation of right only ,where criminal law fastens criminal liability even on those persons who omit to perform duty required by law.

While editing Blackstone`s Commentaries, Stephan modified this definition slightly and reconstructed:

A crime is a violation of a right, considered in reference to the civil tendency of such violation as regards the community at large.

These definition Blackstone and Stephen further stress that crimes are breaches of those laws which injury the community. Similar was the idea in regard to the concept of crime with the Romans ,who designated crime as Delicta Publica (Public Wrongs) and criminal trials as Judica Publica (Public Justice).

As a Moral Wrong –The word “crime” owes its genesis to the Greek expression “krimos”, which is synonymous with the Sanskrit word “krama meaning social order.” The word crime is applied to those acts that go against social order and are worthy of serious condemnation.

Garafalo was an eminent criminologist, He defines crime in terms of immoral and anti-social acts. He says: 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.

No doubt immoral acts like murder, stealing or destroying another's property, kidnapping a child, raping a woman, etc. have been traditionally considered as crimes. And other immoral acts like ingratitude, hard-heartedness, callous disregard for the sufferings of others etc., have never been crime law for obvious reasons of their triviality, or the impracticability of using criminal law as the means to correct such behavior. Instead, they are to be corrected by social, educational and religious institutions.

3) As a Conventional Wrong-Edwin Sutherland is a criminologist. He defines crime in terms of criminal behavior.

Criminal behavior is behavior in violation of the criminal law. No matter what the degree of immorality, reprehensibility, or indecency of an act, it is not a crime unless it is prohibited by the

Criminal law. The criminal law, in turn, is defined conventionally as a body of specific rules regarding human conduct which have been promulgated by political authority, which apply uniformly to all members of the classes to which the rules refer, and which are enforced by punishment administered by the state. Characteristics, which distinguish this body of rules regarding human conduct from other rules, are therefore, polytonality, specificity, uniformity and penal sanction. He says that crime is a violation of the criminal law.

4)As a social wrong-John Gillin gives a sociological definition of crime.

John Gillin says "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 place such act under the ban of positive penalties."

5)As a Procedural Wrong -Austin defines crime "A wrong which is pursued by the sovereign or his subordinates is a crime (public wrong). A wrong which is pursued at the discretion of the injured party and his representatives is a civil injury (private wrong)."

6) As a legal wrong-

Kenny modified Austin`s definition that

“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.”

Roscoe pound defines Crime -

A final answer to the question ‘what is crime’?, is impossible ,because law is a living ,changing thing ,which may at one time be based on sovereign will and at another time on juristic science ,which may at one time be uniform, and at another time give much room for judicial discretion ,which may at one time be more specific in it`s prescription and at another time much more general.

6)As a Legal wrong-6 When a penal statute prescribes punishment for an or illegal omission(sec 32,I P C),it becomes a crime. According to section 40 I.P.C. Except in the chapter and sections mentioned in clauses 2 and 3 of this section ,the word “offence” denotes a thing made punishable by this code. Crime is an act of commission or an act of omission on the part of a human being ,which is considered harmful and prohibited by the state, ³

What is crime -It is very difficult to give a correct definition of a crime. Glanville Williams admitting the impossibility of having a workable content based definition of a crime points out that the definition of crime is one of the thorny intellectual problems of law. Russell also admitted that “to define crime is a task which so far has not been satisfactorily accomplished by any writer”.

JW Cecil Turner, who said that the definition of a crime has always been regarded as a matter of great difficulty and the truth appears to that no satisfactory definition has yet been achieved, and that it is indeed, not Crime possible to discover a legal definition of crime.⁴

Taft—is a social injury are thus subjective (expression of opinion) as well as relative(varying in time &place).

Prof Pripurnanand –Some acts acts or omission in respect of which legal punishment be inflicted on the which legal punishment be infliction on the person who is in default whether by acting or omitting to act

³ Gaur K.D. , Criminal Law Criminology and Administration of Criminal Justice, Lexis Nexis, Third Edition 2015,P. 186-189

⁴ Pillai`s PSA, Criminal Law, Lexis Nexis, 14th Edition 2019 ,P.2.

Gillin-an act that has been shown to be actually harmful to the society, or that is believed to be socially harmful by group by group of people which has ,power to enforce its beliefs and that place such act under the ban of positive penalties

Thus he considers crime as an offence against the law of the land.

