CHAPTER 1

INTRODUCTION

Basic concepts used in understanding, crime, criminality, criminal

1.1 Crime:

The starting point of the discussion, like any other area of study, is to define and delimit its subject-matter. This has to be done, at least to some extent, despite the fact that it is difficult to appreciate a definition without knowing something about the subject in the first instance, and definitions should be attempted towards the end rather than in the beginning of the discussion of the subject.

The most convenient starting point for understanding the nature and scope of criminology is obviously the concept of crime itself since the subject concerns itself with the study of crime and criminals from various perspectives.

The obvious way of defining crime is in legal terms, to distinguish it from sin, religious and moral wrongs. A legal definition gives a basic premise in which the pitfalls resulting from individual or group opinions are avoided, to give, as far as possible, a scientific and precise character to criminology. The lawyer-sociologist Paul W. Tappan has defined crime as "an intentional act or omission in violation of criminal law, committed without defence or justification, and sanctioned by the laws as felony or misdemeanour". It appears, however, that the definition could conveniently be reduced to "an act or omission in violation of criminal law," since any defence or justification is to be found within the criminal law, and there is no question of violating the criminal law if some defence or justification is available for a particular act or omission in certain circumstances. Further, it is not necessary for an act or omission to be intentional in order to be a crime; it could be made punishable on the basis of knowledge, recklessness or negligence or even without any reference to the mental element of the wrongdoer i.e. based on the concept of strict responsibility.

There is, however, another school of thought which considers the legal definition to be inadequate and unsuitable for the purpose of criminology. It insists on giving a definition which is broader as compared to the legal definition and is called the social definition. Crime accordingly is defined as "an act which the group (social) regards as sufficiently menacing to its fundamental interests, to justify formal reaction to restrain the violator". Raffeale Garofalo one of the three leading exponents of the Italian school of criminology, rejected the 'juridical' conception of crime which according to him fails in that it both includes and excludes behavior properly encompassed in a **"sociological notion of crime".** For his sociological purpose, he formulated his theory of **"natural crime"**. By **"natural crime"** he meant acts which offend the basic moral sentiments of pity (revulsion against the voluntary infliction of suffering on others) and probity (respect. for property rights of others).'

It is interesting to note that the exponents of each one of the above schools accuse the other of being unscientific in approach. The legal definition has been criticised on the ground that whether any act or omission is recognized as a crime at a given time in a society depends upon values which are relative and not on any intrinsic worth of the act or omission and that makes the study of crime unscientific. As aptly commented upon by an advocate of the sociological approach, the categories set up by criminal law are of a "fortuitous nature" and do not arise intrinsically from the nature of the subject-matter the scientists attempt to analyse. This charge of variation in the legal attitude towards various acts is countered by the supporters of the legalislic approach by pointing out that not only do the legal norms vary due to various circumstances 'but also all the social norms which are essentially relative and impermanent. It is pointed out that criminal law not only gives precise definitions of forbidden acts but also has the machinery and procedure to determine the violations and, therefore is able to identify the offenders, which is not possible in cases where certain conduct is branded as criminal in social terms irrespective of prevailing legal notions.

This certainly is the advantage in the legal definition over the social one despite the various inherent weaknesses of criminal law processes like non-prosecution of many offenders, the possibility of false conviction greater possibility of failure to convict all guilty persons and of innumerable cases remaining unreported to the police. The best exposition of the case for legal definition has been made by Paul W. Tappan in the article **"Who is the Criminal?"** in the following words:

> "The validity of this contention (based on social definition) must depend, of course, upon what the nature of the subject-matter is. These scholars suggest that, as a part of the general study of human behaviour, criminology should concern itself broadly with all anti-social conduct, behaviour injurious to society. We take it that anti-social conduct is essentially any sort of behaviour which violates some social interest. What are these social interests? Which are weighty enough to merit the concern of the sociologist, to bear the odium? What shall constitute a violation of them? Particularly where, as is so commonly true in our complicated and unintegrated society, these interests are themselves in conflict? Roscoe Pound's 'suggestive classification of the social interests served by law is valuable in a juristic framework, but it solves no problem for the sociologist who seeks to depart from legal standards in search of all manner of anti-social behaviour. However desirable may be the concept of socially injurious conduct for purposes of general or abstract description, it does not define what is injurious. It sets no standard. It does not discriminate cases, but merely invites the subjective value-judgment of the investigator.'

