

**Ahmednagar Jilha Maratha Vidya Prasarak Samaj's**

**NEW LAW COLLEGE, AHMEDNAGR**

**Law of Crimes**

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**STUDY MATERIAL**

**FOR**

**Third Year B.A. LL.B.and First Year LL.B**

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## **Third Year B.A. LL.B.and First Year LL. B**

### **LC 0504 Law of Crimes**

Crime and Punishment has always been the most important aspect of Rule of Law. A proper understanding of crimes, methods of controlling them and the reasons for their existence is extremely important to build a just and humane society.

#### **Module 01 Nature of Crime and Criminal Liability:**

The Indian Penal Code is the official criminal code of India, which was drafted way back in 1860. Its objective is to provide a general penal code for the country. It provides list of crimes along with their definitions and punishments. First, the definition of the offense is laid down, and then the punishment for the offense is provided. The IPC has been amended several times and is now supplemented by other Acts.

The objective of the Indian Penal Code is to lay what is right and what is wrong and to lay down the punishment for committing such wrong. In criminal law, the “intention” of committing the crime plays a huge role in deciding the liability of the offense.

#### **Historical Development of Indian Penal Code, 1860**

The First Law Commission prepared the draft of the Indian Penal Code which was chaired by Thomas Babington Macaulay in the year 1834. Elements were also derived from the Napoleonic Code and the Louisiana Civil Code of 1825. The first final draft of the IPC was submitted before then the Governor-General of India in Council in 1837, but the draft was revised subsequently. The drafting was completed in the year 1850 and was presented to the Legislative Council in the year 1856. It was only in 1860 when the draft became law and came into operation on January 1, 1862.

The history of codification of modern criminal law in India generally begins from the advent of the British rule. However, its roots date back to the Vedic age and the rule of various Hindu and Muslim dynasties. The modern criminal justice system is based on English laws and practices. These practices are practical as well as contemporary. As a result, a major chunk of criminal laws that exist today still relies on the British-era laws.

#### **Codification of Substantive Criminal Laws**

According to the Charter Act, 1833, India’s first law commission in 1834 recommended drafting of the Indian Penal Code. Lord Macaulay, who was the chairman of

that law commission, spearheaded its drafting. The Code was basically a comprehensive enactment describing all major crimes in existence at that time.

Despite several revisions over almost thirty years, the law did not come into force until 1860. It was only after the Rebellion of 1857 that the British decided to implement it.

IPC has seen several amendments since it first came into existence. Although it largely relied on British laws and practices, many of its provisions are still the same.

## **THE NATURE OF A CRIME**

A crime is conduct defined as such by statute or by common law- it is something that is forbidden by the state, for which there is a punishment. The Latin maxim “actus non facit reum, nisi mens sit rea” is the principle which establishes criminal liability, i.e. “No act is punishable unless it is performed with a criminal mind.” It is customary to separate crime into actus reus and mens rea.

A crime may be an act of disobedience to such a law forbidding it or commanding it. But then, sometimes, disobedience of law may not be a crime, for instance disobedience of civil laws. Therefore, crime would mean something more than mere disobedience of law.

**Definition Of Crime:** Many jurists have defined crime in their own ways some of which are as under:

**Blackstone** defined crime as an act committed or omitted in violation of a public law either forbidding or commanding it.

**Stephen** observed a crime is a violation of a right considered in reference to the evil tendency of such violation as regards the community at large.

**Oxford Dictionary** defines crime as an act punishable by law as forbidden by statute or injurious to the public welfare.

**Crime:**

1. Crime is a Wrong against Society.
2. Remedy against crime is Punishment
3. The proceeding in case of Crime is criminal proceeding
4. In Crime intention is essential element
5. In Crime, State takes action against Criminal.

**Civil Wrongs:**

1. Civil Wrong is against a private individual or individual
2. Remedy against civil wrong is Damages
3. In case of Civil wrong are civil proceedings
4. In civil intention is not relevant
5. Aggrieved person takes action

**The Elements of a Crime:**

Two conditions must exist for an act to be a criminal offence: actus reus and mens rea.

In Latin, actus reus means “wrongful deed.” It must be show that the person committed the act prohibited by law.

Mens rea means “guilty mind.” It must also be shown that the accused intended to commit the offence. These two conditions must exist at the same time.

These conditions must be proven beyond a reasonable doubt. If there is a reasonable doubt in the mind of the judge or jury that the accused committed the crime, the accused will be acquitted and set free.

**Actus Reus:** The Criminal Code explains what must occur for an act to be considered a crime. The Actus Reus is the physical act of the crime.