Albert Morris-In principle crimes are acts that are considered by those in authority to be sufficiently inimical to the general welfare as to warrant official interdiction and punishment. ⁵

Kenny-“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 a all.”

In this definition the word sanction means punishment and remissible refers to pardon by crown. But this definition has evoked criticism on to ground that there are indeed a number of compoundable offences that are remissible by the consent of the parties.

Halsbury -Crime as an unlawful act which is an offence against the public and the perpetrator of that act is liable to legal punishment.

Keeton – A crime would seem to be any undesirable act which the state finds it most convenient to correct by the institution of proceeding for the infliction of a penalty ,instead of leaving the remedy to the discretion of the injured party.

On the basis of the definition of as crime has three attributes-

- (i) It is a harm brought about by some anti -social act of a person .which the state desires to prevent ,
- (ii) The preventive means taken by state is in the form of a punishment .
- (iii) The legal proceeding for determining the guilt or otherwise of the accused are governed by the rules of criminal law procedure contained in the code of Criminal Procedure and the law of evidence.⁶

Blackstone -Crime as an act committed or omitted in violation of a public law either forbidding or commanding it.

⁵ Chauhan Dr. M. S., Criminology and Criminal Administration ,Central Law Agency, 5th Edition 1995, P.12.

⁶Paranjape Prof. N.V ,Criminology &Penology with victimology .central Law Publication,16th Edition reprinted 2015 ,P.9

Paton-“The normal marks of a crime are that the state has power to control the procedure, to remit the penalty or to inflict the punishment”,

Miller -Crime is to be the commission or omission of an act which the law forbids or commands under pain of a punishment to be imposed by the state by a proceeding in its own name.

Stephen -Crime is an act forbidden by law and which is at the same time revolting to the moral sentiments of the society.

Austin- A wrong which is pursued at the discretion of the injured party and his representatives is a civil injury a wrong which is pursued by the sovereign or his subordinates is a crime.

Thus according to Austin in case of a civil wrong the state does not interfere until the wrong has been committed and proceedings are initiated by the injured party or by some other person acting on his behalf .In case of criminal wrongs proceeding can be instituted by the sovereign or his subordinates alone.⁷

Sutherland says about crime-that just as germ theory of disease does not explain all diseases ,so it is possible that no theory of criminal behaviour will explain all criminal behaviour. In the case ,it will be desirable to define the areas to which any theory ,applies ,so that several theories are co-ordinated and when taken together ,explain all criminal behaviours.

Sutherland said that Criminal behaviour is behaviour in violation of criminal law. No matter what the degree of immorality .reprehensibility or indecency of an act ,it is not a crime unless prohibited by the criminal law.⁸

A pattern of human of human behaviour prohibited by criminal law at a given time in given society thus depends upon the specific feather of its organisation. A human conduct that is belived to be inimical to the social interests is labelled as a crime.

Indian penal code -Offence means an act or instance of offending ,commit an illegal act and illegal means ,contrary to or forbidden by law.⁹

⁷ Misra Prof S.N; Indian Penal Code, Central Law Publications, 18th Edition 2012, p.4-5

⁸ Chauhan Dr. M.S; Criminology ,Criminal Administration and victimology Central Law Agency 9th Edition 2013,P.11

⁹ Ratan Lal &Dhiraj Lal ,The Indian Penal Code, Lexis Nexis ,34th Edition 2014, P.78.

Purpose of criminal law – W Friedman, approvingly quoting Professor Wechsler observed “The purpose of criminal law is to express a formal social condemnation of forbidden conduct buttressed by sanctions calculated to prevent it”. According to him ,there are three question “to which different societies give very different answers”

1)What kind of conduct is forbidden?

2)What kind of formal social condemnation is considered appropriate to prevent such conduct?

3)What kind of sanction is considered as best calculated to prevent officially outlawed conduct ?

According to Nigel Walker-The purpose of criminal law are:-

1)The protection of the human person against intentional violence, cruelty or unwelcome sexual approaches.

The protection of people against some form of unintended harm (traffic, poisons).

The protection of particularly vulnerable individuals against the abuse of their person or property.

The defence of the state .

The Protection of property in of property against theft .fraud or damage .