It is because of the 'confusion" caused by the social definition that the use of the expression white collar crime" by Professor Sutherland irks Tappan. He clinches the issue in favour of the legal definition by observing that convicted criminals represent the closest possible approximation to those who have in fact violated the law even if this group may not be complete or fully representative of all those who have committed crime. Further, the criminal law establishes substantive norms of behaviour, standards more clear-cut. Specific and detailed than the norms in any other category of social

1.1.1 Parties to Crime:

Ordinarily a person is liable for his own guilty act. There are, however, some situations when one is liable for the criminal acts of others also. Under the statue, a duty may be cast upon a person to manage things in a certain manner and he may be liable even if the failure regarding the statutory duty is not his own but of some acting on his behalf. A master may be made liable for the acts of is servant under a statute. So far as the general law of crimes is concerned, one may be involved in certain situations in such a way that though he did not commit the criminal act himself, he either acted in concert with others or abewtted the criminal act. Every member of o group becomes liable for every act committed by any of them in furtherance of the common intention of the group members irrespective of the actual part played by the individual. Similarly members of an unlawful assembly may become liable for any criminal act committed by any member in the prosecution of the common object of the assembly.

Abetment of a crime is also a crime. Abetment may be committed by instigating another to commit a crime or by entering into a conspiracy to commit a crime or by providing necessary aid to another in the commission of the crime. The aid may be given before the commission of the offence or at the time or subsequent to the commission of the offence. The abetment of an offence is punished in the same way as the actual commission of the offence if the abetment actually results in the offence abetted, otherwise a lesser punishment is provided for the abettor.

1.1.2 Elements of a Crime

Before a man can be convicted of a crime it is usually necessary for the prosecution to prove **(a)** that a certain event or a certain state of affairs, which is forbidden by the criminal law, has been caused by his conduct and **(b)** that this conduct was accompanied by a prescribed state of mind. The event, or state of affairs, is usually called the actus reus and the state of mind the mens rea of the crime. Both these elements must be proved beyond reasonable doubt by the prosecution. Though it is absolutely clear that D killed P - that is, he has caused an actus reus - he must be acquitted of murder if the killing might reasonably have been accidental; for, if that is the case, it has not been proved beyond reasonable doubt that he had the requisite mental element. It was so laid down by the House of Lords in Woolmington v Director of Public Prosecutions' where it was held, overruling earlier authorities, that it is a misdirection to tell a jury that D must satisfy them that the killing was an accident. The true rule is that the jury must acquit even though they are not satisfied that D's story is true, if they think it might reasonably be true. They should convict only if satisfied beyond reasonable doubt that it is not true. This rule is of general application' and there is only one clearly established exception to it at common law - the defence of insanity.' To raise other defences at common law - for example, provocation, self-defence, automatism or duress – the accused need do no more than introduce some evidence of the constituents of the defence; whereupon it is for the Crown to satisfy the jury that those constituents did not exist. If there is evidence of a defence, though it has not been specifically raised by the accused, the judge must direct the jury to acquit unless they are satisfied that the defence has been disproved.' Statute, however, has created many exceptions to the rule in Woolmington. Where an onus of

proof is put upon D, he satisfies it if he proves his case on a balance of probabilities - the same standard as that on the plaintiff in a civil action - and he need not prove it beyond reasonable doubt.'

The principle that a man is not criminally liable for his conduct unless the prescribed state of mind is also present is frequently stated in the form of a Latin maxim: actus non facit reum nisi mens sit red. It is convenient, for purposes of exposition, to consider the mental element separately from the other elements of the crime. The mental element is traditionally described as the mens rea and the other elements as the actus reus. The actus reus amounts to a crime only when it is accompanied by the appropriate mens rea. To cause an actus reus without the requisite mens rea is not a crime and may be an ordinary, innocent act. For example. The offence of perjury consists in making a statement, whether true or not oath in a judicial proceeding, knowing it to be false or not believing it to be true. Thus, every statement on oath in a judicial proceeding is the actus reus of perjury. When we say then that a certain event is the actus reus of a crime what we mean is that the event would be a crime if it were caused by a person with mens rea. The description of it as an actus reus implies no judgment whatever as to its moral or legal quality. The analysis into actus reus and mens rea is for convenience of exposition only. The only concept known to the law is the crime; and the crime exists only when actus reus and mens rea coincide. Once it is decided that an element is an ingredient of an offence, there is no legal significance in the classification of it as part of the actus reus or the mens rea.

