



New

Criminal Laws

(Subjective Q&A for Mains)

Volume - 2

Bharatiya Nyaya Sanhita, 2023



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SUBJECTIVE QUESTIONS AND ANSWERS

CHAPTER 1

PRELIMINARY, OBJECT AND NATURE

Que. Discuss the object and reasons behind the enactment of the Bharatiya Nyaya Sanhita, 2023.

Ans:

The Bharatiya Nyaya Sanhita, 2023 (BNS) has been enacted to **consolidate and amend the substantive criminal law** governing offences in India, replacing the colonial-era Indian Penal Code, 1860.

Objects and Reasons:

1. Decolonisation of Criminal Law

The BNS seeks to remove outdated colonial provisions and align criminal law with **constitutional values and contemporary societal needs**.

2. Simplification and Rationalisation

It streamlines provisions relating to offences and penalties, ensuring clarity, coherence, and ease of application.

3. Introduction of Reformatory Justice

A significant step is the introduction of **community service** as a punishment for petty offences, reflecting a shift toward **restorative and reformatory justice**.

4. Addressing Emerging Crime

The statute recognises modern forms of criminality by explicitly including offences committed through **electronic and digital means**.

5. Addressing National Security and Organised Crime

New provisions have been introduced to effectively tackle **terrorism and organised crime**, prescribing stringent punishments.

6. Replacement of Sedition Law

The offence of sedition under Section 124A IPC has been omitted and replaced with a new provision penalising acts **endangering sovereignty, unity, and integrity of India**, in line with constitutional principles.

7. Enhanced Punishments and Fines

The BNS revises punishments and fines to reflect present-day realities and ensure **deterrence and proportionality**.

8. Focus on Victim-Centric Justice

The legislation incorporates provisions aimed at better protection of victims, especially women and children.

Cases:

The reform aligns with the evolving jurisprudence of the Supreme Court of India, particularly in:

- **Kedar Nath Singh v. State of Bihar (1962) SC**– which upheld sedition but limited its scope.
- **S.G. Vombatkere v. Union of India (2022) SC**– where the Court effectively **kept sedition in abeyance**, prompting legislative reconsideration reflected in BNS.

9. Alignment with Constitutional Values

- The BNS aims to align criminal law with **constitutional principles**, ensuring justice, fairness, and protection of individual rights.

Que. Discuss the major changes introduced by the Bharatiya Nyaya Sanhita, 2023 vis-à-vis the IPC, 1860.

Ans:

The BNS introduces substantial reforms to modernise India's criminal justice system. The key changes are as follows:

1. Expanded and Updated Definitions

- **Child:** Defined as a person below 18 years.
- **Gender neutrality:** IT include male, female, and transgender persons.
- **Documents** are expanded to include **electronic and digital records**.
- **Movable property:** Now includes **intangible property**.
- Terminology is updated. (e.g., “minor” is now “child”, “insane person” is now a “person of unsound mind”).

2. New Punishment Framework

- Introduction of **community service** as a sixth form of punishment (Section 4 BNS).
- It has increased fines and limits for imprisonment in default of fine (Section 8 BNS).
- There is greater emphasis on proportional and deterrent sentencing.

3. Newly Introduced Offences

Key additions include:

- Organized crime and petty organized crime
- Terrorist acts
- Mob lynching
- Snatching
- Hit-and-run cases
- Sexual intercourse by deceitful means
- Hiring a child to commit offences
- Acts endangering sovereignty and integrity of India

4. Gender Justice and Protection of Women

- Certain offences like voyeurism and disrobing are made **gender-neutral**.
- Enhanced punishment for **gang rape of minors (below 18 years)**.
- Marital rape exception age raised from 15 to 18 years.

Cases

- Independent Thought v. Union of India (2017) SC - where the Supreme Court read down the marital rape exception for wives aged 15–18, influencing legislative reform.

5. Stringent Punishments

- It has increased penalties for offences such as:
 - Causing death by negligence
 - Hurt and grievous hurt
 - Rioting and unlawful assembly
 - Fabrication of evidence
- Introduction of **minimum punishments** in several offences.

6. Removal and Reclassification of Offences

Certain IPC offences have been removed or restructured, including:

- Sedition
- Adultery (already decriminalized judicially)

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- Attempt to suicide (largely decriminalized approach)
 - Unnatural offences (partly struck down)

Cases:

- Joseph Shine v. Union of India (2018 SC) – decriminalized adultery.
- Navtej Singh Johar v. Union of India (2018) SC – decriminalized consensual same-sex relations.

