CHAPTER 2

ELEMENTS OF CRIME

Physical element, *actus reus* and mental element, *mens rea*, are two tests of criminality known to our law which is based on English Law. These are not only two elements of a crime but there are in all four elements that go to constitute a crime, *viz.*, (*i*) A human being; (*ii*) Guilty intention or *mens rea* on the part of such human being; (*iii*) *Actus reus*, illegal act or omission, and (*iv*) injury to another human being. Now I will discuss each separately in the briefest possible way.

1. Human Being: The first element requires that the act must be committed by a human being. In ancient times punishments were inflicted on animals also for the injury done by them. However no such practice was followed in Pakistan and with the development of the notion of *mens rea* such trials and punishment were completely abandoned. So the first essential of a crime is a human being who--

(*i*) must be under legal obligation to act in a particular manner; and

(*ii*) should be a fit subject for award of appropriate punishment.

Section 11 of the P.P.C. provides that the word 'person' includes a company, or association or a body of persons whether incorporated or not. The word 'person', hence, includes artificial or juridical persons. "A Corporation" according to Salmond, "is a group or series of persons which by legal fiction is regarded and treated as itself a person." According to the case of *Abdul Qadeer* v. *Ishtiaq Hussain*, **1971 PCr. LJ 537**, the word "person" as appearing in sections describing offences where imprisonment is mandatory, does not include corporate body. Corporate body or company not indictable for offences which can be committed only by human individuals or for offences punishable with imprisonment. Officer or Agent authorised to act on behalf of corporate body, individually liable for criminal action. In the beginning the view prevailed that Corporations entail no criminal liability. It is due to the following reasons:

(*i*) A corporation has no physical body of its own and so it cannot be imprisoned.

(*ii*) Since a corporation has no mind of its own, it can never have a criminal intention. Moreover, a corporation acts only through its agent or servant and since there is nothing as vicarious liability under criminal law, no corporation can be held liable in the capacity of master.

(*iii*) *Lastly*, the doctrine of *ultra vires* confines corporate activities within a defined limit. So a corporation can only be held liable for the act authorised by it. Since a corporation can never authorise the commission of a crime the question for its criminal liability does not arise.

In the case of *King* v. *Daily Mirror Newspapers Ltd.* **(1922) 2 KB 530, distinguished in 1975 Cr. LJ 1148,** it was held that a limited company cannot be committed for trial on an indictment and therefore, it cannot also be tried. It was pointed out in that case that in order that a person may be brought to trial, he must be committed for trial. In that case the company could not be committed for trial because the Interpretation Act, 1889 in England explained what was meant by the expression "committed for trial" and the provision was that the expression "committed for trial" shall mean committed to prison with a view to being tried before a Judge or Jury. This interpretation of "committed for trial" has not found place in the Pakistani Law.

There, however, have been cases where corporations have been convicted and fined for libel or nuisance and for breach of statutory duty imposed on it. In the case of *R.* v. *Birmingham, etc., Railway Company,* **(1846) 9 QB 315**, the corporation was held liable for having neglected to repair a highway, Likewise a Railway Company was held liable for obstructing a highway whereby public nuisance was created. An important development in this respect took place with the decision of Viscount Haldane in the case of *Lennard Carrying Company Limited* v. *Asiatic Petroleum Co. Ltd.*, **1915 AC 705-715**, where it was held, "A corporation is an abstract. It has no mind of its own any more than it has a body of its own, its acting and directing will must consequently be sought in the person of somebody..... who is really the directing mind or will of the corporation, the very ego and centre of personality of the corporation". The fault of a corporation is, therefore, fault of its superior officers who are the directing mind or will of the corporation. This *alter ego* theory was extended to criminal law in the case of *R.* v. *I.C.R. Haulage Limited*, **1944 KB 551.**

where the Court held that a limited liability company can be indicted at Common Law for a conspiracy to defraud.

In spite of well-known decisions of English Courts the law regarding criminal liability of corporations in England is not well defined and formulation of clear principles of criminal liability or corporations is urgently needed.