It is not always possible to separate actus reus from mens rea. Sometimes a word which describes the actus reus, or part of it, implies a mental element. Without that mental element the actus reus simply cannot exist. There are many offences of possession of proscribed objects and it has always been recognised that possession consists in a mental as well as physical element. The same is true of words like **"permits", "appropriates", "cultivates"** and many more. Having an offensive weapon in a public place is the actus reus of an offence; but whether an article is an offensive weapon depends, in some circumstances, on the intention with which it is carried. In the absence of that intention, the thing is not an offensive weapon and there is no actus reus. The significance of this is that any mental element which is part of the actus reus is necessarily an element of the offence. It is possible for the courts to dispense with mens rea in whole or in part, but, except in the anomalous case of an intoxicated offender,' they can never dispense with the actus reuse. If an offence consists in possessing or permitting, it cannot be proved if D cannot be shown to have possessed or permitted. The court may of course g'ive effect to the word without requiring full mens rea, as where it held that D was guilty of permitting the use of an uninsured vehicle where he intended to permit only the use of the vehicle (which was in fact uninsured) or cultivating a cannabis plant where he intended only to cultivate that plant (which was in fact a cannabis plant.).

1.1.3 The Actus Reus

1. The Nature of an Actus Reus. Since the actus reus includes all the elements in the definition of the crime except the accused's mental element,' it follows that the actus reus is not merely an act. It may indeed consist in a "state of affairs", not including

an act at all. Much more often, the actus. reus requires proof of an act or an omission (conduct). Usually it must be proved that the conduct had a particular result. In murder, for example, it must be shown that the accused's conduct caused the death. Some crimes do not require evidence of any result. Perjury is committed as soon as D makes a statement on oath which he does not believe to be true. It is irrelevant whether he is believed or not. These different types of offence have been designated' "result crimes" and "conduct crimes" respectively. It has been said" that in "result crimes" the law is interested only in the result and not in the conduct bringing about the result. Similarly, a well-known definition of actus reus is "such result of human conduct as the law seeks to prevent".' But a dead man with a knife in his back is not the actus reus of murder. It is putting the knife in the back thereby causing the death which is the actus reus. The law is no less interested in the conduct which brings about the result in a "result crime" than in a "conduct crime". A case can indeed be made out that in all crimes the law should have regard only to the conduct and not to the result.' Whether or not the conduct results in harm is generally a matter of chance and does not alter the blameworthiness and dangerousness of the actor. For example, if D hurls a stone, being reckless whether he injures anyone, he is guilty of a crime if the stone strikes P but of no offence if by pure chance - no one is injured. From a retributive point of view, it might be argued that D should be equally liable in either event. On utilitarian grounds, however, it is probably undesirable to turn the whole criminal law into "conduct crimes". The needs of deterrence are probably adequately served in most cases by "result crimes"; and the criminal law should be extended only where a clear need is established.

The actus reus then is made up, generally but not invariably, of conduct and sometimes its consequences and also of the circumstances in which the conduct takes place (or which constitute the state of affairs) in so far as they are relevant. Circumstances, like consequences, are relevant in so far as they are included in the definition of the crime. The definition of theft, for example, requires that it be proved that D dishonestly appropriated property belonging to another. If the property belonged to no-one (because it had been abandoned) D's appropriation could not constitute the actus reus of theft. However dishonest he might be, he could not be convicted of theft because an essential constituent of the crime is missing.

Sometimes a particular state of mind on the part of the victim is required by the definition of the crime. If so, that state of mind is part of the actus reus and, if the prosecution are unable to prove its existence, they must fail. If D is prosecuted for rape, it must be shown that P did not consent to the act of intercourse. The absence of consent by P is an essential constituent of the actus reus. But in many crimes the consent of the victim is entirely irrelevant. If D is charged with the murder of P, it is no defence for him to show that P asked to be killed.

It is apparent from these examples that it is only by looking at the definition of the particular crime that we can see what circumstances are material to the actus reus. We find this definition, in the case of common law crimes, in the decisions of the courts and, in the case of statutory crimes, in the words of the statute, as construed by the courts.