**Mens Rea:** Mens Rea is the second condition that must exist for an act to be considered a crime. This condition is the mental part of a crime. Mens rea exists if the offence is committed with intent or knowledge.

**Intent** – the true purpose of the act. It is based on the facts and on what a reasonable person would be thinking under the circumstances. ° Intent can be either general or specific ° A general intent to perform an action means that the intent is limited to the act itself and the

person has no other criminal purpose in mind. ◦ Specific Intent exists when the person committing the offence has a further criminal purpose in mind. □ The law considers some people to be incapable of forming the intent necessary to commit a crime. I.E. Mental illness, minors, people extremely under the influence of drugs/alcohol

**Knowledge** – knowing certain facts can also provide the necessary mens rea. For example, any person who uses a credit card knowing that it has been revoked or cancelled is guilty of an indictable offence. Here the Crown only has to prove the individual used the card knowing that it had been cancelled.

**Motive** The reason for committing an offence is called the motive. Motive is not the same as intent, and it does not establish the guilt of the accused. A person can have a motive and not commit the offence.

Motive may be used as circumstantial evidence – indirect evidence that would lead you to conclude that someone is guilty. However, the elements of the crime must be proven to obtain the conviction. The judge may also refer to the motive for an offence during sentencing.

**Recklessness** The careless disregard for the possible results of an action. When people commit acts with recklessness, they may not intend to hurt anyone. However, they understand the risks of their actions and proceed to act anyway. i.e. Driving over the speed limit, cutting people off in traffic could result in criminal charges if injury occurs as a result of these actions. Mens Rea would exist if such recklessness were proven. □ the person committed the actus reus, he or she is guilty, no matter what precautions were taken to avoid committing the offence.

### **Offences without Mens Rea**

Some offences are less serious than those found in the Criminal Code. To prove that these offences occurred, it is not necessary to prove mens rea. These offences are usually violations of federal or provincial regulations passed to protect the public. Speeding, “short-weighting” a package of food, and polluting the environment are all examples of regulatory offences. Regulatory offences also carry lesser penalties. As a result, they do not carry the stigma attached with a criminal conviction.

There are two types of regulatory offences: strict liability offences and absolute liability offences. To prove a strict liability offence, it is only necessary to prove that the



offence was committed. The accused can put forward the defence of due diligence, which means that the accused took reasonable care not to commit the offence or honestly believed in a mistaken set of facts.

Absolute liability offences are similar to strict liability offences in that the Crown does not have to prove mens rea. However, absolute liability offences have no possible defence –due diligence is not accepted as a defence for committing such offences. If the person committed the actus reus, he or she is guilty, no matter what precautions were taken to avoid committing the offence.

## **Module 02 General Principles of Criminal Law:**

### **General Principles of Criminal Law :**

#### **Nulla poena sine lege, nullum crimen sine lege :**

The Principle of legality of crimes and punishments (*nullum crimen, nulla poena sine lege*) refers to the fact that an act is not considered a crime and deserves no punishment, unless the Legislator determines and announces the criminal title and its penalty before.

The legality principle protects individual security by ensuring basic individual liberties against the arbitrary and unwarranted intrusion of the state. Thus, the criminal judge can't call the individuals' acts crime and assign punishments for them or exert punishments that are not prescribed by the Legislator without any letter of law. If an act is morally rebutted or socially is against the public order, it is not regarded as crime and the Legislator is the only authority who can recognize some acts as crime and punish the actor

#### **Principles of mala in se, mala prohibita:**

**Mala In Se and Mala Prohibita** Another approach is to classify crime by “moral turpitude” (evil). Mala in se crimes are considered “inherently evil” and would be evil even if not prohibited by law. This includes murder, rape, robbery, burglary, larceny, and arson.

Mala prohibita offenses are not “inherently evil” and are only considered wrong because they are prohibited by a statute. This includes offenses ranging from tax evasion to carrying a concealed weapon, leaving the scene of an accident, and being drunk and disorderly in public. Why should we be concerned with classification schemes? A felony conviction can prevent you from being licensed to practice various professions, bar you from being admitted to the armed forces or joining the police, and prevent you from adopting a child or receiving various forms of federal assistance. In some states, a convicted felon is still prohibited from voting, even following release.

The distinction between mala in se and mala prohibita is also important. For instance, the law provides that individuals convicted of a “crime of moral turpitude” may be deported from the United States. There are a number of other classification schemes. The law originally categorized as infamous those crimes that were considered to be deserving of shame or disgrace. Individuals convicted of infamous offenses such as treason (betrayal of the nation) or offenses involving dishonesty were historically prohibited from appearing as witnesses at a trial.

