



338en08



Notes

## TECHNIQUES OF LAW AND REMEDIES II

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 lesson will also introduce the emerging techniques of Law which is widely used by Indian citizens to prevent corruption and maladministration. 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.



### OBJECTIVES

After studying this lesson, you will be able to:

- describe the general or the basic principles of Criminal Law;
- know the general ‘defences’ as described in the Indian Penal Code (IPC);
- explain the main provisions of Right to Information Act, 2005 (as amended upto Feb 2011); and
- understand the process of getting the information by the citizens.

## 8.1 CRIMINAL LAW – CRIME AND GENERAL PRINCIPLES OF CRIMINAL LAW



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### 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:

### 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:

- **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'.

- **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 malicious state of mind where as larceny requires felonious state of mind.



### INTEXT QUESTIONS 8.1

1. Explain the basis of general principle of Criminal Law.
2. State briefly the necessary conditions for a 'crime'.
2. Explain the meaning of the terms 'Actus Reus' and 'Mens Rea'.

### 8.2 GENERAL 'DEFENSES' IN CRIMINAL LAW

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

- **Insanity or mental disorder:** It is the most common defense 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.
- **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.
- **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 defense 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 defense for a crime because of drug overdose.



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- **Mistake of fact:** Mistake of fact is genuine and is accepted by law. This is yet another common defense by accused in criminal law, by saying "I made a mistake" in conjunction with another defense. 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.
- **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'.
- **Lawful capacity of office and / or legal duty:** This defense 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.
- **Self defense:** 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 defense of self defense in this case. Example, 'X' claims that 'Y' intended to kill him/her. As a defense 'Y' claims that its course of action was an act of self defense. '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 Defense and Averting Danger in an Emergency
2. Legally Prescribed Excuses for Mitigation:

**List of defenses described in Chapter IV of the Indian Penal Code (IPC)**

**The list of defenses described in Chapter IV of the Indian Penal Code (IPC) can be categorized as follows:**

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

**List of 'Defences' described in chapter IV of the Indian Penal Code (IPC)**

- Trifling acts
  - Private defense
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 defense



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**INTEXT QUESTIONS 8.2**

1. Define 'Defences' as described in Criminal Law?
2. Give a list of 'Defences' as described in chapter IV of the Indian Penal Code (IPC)

**8.3 RIGHT TO INFORMATION**

The Right to information (RTI) was much more sought than ever. This was due to increasing volume of corruption and unwanted delays in the work. The public at large was getting harassed, mentally as well as physically and also financially. To put a check on it RTI act enacted by Government of India in year 2005.

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**Right to Information Act 2005** mandates timely response to citizen requests for government information. It is an initiative taken by **Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions** to provide a– **RTI Portal** Gateway to the citizens for quick search of information on the details of first Appellate Authorities, PIOs etc. amongst others, besides access to RTI related information / disclosures published on the web by various Public Authorities under the Government of India as well as the State Governments. The aim of RTI is, **“Bringing Information to the Citizens”**. This Act is updated till February 2011.

**The Act**

This Act is comprised of six Chapters and total of thirty-one Sections and two Schedules. The first chapter explains preliminary aspects of the act like, definitions, titles and commencements etc. The second chapter explains right to information and obligations of public authorities, sections so covered are, right to information, obligation of public officer, designation of public officers, request for obtaining information, disposal of request, exemptions, grounds for rejection of application, severability and third party information. The third chapter explains about the central information commission, sections covered under this chapter are, constitution of central commission, term of office, conditions of service and removal of CIC. The first fourth explains state information commission which operates at the state level. This chapter is comprised of similar sections of chapter three but at state level, like constitution of state commission etc. The fifth chapter explains the various powers and functions of CIC at the central level and also at the state level as well as penalties and appeals are also covered under this chapter. The chapter is comprised of the sections like, power and functions of CIC, appeals and penalties. The last and the sixth chapter is about miscellaneous aspects of the act. This is longest chapter of the act that is contains 11 sections. The sections are, bonafide protection of action, overriding effect, jurisdiction of courts, non application of act on certain organizations, monitoring and reporting, appropriate Government to prepare programmes, power to make rules by appropriate government, power to make rules by competent authority, lying of rules, power to remove difficulties and repeal.