7. Strengthening National Security Provisions

- Introduction of offence relating to **acts endangering sovereignty, unity, and integrity of India** (Section 152 BNS), replacing sedition with a more narrowly tailored provision.

8. Technological Adaptation

- Explicit inclusion of **electronic modes** in offences such as cheating, forgery, and fraud, aligning law with digital realities.

Que. Define “Crime”.

Ans:

The concept of crime has existed since time immemorial, yet it **cannot be defined with precision**. As observed by Russell, defining crime satisfactorily has remained a difficult task. This is because crime is **relative and dynamic**, varying with social values, customs, traditions, and the political and economic structure of society.

Meaning and Definition of Crime

- In simple terms, **crime** may be defined as:
 - *An act or omission which is prohibited by law and is punishable by the State.*
 - The Bharatiya Nyaya Sanhita, 2023 does not expressly define “crime.” However, it can be understood as **conduct that is socially harmful and legally punishable**.
 - In T.K. Gopal v. State of Karnataka (2000) 6 SCC 168, the Supreme Court held that:
 - *A crime is an act which subjects the doer to legal punishment.*

Definitions by Jurists

- **Jeremy Bentham:** Offences are acts prohibited by the legislature.
- **William Blackstone:** Crime is an act or omission in violation of public law.
- **James Fitzjames Stephen:** Crime is a violation of rights affecting society at large.

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- **John Austin:** A wrong pursued by the sovereign is a crime.
 - **Courtney Stanhope Kenny:** Crime is a wrong whose sanction is punitive and enforced by the State.
 - **Miller:** Crime is an act forbidden by law under threat of punishment by the State.
 - **P.H. Winfield:** Crime is a wrong punishable by the State and not avoidable by the offender.

Nature of Crime

- Crime is a **wrong against society**, not merely an individual.
- It disturbs **public order and societal conscience**.
- The **State acts as the prosecutor**, as crimes affect the community at large.
- The primary objective is to maintain **law, order, and security**.

Crime is Not Static (Dynamic Nature of Crime)

Crime is **not a fixed or absolute concept** because:

1. **Law is dynamic**
 - Laws evolve with societal needs; hence, what constitutes crime also changes.
2. **Law Changes in Social Values**
 - Moral standards differ across societies and time periods.
3. **Judicial Developments**
 - In **Joseph Shine v. Union of India (2018)**, SC held that the adultery was decriminalized.
 - In **Navtej Singh Johar v. Union of India (2018) SC**, consensual same-sex relations were decriminalized.
4. **Expansion of Offences**
 - The definition of offences like rape has been **expanded over time** to ensure better protection.

Que. Difference between “Crime” and “Offence”?

Ans:

The most critical distinction lies in how the law defines them.

- **Offence:** This is a strictly legal term. Under **Section 40 of the IPC/2(24) BNS**, an "offence" is defined as a thing made punishable by the Code/Sanhita. Essentially, if there is a specific section in the IPC (or any special or local law) that says "doing X will result in Y punishment," then X is an offence.
- **Crime:** The word "crime" is **not defined** anywhere in the IPC/BNS. It is a broad, sociological, and pedagogical term used to describe an act that violates public law and is harmful to society.

2. Scope and Nature

Feature	Offence	Crime
Origin	Derived from Statute (IPC/BNS, CrPC/BNSS, Local Laws).	Derived from Social Norms and legal theory.
Legal Status	Must be specifically codified to exist.	A general concept of "wrongdoing" against the public.
Classification	Divided into Bailable/Non-bailable, Cognizable/Non-cognizable.	Generally categorized by its nature (e.g., White-collar, Violent).
Application	Used by courts and police in FIRs and judgments.	Used by criminologists, sociologists, and the public.

Que. Difference between "Crime" and "Tort"

Ans.

Meaning

Crime

A crime is a wrongful act prohibited by criminal law, considered an offence against the State or society, and punishable by the State.

Tort

A tort is a civil wrong that causes injury to a person, for which the injured party can claim damages or compensation.

Distinction between Crime and Tort

Basis	Crime	Tort
1. Nature of Law	Governed by criminal law and criminal procedure.	Governed by civil law and civil procedure.

2. Object	Punishment of offender.	Compensation to injured person.
3. Remedy	Imprisonment, fine, death penalty, etc.	Damages, compensation, injunction, etc.
4. Who files the case?	Generally prosecuted by the State/Government.	Suit filed by aggrieved person.
5. Court	Criminal Courts.	Civil Courts.
6. Nature of Wrong	Wrong against society or State.	Wrong against an individual/private right.
7. Intention	Criminal intention (mens rea) usually important.	Intention may or may not be important.
8. Standard of Proof	Beyond reasonable doubt.	Preponderance of probabilities.
9. Punishment/Damages	Punishment predetermined by law.	Damages determined by court's discretion.
10. Result of Proceedings	Conviction or acquittal.	Decree for damages or dismissal of suit.