In Pakistan also, the position in this respect is not very satisfactory. Generally a corporation is liable for those acts where no *mens rea* is required and only fines can be imposed on it. So a corporation cannot be charged of committing the offence of murder or like offence which can only be punished with imprisonment. **AIR 1952 Cal. 759.**

According to the case of *Syed Abdul Qadeer* v. *Mirza Ishtiaq Hussain*, **1971 PCr. LJ 537**, corporate body or company not indictable for offences which can be committed only by human individuals or for offences punishable with imprisonment. Officer or Agent authorised to act on behalf of corporate body. Individually liable for criminal action.

The question whether a company can be tried and punished for an offence punishable with a minimum term of six months, imprisonment and fine arose before the Full Bench of the Delhi High Court, **1975 Cr. LJ 1143**, where it was contended that since the company could not be given the corporal punishment which was the mandatory part of the sentence, the company, therefore, could not be prosecuted. Rejecting this contention the Court held that the company did not enjoy immunity from prosecution and in a case like this the guilty company will be punished with fine only.

Criminal liability of a corporation is an imputed liability and not a vicarious liability. As the corporation itself cannot be executed or punished the liability is to be imputed to its high managerial agents who are responsible for the conduct of its policy and business. The fault or privity of the company is that the fault or privity of somebody who is not merely a servant or agent for whom the company is liable upon the footing of the respondent superior, but somebody for whom the company is liable because his action is the very action of the company itself.[1] For example, Section 8 of the Foodstuffs (Control) Act, 1958 provides that where an offence under the Act has been committed by a company, every person who at the time the

[1] See Friedmann Law in the Changing Society (Abridged Edn., 164-65).

offence was committed was incharge of, and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to be punished.

(2) Mens rea: The second important essential of a crime is *mens rea* or evil intent. There can be no crime of any nature without an evil mind. Every crime requires a mental element. Even in strict or absolute liability some mental element is required. That is why *mens rea* or *actus non facit reum nisi mens sit rea* is considered a fundamental principle of penal liability. The meaning of the term "*actus non facit reum nisi mens sit rea*" is that intent and act must both concur to constitute the crime. It has, however, been a matter of great difficultly to arrive at the true meaning of *mens rea*. According to the case of *Gul Afzal* v. *The State*, the existence or non-existence of specific *mens rea* is a crucial factor in case of attempt to commit Qatl-i-Amd. **PLD 1992 Pesh. 125 (c).** In the case of *Sweat* v. *Parsley*, **1970 AC 132, 162**, Lord Diplock said, "An act does not make a man guilty of a crime unless his mind be also guilty. It is thus not the *actus* which is *reus* but the man and his mind respectively .... it is well to record this as it has frequently led to confusion". Sir James Stephen said that the expression itself is unmeaning. Whatever view may be formed or have been formed, the influence of the expression becomes quite evident if we trace the history of criminal law. The conception or *mens rea* has differed from time to time according to the changing underlying conception and objects of criminal justice. Stephen thought that "the maxim not only looks more instructive than it really is, but suggests fallacies which it does not precisely state". **History of Criminal Law 95.**

Notion of *mens rea* in early primitive societies was non-existent and liability was absolute and offender was responsible whether he acted innocently or negligently.

Mens rea and Pakistani Law: J D. Mayne, Rattan Lal, Shaukat Mahmood and Shahid H. Kadri have taken the view that doctrine of *mens rea* under the Penal Code is wholly out of place. Every offence is defined and definition states not only what the accused must have done, but also the state of his mind with regard to the act when he was doing it. Each definition of the offence is complete in itself. The words *mens rea* has nowhere been used in the P.P.C. but it has been applied in two different ways:--

(*i*) while defining offences words used indicate actual criminal intent required for the offence. The expressions fraudulently, dishonestly, voluntarily and intentionally, *etc.*, used in the definitions indicate the criminal intent. No such words have, however, been used in case of offences which cannot be committed by innocent persons. Such offences are Waging War against Government. (*S. 121*), Sedition (*S. 124-A*) and Counterfeiting of Coins (*S. 232*), *etc.*

(*ii*) The P.P.C. contains a separate chapter on general exceptions (*Ss. 76-106*) which indicates the circumstances where absence of criminal intent may be presumed. This negative method of applying *mens rea* in the P.P.C. has been found to be very useful.