**Joint Liability:**

The concept of joint liability comes under Section 34 of IPC which states that “when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.” The section can be explained as when two or more persons commit any criminal act and with the intention of committing that criminal act, then each of them will be liable for that act as if the act is done by them individually.

**The ingredients of section 34 of IPC are-**

- 1) A criminal act is done by several persons;
- 2) The criminal act must be to further the common intention of all;
- 3) There must be participation of all the persons in furthering the common intention.

**PRINCIPLE OF STRICT LIABILITY:**

Strict liability crimes are those types of crimes where the defendant is held responsible for the criminal action even if he did not have the requisite guilty intention for the alleged offense. It resembles the no-fault liability. The element of mens rea is absent, and on the sole basis of his actus reus, he is held responsible. This principle was developed in the case of *Rylands v. Fletcher*. This rule was basically drawn in the area of tortious wrongs. But the nature of this principle suits certain criminal offenses whereby the offender goes off the hook because of lack of guilty intention. The mens rea is presumed here, and it is not needed to be proved. The actus reus is so harmful that it can be concluded as an act prohibited by law.

## **Stages of Crime**

If a person commits a crime voluntarily or after preparation the doing of it involves four different stages. In every crime, there is first intention to commit it, secondly, preparation to commit it, thirdly, attempt to commit it and fourthly the accomplishment. The stages can be explained as under-

### **1. Intention-**

Intention is the first stage in the commission of an offence and known as mental stage. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. But the law does not take notice of an intention, mere intention to commit an offence not followed by any act, cannot constitute an offence. The obvious reason for not prosecuting the accused at this stage is that it is very difficult for the prosecution to prove the guilty mind of a person.

### **2. Preparation-**

Preparation is the second stage in the commission of a crime. It means to arrange the necessary measures for the commission of the intended criminal act. Intention alone or the intention followed by a preparation is not enough to constitute the crime. Preparation has not been made punishable because in most of the cases the prosecution has failed to prove that the preparations in the question were made for the commission of the particular crime.

If A purchases a pistol and keeps the same in his pocket duly loaded in order to kill his bitter enemy B, but does nothing more. A has not committed any offence as still he is at the stage of preparation and it will be impossible for the prosecution to prove that A was carrying the loaded pistol only for the purpose of killing B.

### **Preparation When Punishable-**

Generally, preparation to commit any offence is not punishable but in some exceptional cases preparation is punishable, following are some examples of such exceptional circumstances-

1· Preparation to wage war against the Government - Section 122, IPC 1860;

2· Preparation to commit depredation on territories of a power at peace with Government of India- Section 126, IPC 1860;

3· Preparation to commit dacoity- Section 399, IPC 1860;

4· Preparation for counterfeiting of coins or Government stamps- Sections 233-235, S. 255 and S. 257;

5· Possessing counterfeit coins, false weight or measurement and forged documents. Mere possession of these is a crime and no possessor can plead that he is still at the stage of preparation- Sections 242, 243, 259, 266 and 474.

3. **Attempt-** Attempt is the direct movement towards the commission of a crime after the preparation is made. According to English law, a person may be guilty of an attempt to commit an offence if he does an act which is more than merely preparatory to the commission of the offence; and a person will be guilty of attempting to commit an offence even though the facts are such that the commission of the offence is impossible. There are three essentials of an attempt:-

1· Guilty intention to commit an offence;

2· Some act done towards the commission of the offence;

3· The act must fall short of the completed offence.

**Attempt Under The Indian Penal Code, 1860-** The Indian Penal Code has dealt with attempt in the following four different ways-

Completed offences and attempts have been dealt with in the same section and same punishment is prescribed for both. Such provisions are contained in Sections 121, 124, 124-A, 125, 130, 131, 152, 153-A, 161, 162, 163, 165, 196, 198, 200, 213, 240, 241, 251, 385, 387, 389, 391, 394, 395, 397, 459 and 460.

Secondly, attempts to commit offences and commission of specific offences have been

dealt with separately and separate punishments have been provided for attempt to commit such offences from those of the offences committed. Examples are- murder is punished under section 302 and attempt to murder to murder under section 307; culpable homicide is punished under section 304 and attempt to commit culpable homicide under section 308; Robbery is punished under section 392 and attempt to commit robbery under section 393.

Thirdly, attempt to commit suicide is punished under section 309;

Fourthly, all other cases [where no specific provisions regarding attempt are made] are covered under section 511 which provides that the accused shall be punished with one-half of the longest term of imprisonment provided for the offence or with prescribed fine or with both.