Important Point about Intention

The statement in the image:

“For the tort, there is no importance of intention”

is not absolutely correct in all situations.

More accurate statement:

In many torts, intention is not essential because liability may arise from negligence or strict liability.

However, in some torts like:

- Assault,
- Battery,
- False imprisonment,
- Malicious prosecution,

intention is relevant.

Illustration

Crime Example

A intentionally stabs B. This is an offence against the State. The State prosecutes A.

Tort Example

A negligently drives a car and injures B. B may sue A for compensation.

Que. Which are the different stages involved in the commission of a crime? How would you distinguish them inter se?

Ans:

1. Stages in Commission of Crime

The commission of a crime generally passes through the following **four stages**:

- i. Intention (Mens Rea)**
- ii. Preparation**
- iii. Attempt**
- iv. Commission (Completion of offence)**

2. Explanation of Each Stage

(1) Intention

- It is the **mental element** or decision to commit a crime
- It is **not punishable**, as it exists only in the mind

(2) Preparation

- Arranging means or measures necessary for committing the offence
- Generally, **not punishable**, except in specific cases (e.g., preparation for dacoity, counterfeiting, etc.)

(3) Attempt

- Direct movement towards commission of offence after preparation
- **Punishable** under **Section 62, Bharatiya Nyaya Sanhita, 2023**
- Requires:
 - Intention
 - Overt act
 - Proximity to offence

(4) Commission

- Final stage where offence is **completed**
- Full liability arises under the relevant provision (e.g., Section 103 BNS for murder)

3. Distinction

Basis	Intention	Preparation	Attempt	Commission
Nature	Mental stage	Arranging means	Execution begins	Offence completed
Punishability	Not punishable	Not punishable (general rule)	Punishable	Fully punishable
Proximity to Crime	Remote	Remote	Near/proximate	Complete
Evidence	Difficult to prove	May be inferred	Clearly visible	Fully established
Example	Thinking to kill	Buying weapon	Attacking victim	Victim killed

4. Key Principle

Criminal liability generally arises **only at the stage of attempt or completion**, because these stages show **clear danger to society**.

5. Conclusion

A crime evolves from **intention to commission**, but law intervenes only when acts reach the stage of **attempt or completion**, ensuring a balance between **individual liberty and social protection**.

Que. Discuss the essential elements of crime.

Ans:

Elucidation of the Statement

Crime is not merely a wrong against an individual; it is a **wrong against society as a whole**. Every criminal act disturbs social order, undermines public peace, and threatens the security of the community. Therefore, it is rightly said that **crime is a revolt against society and an attack on civilization**, as it challenges the accepted norms, values, and legal order on which civilized society rests.

This is why criminal law treats offences as **public wrongs**, and the **State becomes the prosecutor** to maintain law and order and protect societal interests.

Essential Elements of Crime

There are two fundamental elements of crime:

1. Actus Reus (Guilty Act)

Actus reus refers to the **physical or external component** of a crime.

- It means the **conduct, act, or omission** prohibited by law.
- According to Courtney Stanhope Kenny, it is “*the result of human conduct which the law seeks to prevent.*”

Key Features:

- There must be a **voluntary act or omission**.
- Mere intention is not punishable without an act.
- A person is generally liable for **his own acts only**.
- It includes:
 - **Positive acts** (e.g., assault, theft)
 - **Negative acts (omissions)** (e.g., failure to perform a legal duty)

Illustrations:

- In homicide, **death of a person** is the actus reus.
- In house-breaking, the act relates to **place**, and in house-breaking by night, it relates to **place and time**.

2. Mens Rea (Guilty Mind)

Mens rea means the **mental element or guilty intention** behind the act.

- It signifies **evil intent or knowledge** of wrongdoing.
- The MAXIM is:
“*Actus non facit reum nisi mens sit rea*”
(*The act does not make a person guilty unless the mind is also guilty*).

Key Features:

- There must be a **concurrence of act and intention**.
- The act must be **voluntary and intentional**.
- Different offences require different mental states such as intention, knowledge, recklessness, or negligence.

CASES:

In Sherras v. De Rutzen (1895) 1 QB 918:

- Mens rea is presumed unless excluded by statute.

In Queen v. Tolson (1889) 23 QBD 168:

- A guilty mind is generally required, but statutes may create exceptions.