The doctrine of *mens rea* has been applied by Courts in Pakistan and it is now firmly settled law that *mens rea* is an essential ingredient of offence. This point has come under judicial scrutiny on many occasions.

In the case of *Srinivasamal* v. *King Emperor*, **AIR 1947 PC 135**, a petrol dealer was acquitted on the ground that there was no guilty intention on the part of the accused as the act was committed without his knowledge. Similarly in the case of *Hari Prasad Rao* v. *State*, **AIR 1951 SC 204**, the observations of Goddard, C.J. were approved in this case a servant of a petrol dealer supplied motor spirit without coupons and in some cases took advance coupons from consumers without supplying them the spirit, which was an offence under the Motor Rationing Order, 1941. The Supreme Court held that there were no grounds for conviction of the master, especially when he was absent at the time of delivery of the spirit. He, however, was convicted for non-endorsement on coupons by his servant which was mandatory and an absolute rule non-observance of which was punishable even without *mens rea*.

Generally offences created by the Foodstuffs (Control) Act, 1958, the Drugs Act, 1976 and Weights and Measures (International System) Act, 1967 are in terms of absolute prohibition and the offender is liable without proof of guilty knowledge. **AIR 1961 SC 631.** Thus a seller of food is under the duty of ascertaining at his peril whether the article of food conforms to the standard fixed by the statutes unless such statutes expressly or by necessary implication, make intent an element of offence. **(1974) 1 SCC 167.** In the words of Lord Wright: "Intention to commit a breach of statute need not be shown. The breach in fact is enough". **(1940) 2 All. ER 179.**

Section 10 of the Opium Act, 1878 provides: In prosecutions under Section 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is the opium in respect of which he has committed an offence under this Act. In a case, **1973 SCC (Cri.) 813**, arising under Section 9 of the above Act. Mathew, J., observed:

> "Normally, it is true that the plain ordinary grammatical meaning of the words of an enactment affords the best guide. But in cases of this kind, the question is not what the words mean but whether there are sufficient grounds for inferring that Parliament intended to exclude the general rule that *mens rea* is an essential element in every offence. And, the authorities show that it is generally necessary to go behind the words of the enactment and take other factors into consideration. So, in the context permissible to look into the object of the legislature and find out whether, as a matter of fact, the legislature intended anything to be proved except the possession of the article as constituting the element of the offence. Even if it be assumed that the offence is absolute, the word 'possess' in Section 9 connotes some sort of knowledge about the thing possessed.

Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated. **AIR 1966 SC 43.**

The element of *mens rea* is not required beyond the point that the facts must show an intention on the part of the person accused to do the act forbidden. In the case of modern statutory offences the maxim has no general application and the statues are to be regarded as themselves prescribing the mental element which is pre-requisite to a conviction. So *mens rea* is an essential element of crime in every penal statute unless the same either expressly or by necessary implication rule out by the statute.

According to the case of *Gul Afzal* v. *The State*. PLD **1992 Pesh. 125 (c)**, the existence or non-existence of specific *mens rea* is a crucial factor in case of attempt to commit Qatl Amd.

Words denoting Mens Rea in P.P.C. -- **Fraudulently** : According to Section 25 "A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise". No definition of fraud has been given and there has been great reluctance among lawyers to define it. The expression 'defraud' involves two elements, *viz.*, deceit and injury to the person deceived. According to Sir James Stephen, **History of Criminal Law**, a particular conclusive test as to the fraudulent character of a deception for criminal purposes is this: Did the author of the deceit derive any advantage from it which he could not have had if that truth had been known? If so it is hardly possible that that advantage should not have had an equivalent in loss or risk of loss, to someone else, and if so, there was fraud. The word as used in code is used in its ordinary and popular acceptance: According to Sir J.D. Mayne, **1987 PCr. LJ 247**, "of course there can be no intention to defraud where no wrongful result was intended or could have arisen from the act of accused."