#### **4. Accomplishment or Completion-**

The last stage in the commission of an offence is its accomplishment or completion. If the accused succeeds in his attempt to commit the crime, he will be guilty of the complete offence and if his attempt is unsuccessful, he will be guilty of an attempt only. For example, A fires at B with the intention to kill him, if B dies, A will be guilty for committing the offence of murder and if B is only injured, it will be a case of attempt to murder.

## **Module 03 Introduction to Substantive Criminal Law:**

### **Jurisdiction under Indian Penal Code:**

Sections 1 to 5 of Indian Penal Code, 1860 deals with the provisions relating to title, extent, operation and Jurisdiction of the code.

#### **Intra-Territorial Application of The Code (Section- 2)**

It lays down that for every act or omissions contrary to the provisions of the Code, every person shall be held liable. To hold a person liable under this Code, the act or omission contrary to the law must have been committed within India.

Section 2 of the Code makes it clear that 'every person' shall be amenable to the jurisdiction of the code irrespective of caste, creed, nationality, religion, rank, or sex, for offences committed within Indian territory.

Exceptions:

- **The President and the Governor of the State:** Under Article 361 of Constitution of India, the President and the Governor of States are exempted from civil and criminal proceedings.
- **Foreign Sovereigns:** A foreign Sovereign cannot be punished under the code according to the rules of international law
- **Ambassadors:** An ambassador cannot be punished under the code according to the rules of international law. Ambassadors are exempted from the jurisdiction of the Indian Criminal Courts. They enjoy the same immunity as the Sovereign or the State, which they represent. They enjoy the immunity on a mutual basis.
- **Alien Enemies:** The military persons of alien enemies cannot be tried by Criminal Courts of India in respect of their acts of war. If an alien enemy commits a crime unconnected with war as theft, cheating, etc he would be tried under Criminal Court. For acts of war, they shall be dealt under martial law.
- **Foreign Army:** When by consent of one State the armies of other State are on the soil they are exempted from the jurisdiction of State.

- **Warships:** Warships of one State, when in foreign waters, are exempt from the jurisdiction of the State within whose territorial jurisdiction they are. This is in accordance to the rules of international law. A State or nation can waive this immunity.

### **Extra-Territorial Operation of The Code:**

Section 3 and 4 relate to the extraterritorial operation of the code. As seen above, in order to invoke liability under Section 2, the offence should have been committed in Indian soil. But there are certain types of persons enumerated in Section 4 of the Code, who are liable to be tried by Indian Courts, even though they have committed offences outside India.

Section 3 and 4 lay down that an offence committed outside India may be tried as an offence committed in India in the following three causes, namely when an offence is committed by:

1. Any citizen of India in any place without and beyond India
2. Any person on any ship or aircraft registered in India, wherever it may be;
3. Any person in any place without and beyond India committing an offence targeting a computer resource located in India.

### **If an offence is committed outside India, but the offender is found within India:**

- He may be given up for trial in the country where the offence was committed (extradition); or
- He may be tried in India (extraterritorial jurisdiction)

### **Extraterritorial Jurisdiction:**

In exercise of their extraterritorial jurisdiction, Indian courts are empowered to try offences committed outside India:

- a. On Land;
- b. On the High Seas; and
- c. On Aircraft.

#### **A) On Land:**

By virtue of Section 3 and 4 of IPC, Indian Courts can take cognizance of offences committed outside the limits of India. In this connection, it is also relevant to refer to the



provisions of the Criminal Procedure Code, which provide that when an offence is committed by:

- Any citizen of India in any place without and beyond India;
- Any person on any ship or aircraft registered in India, wherever it may be-

**B) On the High Seas:**

The jurisdiction to try offences committed on the high seas known as Admiralty Jurisdiction. It is founded on the principle that a ship on the High Seas is floating island belonging to the nation whose flag is flying.

**C) On Aircraft:**

The provision of the IPC also applies to any offence committed by any person on any aircraft registered in India, wherever it may be.

## **General Explanations**

### **1. Movable Property:**

The words “movable property” are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

### **2. Wrongful Loss and Wrongful gain**

Wrongful Gain – is gain by unlawful means of property to which the person gaining is not legally entitled.

Wrongful loss – is the loss by unlawful means of property to which the person losing it is legally entitled.

### **3.Dishonestly:**

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.

### **4. Fraudulently:**

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

### **5. Common Intention, Common Object,**

#### **Difference Between Common Intention And Common Object: -**

- I. **Section 34: Acts Done by Several Persons In Furtherance Of Common Intention-** According to Section 34, when a criminal act is done by several persons in furtherance of common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

- II. **Common Object: -**

Section 149, like Section 34, is the other instance of constructive joint liability. Section 149 creates a specific offence. It runs as under:

“If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in

prosecution of that object, every person who, at the time of the committing of that offence, is a member of the assembly, is guilty of that offence.”