The protection of social institutions such as marriage and family.¹⁰

Criminal law and morality -Criminal law and moral law are different with each other and different orbits of human conduct. Criminal law is narrower than morality. Criminal law then must be confined within narrow limit, and can be applied only to definite overt acts or omission. capable of being distinctly proved ,which acts or omissions inflict definite evils, either on specific persons or on the community at large. It is within these limits only, that there can be any relation at all between criminal law and morality .Some offence like murder, rape robbery ,theft etc there is common in criminal law and moral law. According to sir James Fitzjames Stephen “The sentence of the law is to the moral sentiments of the public in relation to any offence what a seal is to

¹⁰ Pillai's PSA, Criminal Law Lexis Nexis, 14th Edition 2019,P.7.

hot wax. It converts into a permanent final judgment what might otherwise be a transient sentiment. The mere general suspicion or knowledge that a man has done something dishonest may never be brought to a point and the disapprobation excited by it may in time pass away, but the fact that he has been convicted and punished as a thief, stamps a mark upon him for life. In short the infliction of punishment by law gives definite expression and solemn ratification and justification to the hatred which is excited by the commission of offence, and which constitutes the moral and popular sanction of morality, which is also sanctioned by criminal law. The criminal law thus proceeds upon the principle that it is morally right to hate criminals, and it confirms and justifies that sentiment by inflicting upon criminals punishment which express it¹¹

The standard of morality may differ from society to society. Certain morals are universal in character and common to all societies. It is the duty of legislators to protect these morals by providing necessary safeguards. The law should in any case continue to support a minimum morality because roots of both systems are lying in society itself.¹²

Criminal law and Ethics-Criminal law is concerned with relationships between individuals, rather than with the individual excellence of their characters. Ethics is a study of the supreme good, which concentrates on an individual. Law comes in only when ethics and morality fail. Ethics deals with absolute ideal, whereas positive morality deals with current public opinion.¹³

Classification of crime—

1-Legal crime-----theft, robbery, dacoity, rape, hurt etc.

2-Political crime-----Political activity, violation of the election laws. etc

3-Economic crime-----white collar crime, smuggling, prostitution, gambling, etc

4-Social crime-----Child marriage, dowry, juvenile justice, etc.

According to I.P.C-

a) Offences against person.

¹¹ Pillai's Criminal Law, Lexis Nexis, 14th Edition 2019P.8

¹²Srivastava .O .P, Principles of Criminal Law, Eastern Book Company, 4th Edition 2005, P.7

¹³ Pillai's Criminal Law, Lexis Nexis, 10th Edition 2008 reprint 2009,P.10

- b) Offence against property.
- c) Offence relating to documents.
- d) Offence affecting mental order.
- e) Offence against public tranquillity.
- f) Offence against state.
- g) Offence relating to public servants.

Characteristic of crime-

- **External consequences.**
- **Harm.**
- **An act (Actus Reus).**
- **Mens-rea or guilty mind.**
- **Prohibited act.**
- **Punishment.**

Difference between Sin and Crime-

- The concept of sin emanates from religion whereas crime is a legal proposition.
- Sin results in violation of rules of religion or morality while crime involves breach of law.
- A sinner is punished by God but a criminal is punished by the State.
- There is no direct injury or harm in case of a sin but a crime necessarily involves some kind of direct injury.
- The remedy for a sin is penance whereas a person who commits a crime is subjected to a term of sentence by the law court.¹⁴

Conclusion -The nature and definition of a crime has always been regarded as a matter of great difficulty. Crime and Society has become a part of each other ,Without crime we can not imagine of a society .There is need to control of crime. According to Jerome Hall leads to a description of the following seven inter related and overlapping differentia of crime . These are :-

- 1- There must be some external consequences of “harm” to “social interest.”**

¹⁴ Paranjape Prof .N. V.,Criminology&Penology with Victimology, Central Law Publications ,16th Edition 2014 Reprinted 2015,P.13

- 2- The harm must be “prohibited” by Penal law.
- 3- There must be “conduct” i.e. intentional or reckless action or inaction that brings the prohibited “harm”.
- 4- There must be “mens rea” or “criminal intent”.
- 5- There must be “concurrence” of mens rea and conduct.
- 6- There must be a “causal” relation between the legally prohibited harm and the voluntary misconduct.
- 7- There must be legally prescribed “punishment” or threat of punishment.¹⁵

But we can say that Penal Law is perceived as an effective instrument of social control.

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¹⁵ Pillai's P.S.A., Criminal Law , Lexis Nexis , Edition 14th, Year 2019 , P.13