The words "with intent to defraud" in Section 25 indicate not a bare intent to deceive but an intent to cause a person to act or omit to act, as a result of deception played upon him, to his disadvantage and the words "but not otherwise" clearly show that the words "intent to defraud" are not synonymous with the words "intent to deceive" and require some action resulting in some disadvantage which but for the deception, the person deceived would have avoided. According to the case of *Malik Muhammad Iqbal* v. *The State*, **AIR 1956 SC 523**, the expression "intent to defraud" implies conduct couple with intention. A reference to Section 25 of the P.P.C. shows that the expressions "fraudulently" and "with intent to defraud" are synonymous. The difference between an act done dishonestly and an act done fraudulently is that if there is an intention to cause wrongful loss by the deceit practised, it is dishonestly but even in the absence of such an intention if the deceitful act wilfully exposes anyone to rise of loss then it is fraud. The section, therefore, does not require any deprivation of property. When an act is done with intent to defraud then it is fraudulent even though nobody is actually deprived of any property. In *Dr. S. Dutt's case*, **1987 Cr. LJ 297**, one Dr. Dutt was examined as an expert witness by the defence in a sessions trial. He claimed to hold a diploma from the Imperial College of Science and Technology, London to the effect that he had specialised in the subject of criminology. He was cross-examined *inter alia* about his claim by the prosecution. Dr. Dutt's testimony ran counter to the testimony of an expert

witness examined by the prosecution and the credentials of Dr. Dutt were challenged. The Judge asked Dr. Dutt to produce all his academic diplomas and certificates for his inspection. Dr. Dutt produced the aforesaid diploma. Dr. Dutt was prosecuted for the offence of forgery. It was however held that Dr. Dutt did not intend to cause wrongful gain to one person or wrongful loss to another person when he brought the diploma, whether forged or not, into Court. He was ordered to do so. He may have intended to deceive the Court, even as he intended that others should be deceived, into believing that he was an expert and that he held a diploma from a recognised institution. He did not act dishonestly. His intention was not to cause any one to act to his disadvantage because he did not bring the diploma voluntarily but under orders of the Court. He did not, therefore, have the intent to cause voluntarily, a course of conduct in any person to that person's disadvantage. His conduct was "corrupt" and his case fell under Section 196, P.P.C. (using evidence known to be false). The offence of perjury is a more serious offence.

According to the case of *Muhammad Siddique and Another* v. *The State*, **1997 PCr. LJ 284**, the petitioner neither a party in application for setting aside *ex parte* decree nor giving or fabricating false evidence in those proceedings nor any evidence to show that the petitioners in any manner abetted co-defendants. Prosecution of the petitioners, held, uncalled for, improper and illegal, in circumstances.

In the case of *Haycraft* v. *Creasy*, **(1801) 2 East 92**, it was observed: "By fraud is meant an intention to deceive; whether it be from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial". The passage brings out the distinction between an advantage derived by the person who deceives in contrast to the loss incurred by the person deceived.

In the case of *R.* v. *Welham*, **(1960) 1 All. ER 260**, hire-purchase finance companies advanced money on a hire-purchase form and agreement and on credit sale agreements witnessed by the accused. The form and agreements were forgeries. It was not proved that the accused had intended to cause any loss of money to the finance companies. His intention had been by deceit to induce any person who was charged with the duty of seeing that the credit restrictions then current were observed to act in a way in which he would not act if he had known the true facts, namely, not to prevent the advancing of large sums of money exceeding the limits

allowed by law at the time. The Court held that the said intention amounted to intend to defraud. This decision is a clear authority for the position that the loss or the injury caused to the person deceived need not be economic loss. Even a deprivation of a right without any economic consequences would be enough.

In the case of *Shashi Bhushan* v. *King Emperor*, **ILR 15 All. 210**, the accused applied for admission to L.L.B. (Final) class in Benaras University alleging that he had attended L.L.B. (Previous) class in Lucknow Canning College. He was admitted and required to produce a certificate in support of proof of having passed L.L.B. (Previous) examination. He produced a forged certificate and it was held that he acted fraudulently.