The difference between common intention and common object may be stated as under:

1. Under Section 34 number of persons must be more than one. Under Section 149 number of persons must be five or more.
2. Section 34 does not create any specific offence but only states a rule of evidence. Section 149 creates a specific offence.
3. Common intention required under Section 34 may be of any type. Common object under Section 149 must be one of the objects mentioned in Section 141.
4. Common intention under Section 34 requires prior meeting of minds or pre-arranged plan, i.e. all the accused persons must meet together before the actual attack participated by all takes place. Under Section 149, prior meeting of minds is not necessary. Mere membership of an unlawful assembly at the time of commission of the offence is sufficient.
5. Under Section 34 some active participation is necessary, especially in a crime involving physical violence. Section 149 does not require active participation and the liability arises by reason of mere membership of the unlawful assembly with a common object.

#### **6. Voluntarily:**

A person is said to cause an effect “voluntarily” when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

#### **Illustrations**

1. A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death; and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

## **7. Good faith:**

Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention.

## **8. Criminal Conspiracy**

When two or more persons agree to do, or cause to be done:

1. an illegal act, or
2. an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy;

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanations

1. It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

### **Section 120B: - Punishment of criminal conspiracy**

1. Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
2. Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

## **Module 04 General Defences:**

### **1. Excusable: (Mental Incapacity):**

#### **Minority (Infancy):** Section 82 and 83

**Section 82:** It includes an act of a child below seven years of age. Nothing is an offence which is done by a child under seven years of age.

- Suppose a child below seven years of age, pressed the trigger of the gun and caused the death of his father, then, the child will not be liable.

**Section 83:** It includes an act of a child above seven and below twelve of immature understanding. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not yet attained sufficient maturity of understanding to judge the nature and repercussions of his conduct during that occasion.

- Example: Suppose a child of 10 years killed his father with a gun in the shadow of immaturity, he will not be liable if he has not attained maturity.

In **Krishna Bhagwan v. State of Bihar**, Patna High Court upheld that if a child who is accused of an offence during the trial, has attained the age of seven years or at the time of decision the child has attained the age of seven years can be convicted if he has the understanding and knowledge of the offence committed by him.

#### **Involuntary Intoxication:**

One of the rules contained in the general exceptions of the I.P.C. is that intoxication is a good defence only in a particular circumstance, i.e., when it is not voluntary. Sn. 85 provides that it would be no offence, if the accused at the time of doing it was, by reason of intoxication

(i) incapable of knowing the nature of the act or

that what he was doing was either wrong or contrary to law.

The essential condition for excuse is that the thing which caused intoxication must have been administered to him without his knowledge or against his will. Drunkenness is a species of madness for which the madman alone is to be blamed.

Case : **Director of Public Prosecution V. Beard.**

In this case the accused ravished a girl of 13 years of age and in committing rape he placed his hand on her mouth and his thumb on her throat. The girl died due to suffocation. The plea of drunkenness was rejected. Held, guilty of murder .

**Drunkenness in generally not a defence.**

The Supreme Court in **Vasudev V. State of Persu** has laid down conditions. Accused, drunk heavily in a wedding party killed a boy. Held, he was not so much obscured by drink. Held guilty

**Insanity as a Defence:**

**Insanity – Section 84**

Act of a person of unsound mind. Nothing is an offence which is done by a person who at that time of performing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

- **Example:** A, who is insane or unsound, killed B with a knife, thinking it to be a fun game, will not be liable for B's death as he was not aware of the nature of act and law. he was incapable of thinking judiciously.

**Case law for Section 84**

**In Ashiruddin Ahmed vs. State**, the accused Ashiruddin was commanded by someone in paradise to sacrifice his own son, aged 4 years. Next morning, he took his son to a Mosque and killed him and then went straight to his uncle, but finding a chowkidar, took the uncle nearby a tank and told him the story.

**2. Justifiable:**

**Mistake of law and mistake of fact : Sec. 76 and 79.**

One of the cardinal rules of criminal law is *ignorantia facti excusat*, *ignorantia juris non excusat* (Ignorance of fact is an excuse but not Ignorance of law). This rule is contained in Sns. 76 and 79.

According to Sec. 76, a person who believes himself to be bound by law, is excused if he does an act under mistake of fact but not under mistake of law.

E.g. (i) 'A' a soldier fires on a mob by the orders of the Superior officers as per law. A is not guilty.

ii) A, a police officer, arrests Z, believing, in good faith that he is the person required. He is not guilty. 'Mistake' is a slip made not by design but by mischance. It is an error that results from unintentional act or omission. Hence, mistake of fact is considered a good defence.

