# IPC Section 28

## Section 28 of the Indian Penal Code: "Illegal"  
  
Section 28 of the Indian Penal Code (IPC) defines the term "illegal" as it is used within the Code. While seemingly a simple definition, its implications are far-reaching, impacting the interpretation and application of numerous other sections. Understanding Section 28 requires a detailed examination of its wording, its relationship to other legal concepts, its application in various offenses, and its significance in ensuring legal clarity and consistency.  
  
\*\*The Text of Section 28:\*\*  
  
"Illegal.—A person is said to do a thing illegally when he does that thing which is an offence, or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be “illegally” or “unlawfully” restrained when he is deprived of his liberty against his will, without the justification of law, or with such justification as does not amount to lawful restraint and without any exempting authority from the law, such as on a matter of public safety or on the execution or enforcement of a legal process."  
  
  
\*\*Dissecting the Definition:\*\*  
  
Section 28 provides a two-part definition of "illegal":  
  
\*\*Part 1: General Definition of "Illegal"\*\*  
  
"A person is said to do a thing illegally when he does that thing which is an offence, or which is prohibited by law, or which furnishes ground for a civil action."  
  
This part outlines three distinct scenarios that constitute an illegal act:  
  
1. \*\*"Which is an offence":\*\* This refers to any act that is specifically defined as a crime under the IPC or any other criminal statute. For example, theft, murder, assault, and cheating are all offenses. The commission of such acts is inherently illegal.  
  
2. \*\*"Which is prohibited by law":\*\* This encompasses acts that are forbidden by law, even if they are not explicitly classified as "offenses" under the IPC. These prohibitions may be found in other statutes, regulations, or bye-laws. For example, driving without a license, violating building codes, or exceeding speed limits are acts prohibited by law and therefore considered illegal. This category extends the scope of "illegal" beyond just criminal offenses.  
  
3. \*\*"Which furnishes ground for a civil action":\*\* This refers to acts that give rise to a civil lawsuit, even if they are not criminal offenses or explicitly prohibited by law. This category encompasses actions that violate a person's civil rights or cause them harm, allowing them to seek redressal through the civil courts. Examples include breach of contract, negligence, defamation, and trespass. While these actions may not be punishable under criminal law, they are still considered "illegal" under this definition.  
  
  
\*\*Part 2: Definition of "Illegally" or "Unlawfully" Restrained\*\*  
  
"and a person is said to be “illegally” or “unlawfully” restrained when he is deprived of his liberty against his will, without the justification of law, or with such justification as does not amount to lawful restraint and without any exempting authority from the law, such as on a matter of public safety or on the execution or enforcement of a legal process."  
  
This part specifically defines "illegal" or "unlawful" restraint, providing further clarification on this specific form of illegal action:  
  
1. \*\*"Deprived of his liberty against his will":\*\* The core element is the deprivation of a person's freedom of movement against their wishes. This can take various forms, from physical confinement to coercion or threats that prevent a person from moving freely.  
  
2. \*\*"Without the justification of law":\*\* The restraint must be without any legal basis. Lawful arrests by police officers, detention under legal warrants, or confinement of individuals deemed mentally unstable under appropriate legal procedures are not considered illegal restraint as they are justified by law.  
  
3. \*\*"With such justification as does not amount to lawful restraint":\*\* This covers situations where there might be some purported justification for the restraint, but it falls short of legal requirements. For instance, detaining someone on mere suspicion without following due process would fall under this category.  
  
4. \*\*"Without any exempting authority from the law":\*\* This acknowledges that certain situations, while involving restraint, are exempted from being considered illegal due to overriding public interests. Examples include actions taken for public safety, such as quarantining individuals during an epidemic, or actions taken in the execution of legal processes, such as arresting a suspect based on a warrant.  
  
  
  
\*\*Interplay with other Legal Concepts:\*\*  
  
Section 28's definition of "illegal" interacts with several other legal concepts:  
  
\* \*\*Mens Rea (Criminal Intent):\*\* While Section 28 defines "illegal," it doesn't necessarily imply criminal liability. Establishing criminal liability requires proof of \*mens rea\*, the guilty mind or criminal intent. An act may be illegal under Section 28, but if done without criminal intent, it may not attract criminal penalties.  
  
\* \*\*Justification and Excuses:\*\* Certain defenses, like self-defense, necessity, or acting under duress, can negate the illegality of an act even if it falls within the definition of Section 28. These defenses acknowledge that while an act may technically be illegal, the circumstances surrounding its commission justify or excuse the actor's conduct.  
  
\* \*\*Civil and Criminal Law:\*\* Section 28 bridges the gap between civil and criminal law by recognizing that acts giving rise to civil actions can also be considered illegal. This highlights the broader implications of unlawful conduct beyond just criminal repercussions.  
  
  
\*\*Significance of Section 28:\*\*  
  
Section 28 plays a crucial role in the IPC for several reasons:  
  
\* \*\*Clarity and Consistency:\*\* It provides a clear and consistent definition of "illegal" that applies throughout the Code. This avoids ambiguity and ensures that the term is used uniformly across different sections.  
  
\* \*\*Scope and Application:\*\* The broad definition ensures that various forms of unlawful conduct, ranging from serious crimes to civil wrongs, are encompassed within the ambit of "illegal." This facilitates a comprehensive approach to addressing unlawful behavior.  
  
\* \*\*Foundation for Other Sections:\*\* Many other sections of the IPC rely on the definition of "illegal" in Section 28. For example, sections relating to wrongful confinement, abduction, and kidnapping refer to "illegal" restraint. Without a clear definition of "illegal," these sections would be difficult to interpret and apply.  
  
\* \*\*Evolving Interpretation:\*\* Judicial interpretations of Section 28 have further refined its application, providing clarity on its scope and limitations in different contexts. These interpretations ensure that the law adapts to changing social and legal landscapes.  
  
  
\*\*Conclusion:\*\*  
  
Section 28 of the IPC, despite its brevity, provides a fundamental definition of "illegal" that underpins numerous provisions within the Code. Its broad scope, encompassing criminal offenses, statutory prohibitions, and acts giving rise to civil actions, ensures that the concept of illegality is applied consistently throughout the legal system. By clarifying what constitutes "illegal" and specifically addressing "illegal restraint," Section 28 plays a crucial role in maintaining legal clarity, promoting consistent application of the law, and ultimately upholding justice. This detailed analysis elucidates the intricacies of Section 28 and its significant contribution to the framework of Indian criminal law.