Again a Full Bench of Madras High Court had to consider the case of a person obtaining admission to the matriculation examination as a private candidate producing before the Registrar a certificate purporting to have been signed by the head master of a recognised High School that he was of good character and had attained the age of 20 years. It was found that the candidate had fabricated the signature of the head master. The Court held that the accused was guilty of forgery. Benson, J. Observed, **ILR 28 Mad. 90:**

> "I am of opinion that the act was fraudulent not merely by reason of the advantage which the accused intended to secure for himself by means of his deceit, but also by reason of the injury which must necessarily result to the University and through it to the public from such acts if unrepressed."

This decision accepts the principle laid down by Stephen, namely, the expression "defraud" involves two elements, *viz.*, deceit and injury to the person deceived.

The accused purchased a motor car with her own money in the name of her minor daughter by signing minor's name and also received compensation for the claims made by her in regard to the two accidents to the car. The claims were true claims and she received the moneys by signing in the claim forms and also in the receipt her minor daughter's name. *Held*, the entire transaction was that of the accused and it was only put through in the name of her minor daughter for reasons best known to herself. On the evidence as disclosed, neither was she benefited nor the insurance company incurred loss in

any sense of the term. The accused had not acted fraudulently. **AIR 1963 SC 1572.**

The word "fraudulently" has been used in the P.P.C. at many places but the words "fraudulently" and "dishonestly" have jointly been used in Sections 209, 246, 247, 415, 421, 422, 423, 424, 464, 471 and 496.

Dishonestly: 'Dishonestly' according to Section 24 means, "whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another, is said to do that thing dishonestly". According to Section 23 "Wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled and wrongful loss by unlawful means of property to which the person losing it is legally entitled".

According to the case of *State* v. *Muhammad Iqbal*, 1987 **P.Cr. LJ 1096**, the bank guarantee issued without authority, in violation of Bank instructions. Issuance of guarantee not entered in Bank register on record. Accused failing to protect interest of Bank against effect of guarantee. Bank exposed to serious risk of loss by secretive, stealthy and surreptitious execution and delivery of guarantee. Manner in which guarantee was issued and disposed of, held, was fully covered by the word 'dishonestly'.

A person is said to gain wrongfully when he either retains or acquires wrongfully. Similarly losing wrongfully means that the person is either wrongfully kept out of any property or is deprived of property.

Every word in Sections 23 and 24 is of importance. The expressions 'wrongful gain' and 'wrongful loss' are the essential ingredients of the definition of 'dishonestly' in Section 24. The word 'dishonest' has been used in its technical sense and an act can only become dishonest if there is wrongful gain to one person or wrongful loss to another. Thus if a creditor in order to compel his debtor to discharge the debt takes his goods without his consent, he will be guilty of theft for causing wrongful loss to the debtor. In the case of *A.M. Yusuf* v. *King Emperor*, **ILR 18 All. 88**, the accused proceeded to compel liquidation of the debt by taking away from his creditor's house without his knowledge and consent, a cart and four bullocks. Although it was not intended to deprive the debtor permanently of his property, yet the Court held the accused guilty of theft as the property was wrongfully taken. But where the owner is kept out of possession temporarily not with any

object of depriving him of benefit arising out of the property, but only with the intention to causing him trouble in the sense of mere mental anxiety, and with the ultimate intention of restoring the thing to him without exacting or expecting any recompense, the detention will not amount to causing wrongful loss in any sense. **ILR 25 Cal. 416.**

Taking the definitions of "dishonest" intention in Section 24 and "wrongful gain" and "wrongful loss" in Section 23 of the Penal Code together, a person can be said to have dishonest intention if in taking the property it is his intention to cause gain, by unlawful means, of the property to which the person so gaining is not legally entitled or to cause loss, by wrongful means, of property to which the person so losing is legally entitled. It is further clear from the definition that the gain or loss contemplated need not be a total acquisition or a total deprivation but it is enough if it is a temporary retention of property by the person wrongfully gaining or a temporary "keeping out" of the property form the person legally entitled. This is clearly brought out in illustration (*i*) to Section 378, Penal Code, and is uniformly recognised by various decisions of the High Courts which point out that in this respect "theft" under the Penal Code differs from "larceny" in English law which contemplated permanent gain or loss. **PLD 1957 SC 317.**