The leading cases are :

In **R.V. Tolson**, Mrs. Tolson was charged with Bigamy as she had married her second husband. Her defense was that Mr. Tolson, her first husband could not be traced for over seven years despite all reasonable means to search adopted. There was no mens rea. Hence, it was held that she was not guilty. 'Mistake of the fact is an excuse' the court declared.

In **R.V. Prince**, the accused was charged with kidnaping, Annie Phillips, a girl under 16 years of age. The plea of the accused that the girl looked to be above 16, was rejected by the court and he was held guilty. His reasonable belief as to her age was no legal defence.

According to Sec. 79, an act done by a person, who believes himself to be justified by law is excused. However, ignorance of law is no excuse but mistake of fact in good faith is an excuse.

(i) A, a police officer sees Z commit an offence which appears to be murder. A, in good faith, exercising his powers under Cr. P.C. arrests Z. It turns out that there was no murder. Held, Z not guilty as he is justified by law.

(ii) A, a police constable, saw B carrying, three pieces of cloth, suspected them to be stolen and questioned him. B gave no satisfactory answers. Hence, he arrested him, but the Inspector released him. B prosecuted the constable for wrongful confinement. Held, constable not guilty. There was a mistake of fact. - Constable was justified by law to enquire B.

### **Acts done with Consent:**

Consent under Section 87 – 89 and Section 92

**Section 87:** Act not intended and not known to be likely to cause death or grievous hurt, done by consent. Nothing which is not intended to cause death, or grievous hurt,

and which is not known by the doer which is likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or to be intended by the doer to cause, to any person, above 18 years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to that risk of harm.

- Example: A and E agreed to fence each other for enjoyment. This agreement implies the consent of each other to suffer harm which, in the course of such fencing, may be caused without foul play and if A while playing fairly hurts E, then A, has committed no offence.

In **Poonai Fattemah v. Emp**, the accused who professed to be a snake charmer, induced the deceased to believe him that he the power to protect him from any harm caused by the snake bite. The deceased believed him and got bitten by the snake and died. The defence of consent was rejected.

**Section 88:** Act not intended to cause death, done by consent in good faith for person's benefit. Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied to suffer that harm, or to take the risk of that harm.

Case law for Section 88

**R.P Dhanda V. Bhurelal**, the appellant, a medical doctor, performed an eye operation for cataract with patient's consent. The operation resulted in the loss of eyesight. The doctor was protected under this defence as he acted in good faith.

**Section 89:** Act done in good faith for the benefit of a child or insane person, by or by consent of the guardian. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person

**Section 92: Act done in good faith for benefit of a person without consent.**

Nothing is an offence by reason of any harm which it may causes to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if



that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit.

**Section 90:** Consent known to be given under fear or misconception. A consent is not such a consent as is intended by any section of this Code,

1. if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or
2. Consent of insane person if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or
3. Consent of children, the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Case law for Section 90

In **Jakir Ali v. State of Assam**, it was proved beyond doubt that the accused had sexual intercourse with the victim on a false promise of marriage. The Gauhati High Court held that submission of the body by a woman under fear or misconception of fact cannot be construed as consent and so conviction of the accused under sections 376 and 417 of the Indian Penal Code was proper.

**Section 91:** Exclusion of acts which are offences independently of harm caused. The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

**Accident under Section 80:**

Includes an Accident committed while doing a lawful act. Nothing is an offence which is done by accident or misfortune, without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

- **Example:** Suppose M is trying to shoot a bird with a gun but unfortunately the bullet reflected from the oak tree causing harm to N, then, M will not be liable.

**Case law for Section 80**

**In King Emperor v. Timmappa**, a division bench held that shooting with an unlicensed gun does not debar an accused from claiming defence under Section 81 of IPC. The appeal of acquittal was dismissed and the order of trial magistrate was upheld. The court was of the opinion that there is no reason why sentence awarded under Section 19(e) of the Indian Arms Act should be enhanced. The respondent was liable under the provision but no more. He just borrowed a gun for few minutes to kill as he thought a wild animal might attack him and his partners. The application was dismissed regarding enhancement of sentence.

**Judicial acts:**

Act of Judge and Act performed in pursuance of an order under Section 77 and 78

**Section 77: Act of Judge when acting judicially.**

Nothing is an offence which is done by a judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

- Example: Giving Capital Punishment to Ajmal Kasab was done under the judicial powers of judges.