**Guidelines**

The Government of India has also issued guidelines to the information seekers to ease their work and efforts in the process. These guidelines are comprised in the official public document, **“How To Get Information From The Public Authorities Of The Central Government Under The Right To Information Act, 2005”**

This document, which is comprised of 17 topics, explains the various aspects of the process to ease out the hurdles in obtaining the information by the information seeker. These topics are broadly explained as under:

1. Foreword
2. Object of the right of information act
3. What is information
4. Right to information under the act
5. Exemptions from disclosure
6. Central public information officers
7. Assistance available from CPIO's
8. Suo motu disclosure
9. Method of seeking information
10. Fee for seeking information
11. Format of application
12. Disposal of the request
13. First appeal
14. Second appeal
15. Complaints
16. Disposal of appeals and complaints by the CIC
17. Important websites



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### INTEXT QUESTION 8.3

1. Explain briefly the reasons for the enactment of Right to Information Act, 2005.
2. Name the official Public Document containing Guidelines for the information seekers.
3. State briefly the main aim of passing the Right to Information (RTI) Act, 2005.
4. Fill in the blanks
  - (a) The Right to Information Act, 2005 contains ..... Chapters, ..... Sections and ..... Schedules.
  - (b) The Right to Information Act, 2005 is updated till .....

**WHAT YOU HAVE LEARNT**

- Criminal Law is based on the principles of ‘Actus Reus’ and ‘Mens Rea’. 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 requires both to be present. These terms mean that the ‘Act does not make a person guilty unless the mind is also guilty’.
- There are number of ‘defences’ available to the accused. These defences are – insanity or mental disorder, automatism, intoxication, mistakes of facts, necessity/lesser harm lawful capacity of office and/or legal duty and self- defence. Besides these defences, chapter IV of the Indian Penal Code (IPC) describes as many as Eighteen ‘defences’.
- The Right to Information Act, 2005 was enacted with the aim of bringing informatiyon to the citizens. The main reasons for the enactment of this Act (RTI) were increasing volume of corruption, unwanted and un-necessary delay in the work and lack of transparency in the functioning of Government and its Agencies. This Act contains six Chapters, thirty-one Sections and two Schedules. This Act (RTI) has been updated till February, 2011.

**TERMINAL QUESTIONS**

1. What is the literal meaning of ‘Actus Reus’?
2. What is the literal meaning of ‘Mens Rea’?
3. What is the full form of ‘RTI’?
4. What is essential for a ‘crime’?
5. Define the term ‘Actus Reus’.
6. Define the term ‘Mens Rea’.
7. Define ‘crime’ as stated in Criminal Law.
8. What are the various general ‘defenses’ available to the wrong-doer in Criminal Law?
9. Explain briefly the main provisions of RTI Act, 2005.
10. List the Defences as described in chapter IV of the Indian Penal Code (IPC).
11. List the ‘guidelines’ laid by the RTI Act to file a RTI.
12. List ‘Defenses’ as described in Chapter IV of the Indian Penal Code.
13. What are general ‘defenses’ available to the offender of a Crime?

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## ANSWERS TO INTEXT QUESTIONS

## 8.1

1. The general principle of Criminal Law is based upon the term 'Actus Reus' and 'Mens Rea'.
2. The necessary conditions for crime is based upon the following equation:  
CRIME = ACTUS REUS + MENS REA (concurring in time)
3. 'Actus Reus + Mens Reas means that an act alone could not creat 'criminal liability' unless it is accompanied by a guilty state of mind.

## 8.2

1. 'Defenses' in Criminal Law refer to the 'remedies' available to the defendant to plead not guilty for the charges being made in the case against the defendant. Therefore, these defenses are the pleas given by the defendant in the trial of the case to prove his / her innocence against the charges being levied on the defendant by the plaintiff
2. Following are the 'Defenses' available to the defendant to prove that he / she is not guilty:

These 'defenses' are provided in two lists these are as follows:

- (i) List of defenses described in Chapter IV of the Indian Penal Code (IPC)
  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



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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 defense
- (ii) The list of defenses described in Chapter IV of the Indian Penal Code (IPC) can be categorized as follows:
1. Judicial Acts
  2. Mistake of fact
  3. Accident
  4. Absence of criminal intent
  5. Consent
  6. Trifling acts
  7. Private defense

**8.3**

1. The main reasons for the enactment of Right to Information were (i) increasing volume of corruption, (ii) unwanted delay in the work and (iii) lack of transparency
2. “How to get Information from the Public Authorities of the Central Government under the Right to Information”
3. The aim of Right to Information Act, 2005 is to ‘bring information to the citizens’.
4. (a) Six Chapters, Thirty-one Sections and two Schedules  
(b) February, 2011