Wrongful gain includes wrongful retention and wrongful loss includes being kept out of the property as well as being wrongfully deprived of property. Therefore when a particular thing has gone into the hands of a servant he will be guilty of misappropriating the thing in all circumstances which show a malicious intent to deprive the master of it. **AIR 1959 SC 1390.**

Difference between Fraudulently and Dishonestly The word "dishonestly" is not synonymous with fraudulently. The difference between the two was pointed out in the case of *Emperor* v. *Abbas Ali*, **ILR 25 Cal. 512**, by a full Bench of the Calcutta High Court. In this case the accused had forged a certificate in order to qualify himself for the examination of Engine Driver. It was observed that fraudulently and dishonestly do not cover the same ground and that intention to defraud does not necessarily involve deprivation of property. Shamsul Huda,[1] had differentiated them thus:

1 *Principle of Law of Crimes*, pp. 204-206

(*i*) Fraud involves deception necessarily while dishonestly does not.

(*ii*) Dishonestly necessarily involves the idea of injury to property as well as injury of every other kind, *i.e.*, injury to body, mind or reputation.

(*iii*) A dishonest intention is intention to cause loss of specified property belonging to a particular person. Fraudulently on the other hand may refer to injury in respect of unspecified property, to unknown and unascertained persons."

A person lawfully entitled to possess arms and ammunition signing the prescribed certificate of purchase of the same in the name of another with an address not his own, and thereby deceiving the gunsmith and the Government and defeating the object of the certificate, commits forgery; his act having been done "fraudulently", if not "dishonestly". **ILR 43 Cal. 42.**

Deception is essential for fraud but not for dishonesty and wrongful gain or wrongful loss of property is necessary for dishonesty but not for fraud. An act may be dishonest and yet not fraudulent. **AIR 1937 Mad. 713.**

According to the case of *Ghulam Qadir* v. *The State*, **AIR 1937 Mad. 713**, the petitioner producing certificate before the Division Bench of the High Court. Signatory of document appearing as prosecution witness and denying having issued and signed such certificate. Signatures on certificate according to the Handwriting Expert, forged. Accused neither cross-examining Handwriting Expert (sole prosecution witness) nor producing any expert to question opinion of the Handwriting Expert. Testimony of defence witness, held, not reliable. **1983 SCMR 616.**

Voluntarily According to Section 39, "A person is said to cause an effect voluntarily when he causes it by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it". In ordinary sense the word "voluntarily" means an act done without influence or compulsion. The word as used in Section 39 takes into account not only intention but also knowledge and reasonable grounds of belief. Section 39 contains an illustration. A sets fire by night to an inhabited house in a large town for the purpose of facilitating robbery and thus causes the death of a person. Here, A may not have intended to cause death, and may even

by sorry that death has been caused: yet he has caused death voluntarily as he knew that death was a probable consequence. A must have a reason to believe that by setting fire at night to a house in a crowded town, he is likely to cause the death of the person who may be inside the house.

Voluntarily causing an effect embraces, (*i*) with intention to cause the effect, (*ii*) with the knowledge of likelihood of causing the effect, and (*iii*) having reason to believe that the effect is likely to be caused. If the doer of an act knows or believes that dangerous result will emerge from his act, he will be said to have acted with the most direct intention to hurt. "Intention", "knowledge" and "reasons to believe" are the words of most importance in this respect. "Intention" means to have in mind a fixed purpose to reach a desired objective, so it indicates that a man is consciously shaping his conduct so as to bring about a certain event. In simple words intention is the purpose or design with which an act is done. "Intention" differs from "motive" and law takes notice of intention only. If intention is criminal, law provides punishment even though the act is done with the best of the motive.

Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. **AIR 1956 SC 488.**

Knowledge means having mental cognition of a thing or it is the awareness or expectations of the consequence of the act. The main difference between knowledge and intention is that in former the consequence is not desired whereas in latter it is desired. Reason to believe according to Section 26, means, "A person is said to have reason to believe a thing if he has sufficient cause to believe that thing but not otherwise".