**Section 78: Act done pursuant to the Judgement or order of the court.**

Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a court of justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the court may have no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the court had such jurisdiction.

- Example: A judge passing an order of giving lifetime jail punishment, believing in good faith that the court has jurisdiction, will not be liable.

**Trifles under Section 95**

Act causing slight harm is included under this section. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

**Case law for Section 95**

**In Mrs. Veeda Menezes v. Khan**, during the course of exchange of high tempers and abusive words between appellant's husband and the respondent, the latter threw a file of papers at the former which hit the appellant causing a scratch on the elbow. SC said that the harm caused was slight and hence, not guilty.

## **Right of Private Defense of Body and Property - Justifications and Limits:**

### **Private Defence under Section 96 – 106**

#### **Section 96: Things done in private defence.**

Nothing is an offence in which a person harms another person in the exercise of private defence.

#### **Section 97: Right of private defence of body and property.**

Every person has a right to private defence, provided under reasonable restriction under Section 99.

1. Protecting his body or another person's body, against any offence in which there is a danger to life.
2. Protecting his or another person's movable or immovable property, against any offence like theft, robbery, mischief or criminal trespass or an attempt to commit theft, robbery, mischief or criminal trespass.

**Example:** A father, in order to protect the life of daughter from the attack of a thief, shoots him in his leg. But the father will not be liable as he was protecting the life of his daughter.

#### **Case law for Section 97**

In **Akonti Bora v. State of Assam**, the Gauhati High Court held that while exercising the right of private defence of property the act of dispossession or throwing out a trespasser includes right to throw away the material objects also with which the trespass has been committed.

#### **Section 98: Right of private defence against the act of a person of unsound mind etc.**

When an act which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

- Example: A attempts to kill Z under influence of insanity but A is not guilty. Z can exercise private defence to protect himself from A.

**Section 99: Acts against which there is no right of private defence.**

- There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or
- Attempted to be done, by a public servant acting in good faith under color of his office, though that act may not be strictly justifiable by law.
- There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or
- Attempted to be done, by the direction of a public servant acting in good faith under colour of his office though that direction may not be strictly Justifiable by law.
- There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.
- The harm caused should be proportional to that of imminent danger or attack.

**Case law for Section 99**

In **Puran Singh v. State of Punjab**, the Supreme Court observed that where there is an element of invasion or aggression on the property by a person who has no right of possession, then there is obviously no room to have recourse to the public authorities and the accused has the undoubted right to resist the attack and use even force, if necessary.

**Section 100: When the right of private defence of the body extends to causing death.**

- Assault causing reasonable apprehension of death.
- Reasonable apprehension of grievous hurt.
- Committing rape
- Unnatural lust
- Kidnapping or abducting
- Wrongfully confining a person in which that person reasonably apprehends the assault and not able to contact public authority.
- Act of throwing or attempting to throw acid, causing apprehension in the mind that assault will cause grievous hurt.

### **Case law for Section 100**

In **Yogendra Morarji v. state**, the SC discussed in detail the extent and limitations of the right of private defence of the body. There must be no safe or reasonable mode of escape any retreat for the person confronted with imminent peril to life or bodily harm except by inflicting death.

### **Section 101: When such rights extend to causing any harm other than death.**

If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

### **Case law for Section 101**

In **Dharmindar v. State of Himachal Pradesh**, that onus of proof to establish the right of private defence is not as onerous as that of a prosecution to prove its case. Where the facts and circumstances lead to a preponderance of probabilities in favor of the defence case it would be enough to discharge the burden to prove the case of self-defence.

### **Section 102: Commencement and continuance the right of private defence of the body.**

The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; it continues as long as such apprehension of danger to the body continues.<sup>1</sup>

- Example: A, B, and C were chasing D to kill him in order to take revenge, but suddenly they saw a policeman coming from another side. They got afraid and turned back to run. But D shoots B in his leg, even when there was no imminent danger of harm. D will be liable as there was no apprehension of death or risk of danger.

### **Section 103: When the right of private defence of property extends to causing death.**

1. Robbery;
2. House-breaking by night;
3. Mischief by fire committed on any building, tent or vessel, building, tent or vessel used as a human dwelling, or a place for the custody of property;

4. Theft, mischief, or house-trespass, under such circumstances, as may reasonably cause apprehension that death or grievous hurt will be the consequence if such right of private defence is not exercised.
- Example: C Attempts to stab D maliciously while committing burglary in D's house. There is a reasonable apprehension in the mind of D that C will hurt him grievously, so in order to save himself and property, C throttled D with a knife in his chest, causing Death. C will not be liable.