In State of Maharashtra v. M.H. George (1965) SC:

- The Supreme Court held that **mens rea is essential unless expressly or impliedly excluded.**

Exception: Strict Liability

In certain offences, **mens rea is not required**, such as:

- Public nuisance
- Food adulteration
- Regulatory offences

These are known as **strict liability offences.**

Que. “Mens rea is an essential element in every crime.” Explain this rule and state its applicability under the Bharatiya Nyaya Sanhita, 2023.

Ans:

The fundamental principle of criminal law is embodied in the **maxim:**

“Actus non facit reum nisi mens sit rea”

(i.e., **an act does not make a person guilty unless the mind is also guilty**).

Mens rea means a **guilty mind or evil intention**. For criminal liability, there must be a **concurrence of act (actus reus) and guilty mind (mens rea)**. Thus, a person is liable only when he commits a wrongful act with a blameworthy mental state.

Cases

- In **Sherras v. De Rutzen (1895) 1 QB 918**, it was held that:
 - Mens rea is presumed in every offence unless the statute expressly or by necessary implication excludes it.
- In **R v. Prince (1875) LR 2 CCR 154**, the Court distinguished between:
 - **Malum in se** (acts inherently wrong)
 - **Malum prohibitum** (acts wrong because prohibited)
- In **Queen v. Tolson (1889) 23 QBD 168**, it was held that a guilty mind is generally required, but statutes may create exceptions.
- In **Brend v. Wood (1946) 62 TLR 462**, it was observed that courts should not convict unless mens rea is proved, unless clearly excluded.

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- The above principle was accepted by the **Supreme Court** in **State of Maharashtra v. M.H. George**, where it was held that unless a statute clearly or by necessary implication excludes mens rea, it is an essential ingredient of the offence.
 - In **Nathulal v. State of M.P., 1966 SC**.
 - The Supreme Court held that Mens rea is an essential ingredient of a criminal offence, and it is a sound rule of construction to read it into a statute unless excluded.

Applicability under the Bharatiya Nyaya Sanhita, 2023

1. **General Rule: Mens Rea is Essential**

The Bharatiya Nyaya Sanhita, 2023 incorporates mens rea in most offences through expressions such as:

- **Intentionally**
- **Voluntarily**
- **Fraudulently**
- **Knowingly**
- **Dishonestly**
- **Reason to believe**

These words indicate that **criminal liability depends upon the mental state of the accused**.

2. **Exceptions: Absence of Mens Rea (Strict Liability**

The rule is **not absolute**. Mens rea may be excluded:

- Where the statute expressly provides
- Where exclusion is implied to achieve the object of the law

Such offences are known as **strict liability offences**, where **mere commission of the act is sufficient**.

Que. Explain why the mens rea 'guilty mind' rule doesn't apply to strict liability crimes.

Ans:

The doctrine of **mens rea** (guilty mind) is a **fundamental principle of criminal law**, expressed in the maxim:

“Actus non facit reum nisi mens sit rea”

(i.e., the act alone does not make a person guilty unless accompanied by a guilty mind).

However, this principle is **not absolute**. In certain cases, the law **dispenses with the requirement of mens rea**, giving rise to the concept of **strict liability offences**, thereby diluting the doctrine.

Meaning of Strict Liability

Strict liability offences are those in which:

- **Mens rea is not required to be proved**, and
- The accused is held liable **merely on proof of the act (actus reus)**.

Thus, even if the accused had **no intention or knowledge**, he may still be held guilty.

Cases

- In *Sherras v. De Rutzen* (1895) 1 QB 918, it was held that mens rea is generally required unless excluded by statute.
- In *R v. Prince* (1875) LR 2 CCR 154, the accused was held liable for taking away a minor girl despite his honest belief about her age, illustrating strict liability.
- **The Supreme Court in State of Maharashtra v. M.H. George** held that:
 - In certain offences, particularly those affecting economic and social order, mens rea may be excluded.

Que. How Mens Rea is Diluted?

The doctrine of mens rea is diluted in the following ways:

1. Legislative Exclusion of Mens Rea

- The legislature may **expressly or impliedly exclude mens rea**.
- In such cases, the offence is complete **without proof of guilty intention**.

2. Public Welfare and Regulatory Offences

- Strict liability is commonly imposed in areas such as:
 - Public health
 - Food and drugs
 - Environmental protection
 - Taxation and economic offences
- These laws aim at **protecting society at large**, so proving intention is not required.

3. Difficulty in Proving Mens Rea

- In certain offences (e.g., traffic violations), it is **difficult to prove intention**.
- Hence, liability is imposed **based on the act alone**.