In short the word "voluntary" as used in Section 39 is very important and does not mean willingly but knowingly or intentionally.

There are few more words denoting *mens rea* but these have not been defined under the P.P.C. but have simply been used in different sections. These words are, corruptly, malignantly, wantonly, rashly and negligently. The word "corruptly" has been used in Sections 196, 198, 200, 219 and

220 and it is used to denote impropriety brought about by bribery or undue influence. According to Burdick:

> "The words 'corrupt' and 'corruptly' when used in criminal law imply, usually that an act is done dishonestly, without integrity, for the sake of unlawful gain or advantage.... Corruptly implies moral turpitude and intentional fraud, and is synonymous with intentional wrong doing."

The word "corrupt" does not necessarily include an element of bribe-taking. It is used in a much larger sense as denoting conduct which is morally unsound or debased. **AIR 1966 SC 523.** In the case of *Rama Nana* v. *Emperor*, **AIR 1922 Bom. 99 approved in AIR 1966 SC 523**, McLeod, CJ considered the word to be of wider import than the words "fraudulently" or "dishonestly" and did not confine it to the taking of bribes or cases of bribery.

The word 'malignantly' is used in Sections 153 and 270 only and it means maliciously. Acts done maliciously means that the accused had formed design of doing the mischief. The word "wantonly" occurs in Section 153 only and it covers the acts done thoughtlessly and without any reason.

The expression 'wantonly' means recklessly, thoughtlessly, without regard for right or consequence. To kill or sacrifice a cow in the open exposed to the view of the public without regard for the sentiment of those who do not approve of such an act would amount to a wanton Act. **53 Cr. LJ 449.**

The words rashly and negligently have been used in Sections 279, 280, 283 to 289, 304 and 336 to 338. Rashly means doing of an overhasty act without due deliberation and caution. In case of negligence the party fails to comply with legal obligations and breaks a positive duty and does not do the act which it is his duty to do.

According to the case of *Ali Khan* v. *The State*, **PLD 1958 Kar. 615**, the driver of a bus, and a rickshaw driver were tried in a joint trial for offences under Sections 304-A and 337, P.P.C. for having caused the death of two persons and injury to another in a collision by driving their vehicles rashly or negligently. It was held that:

> the collision and death arose out of the same transaction and therefore the trial under Sections 304-A and 337, P.P.C. was perfectly legal and was not at all hit by the provisions of Section 239.

It was observed by Straight, J in the case of *Empress* v. *Idu Beg*, **(1881) 3 All. 776**, that rashness consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence, on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. This definition of criminal rashness and criminal negligence has been adopted by the Supreme Court also. **1972 SCC (Cri.) 254.**

The mere fact that a person contravenes certain rules or regulations in the doing of an act which causes death of another does not establish that the death was the result of a rash or negligent act of that person. **(1972) 3 SCC 525.**

3. Actus Reus (Act or Omission). The third essential element of a crime is *actus reus*. In other words some overt act or illegal omission must take place in pursuance of the guilty intention. Prof. Jerome Hall said that something in addition to a *mens rea* is required to produce a criminal harm. There must also be a manifestation of *mens rea* in the external world. It has long been the custom of lawyers to describe a deed prohibited by law in the words "*actus reus*". Prof. Kenny has defined the term thus, (Such result of human conduct as the law seeks to prevent). He was the first writer to use the term "*actus reus*" and Russel called it physical event. According to Section 32 of the Penal Code, words referring to acts done extend also to illegal omissions if no contrary intention appears from the conduct. Words "illegal or legally bound to do" have thus been defined in Section 43. "The word 'illegal' is applicable to everything which is an offence or which is prohibited by law, or which furnishes grounds for a civil action; and a person is said to be legally bound to do, whatever it is illegal in him to omit". So an act or omission must be forbidden or commanded by some statutory provisions.

The *actus reus* is constituted by the event and not by the activity which caused the event. A deed may consist of harm and destruction of property and even of life, but it is not a crime unless the circumstances are such that it is legally prohibited. Accordingly no crime is committed by a duly

appointed executioner who hangs to death a criminal because in spite of his full intention to kill, his act was commanded by the law. Similarly no crime is committed and no criminal liability arises when hurt is inflicted by a properly skilled person in the course of a surgical or dental operation upon a patient. It would, however, be unlawful (or *actus reus*) if the accused is put to death by an unauthorised person or even by the lawfully appointed executioner if the method of taking the accused's life was unlawful.[1]

4. Injury. The fourth requirement in crime is the injury to another person or to society at large. The injury should be illegally caused to any person in body, mind, reputation or property as according to Section 44 the word "injury" denotes any harm whatever illegally caused to any person in body, mind, reputation or property. The word "injury" is of wide connotation and includes all injuries caused by torious act. Three sections in the Code specifically deal with threats of injury, *i.e.*, Section 189-- threat of injury to public servant, Section 190 -- threat of injury to induce person to refrain from applying for protection to public servant and Section 385 -- putting a person in fear of injury in order to commit extortion. A false charge laid before the police and never intended to be prosecuted in Court, may obviously subject the accused party to very substantial injury. **(1879) 5 Cal. 281.** So also unlawful detention of a cart for realising illegal toll is an injury. Social boycott of a person in order to compel him to co-operate with his fellow workmen in collective bargain for securing better terms, does not amount to an injury within Section 44. **AIR 1949 Mad. 546.** Threat of a decree that could not be executed by any competent Court amounts to harm or injury within the meaning of Section 44. **AIR 1940 Pat. 486.**

So the above are the four elements that go to constitute a crime. It will not be out of place to say something here about good faith which plays a vital role in the Law of Crimes.

Good faith. The term, "good faith" has been thus defined in Section 52. "Nothing is said to be done or believed in good faith which is done or believed without due care and attention". The term has been used in many sections but has not actually been defined. Section 52 gives only a negative definition of the term. **AIR 1966 SC 97.** Words "due care" and "attention" used in Section 52 are of importance and on proper analysis of definition it is derived that a thing shall be deemed

1. Kenny's Outlines of Criminal Law, 19th Ed., p. 18.

to be done in good faith where in fact it is done with due care and attention. The plea of good faith if established will negative criminal liability but before exonerating the liability the Court should take into account the accused's intellectual capacity, his status and surrounding facts and circumstances in which he acted.

While an honest blunderer acts in good faith within the meaning of the General Clauses Act, he can never act in good faith within the meaning of the Penal Code for being negligent. Section 52 makes no reference to the moral elements of honesty and right motive. Penal Code does not require logical infallibility but due care and caution, **AIR 1953 Mad. 936.** "Good faith" precludes pretence or deceit and also negligence and recklessness. Lack of diligence, which an honest man of ordinary prudence is accustomed to exercise, is, in law, want of good faith. **AIR 1961 Punj. 215.**

A Collector authorised a certain Amin to attach a particular property, but due to resistance from the accused the Amin returned the warrant of attachment to the Tehslidar. The Tehsildar, without returning the warrant to the Collector, ordered another Amin to act upon it. His action let to a fight between the accused and the Tehsildar and his party. It was held that though the Tehsildar might have acted with the best of intentions, he had not acted in good faith. **AIR 1942 Oudh 256.**

Similarly a police constable, it was held, acted in good faith where after questioning and getting unsatisfactory replies arrested a person who was carrying three bundles of cloth in his amounts. Similarly a *kobiraj* operated upon a man and cut his internal piles with an ordinary knife, with the result that the patient died. The Court refused to accept his plea that he had performed similar operations on previous occasions and held that he had not acted in good faith as he was not a qualified surgeon. **ILR 14 Cal. 566.** In short it can be said that good faith requires not, indeed logical infallibility but due care and attention. But how far erroneous actions or statements are to be imputed to want of care and caution, must in each case be considered with reference to the general circumstances and the capacity and intelligence of the person whose conduct is in question. **9 Bom. IR 230.** So an educated wealthy person, living in a town where medical facilities are available, cannot be said to have acted in good faith in chaining up his brother, who was subject to fits of violent insanity with lucid intervals.