4. Minor Offences and Petty Penalties

- For offences involving **small penalties or fines**, strict liability is imposed for **quick enforcement**.

5. Maxim: Ignorance of Law is No Excuse

- Even if a person **does not know the law**, he is still liable.
- Absence of intention or knowledge **does not absolve liability**.

6. Certain Offences under Criminal Law

- Examples where mens rea is diluted include:
 - Kidnapping
 - Public nuisance
 - Bigamy
 - Contempt of court
 - Counterfeiting

In such cases, **liability may arise irrespective of intention**.

Position under the Bharatiya Nyaya Sanhita, 2023

Under the Bharatiya Nyaya Sanhita, 2023:

- The general rule is that **mens rea is required**, indicated by words like *intention, knowledge, dishonestly, fraudulently*.
- However, **strict liability offences exist as exceptions**, particularly in matters affecting:
 - Public safety
 - Social welfare
 - Economic regulation

Thus, the doctrine of mens rea is **partially diluted but not completely abolished**.

Que. How far is motive necessary for determining a crime?

Ans:

Meaning of Motive

Motive is the **reason or inducement** which prompts a person to commit an act. It is the **driving force behind intention**.

- **Intention** therefore is an immediate mental state (means)
- **Motive** therefore is an ultimate purpose (end)

Thus, while intention determines criminal liability, motive merely explains it.

General Rule: Motive is Not Essential

The settled principle of criminal law is:

Motive is not an essential ingredient of a crime; mens rea (intention) is.

- A **good motive** does not justify a criminal act.
- A **bad motive alone** cannot constitute a crime.

Therefore, **motive is not a decisive test of criminality.**

Position

Under the Bharatiya Nyaya Sanhita, 2023, offences are defined in terms of:

- intention
- knowledge
- dishonesty
- fraudulence

This shows that **mens rea is essential**, not motive.

Further, **Section 8 of the Indian Evidence Act, 1872** makes **motive a relevant fact**, giving it evidentiary value.

Evidentiary Value of Motive

1. **It Supports the Prosecution Case**
2. **Absence of motive is Not Fatal**
3. **It is Important in Circumstantial Evidence**

Cases

- In **Tanviben v. State of Gujarat, 1997SC**
 - The Supreme Court held that the Conviction can be based even if motive is not proved, when evidence is clear and reliable.
- In **State of U.P. v. Nahar Singh, 1998 SC**
 - It was held that Absence of motive is immaterial where there is reliable eyewitness evidence.
 - **Chandan v. The State (Delhi Admin) 2024 SC.** It was held that motive is insignificant when there is direct evidence proving the guilt of accused.

When Motive Becomes Relevant

Motive becomes significant in the following cases:

1. **Circumstantial Evidence Cases**
2. **To infer intention (mens rea)**

3. **In criminal attempts**
4. **Where specific intention is an ingredient**
5. **In civil wrongs like defamation and malicious prosecution**

Que. Distinguish between ‘Knowledge’ ‘Intention’, ‘and ‘Motive’ with illustrations.

Ans:

Meaning of the Terms

- **Intention:** It is the **purpose or design** with which an act is done. It implies that a person **consciously desires to bring about a particular result.**
- **Knowledge:** It means **awareness of the consequences** of an act. The person may not desire the result, but **knows that it is likely to occur.**
- **Motive:** It is the **reason or inducement** which prompts a person to form an intention. It is the **ultimate object behind the act.**

Position

Under **Section 2(33) of the Bharatiya Nyaya Sanhita, 2023,**

A person is said to cause an effect voluntarily when he causes it by means which he **intends, knows, or has reason to believe** are likely to cause it.

Thus, the provision recognizes:

- Intention
- Knowledge
- Reason to believe

as essential mental elements in criminal liability.

Distinction between Intention, Knowledge and Motive

Basis	Intention	Knowledge	Motive
Meaning	Purpose to bring about a result	Awareness of likely consequences	Reason behind the act
Mental State	Desired result	Foreseen but not necessarily desired	Inducement to act
Relevance in Crime	Essential element	Essential element	Not essential
Relation	Immediate cause	Awareness of outcome	Remote cause
Legal Importance	Determines liability	Determines liability	Only evidentiary value

Illustrations

1. Intention

- A shoots B with the aim of killing him therefore A has **intention to kill**.

2. Knowledge

- A sets fire to a house to commit robbery knowing people are inside therefore
- A may not intend death, but has **knowledge that death is likely**.

3. Motive

- A kills B to inherit property therefore

Motive = gain of property,

Intention = to kill B.