### **Case law for Section 103**

In **Mohinder Pal Jolly v. State**, the deceased worker and some of his colleagues were shouting slogans for demands outside the factory. Some brickbats were also thrown by them which damaged the property of the owner who fired two shots from outside his office room, one of which killed the deceased worker. The court held that it was a case of mischief and the accused will not get the defence of this section.

### **Section 104: When such right extends to causing harm other than death.**

If the offence, the committing of which, or the attempting to commit which occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

- Example: If A has committed criminal trespass in order to annoy B or hurt him, then B will have the right to harm A in proportional manner, not causing death of the person.

In **V.C Cheriyan v. State**, the three deceased along with other persons had illegally laid a road through private property of the church. A criminal case was pending against them. The three accused belonging to church put up barricades across this road. The deceased was stabbed by accused and Kerala HC held that private defence does not extend to causing the death of a person in this case.

### **Section 105: Commencement and continuance of the right of private defence of property.**

The right of private defence of the property commences when:

- A reasonable apprehension of danger to the property commences. The right of private defence of property against theft continues until the offender has effected his retreat with the property
- Or, either the assistance of the public authorities is obtained,
- Or, the property has been recovered.
- The right of private defence of property against robbery continues as long as the,
- Offender causes or attempts to cause to any person death or hurt
- Or, wrongful restraint
- As long as the fear of instant death or
- Instant hurt or
- Instant personal restraint continues.
- The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

- Example: Suppose a thief enters the house of an individual, and attempts to hurt him instantly with a knife, then that individual has the right to act in private defence and harm that thief to save life and property.

### **Section 106: Right of private defence against deadly assault when there is a risk of harm to innocent person.**

If in the exercise of private defence against an assault, a person causes apprehension of death, in which defender has no choice but harming an innocent person, his right will extend to that running of risk.



- Example: C is attacked by a mob who attempts to murder him. He cannot exercise his right to private defence without firing on the mob. In order to save himself, he is compelled to hurt innocent children while firing so C committed no offence as he exercised his right.

## **Module 05 Offences against State, Public Tranquility, Administration of Justice, Etc.:**

### **Meaning of Abetment**

In common parlance, the word '*abet*' signifies help, co-activity and support and incorporates within its ambit, illegitimate reason to commit the crime. So as to bring an individual abetting the doing of a thing under any of the conditions specified under Section 107 of the Indian Penal Code, it isn't just important to demonstrate that the individual who has abetted has participated in the means of the transactions yet additionally has been associated with those means of the transaction which are criminal.

#### **Abetment under the Indian Penal Code**

Abetment is constituted by:

1. Instigating a person to commit an offence; or
2. Engaging in a conspiracy to commit it; or
3. Intentionally aiding a person to commit it.

#### **Abettor: Sec. 108.**

An abettor is a person who abets.

- i) Either the commission of the offence or
- ii) The commission of an act which would be an offence if done by a person capable by law of committing the offence with intention or knowledge of that of the abettor

#### **Explanation:**

- 1) Abetment of an illegal omission amounts of an offence
- 2) Abetted act need not be committed, to constitute an offence

Illu: A abets B to murder C. B refuses to do so. A is guilty of abetting B to murder.

- iii) The abetment of an offence is an offence. Hence, an abetment of such an abetment is also an offence.

A instigate C to murder D. B accordingly instigates C who commits murder of D. B is guilty and punishable under 302 I.P.C. A has instigated. Hence, A is also liable for the same punishment. It is not necessary that the person abetted should be capable of committing a

crime. A child, a lunatic etc. may be used by the abettor to do the crime. In such cases, the abettor is guilty of the offence committed through the child, lunatic etc. 'A with guilty intention abets a child of 5 years to set fire to a house, of B. B, is grievously hurt. A is liable.

### **Waging War against the Government of India:**

Section 121 of the Indian Penal Code states regarding waging or attempting to wage war or abetting waging of war against the Government of India thus: “whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life, and shall also be liable to fine.

#### **Illustration:**

A joins an insurrection against the Government of India. A has committed the offence defined in this Section.

In Section 121 of the code the term ‘whoever’ applies to Indian citizens as well as foreigners. A citizen owes allegiance by birth or naturalization, and a foreigner by his residence. The State, in accordance with the *de jure gentium*, admits the right of the foreigners to enter the country only upon the tacit condition that as they rely upon its protection they also subject themselves to its laws.

The expression ‘Waging War’ means and can only mean, waging war in the manner usual in war. It imports a person arraying himself in defiance of the Government in like manner and by like means as a foreign enemy would do, having gained footing in the realm.

### **Conspiracy to commit offences to wage war:**

Section 121A of the code provides for the offence of conspiring to wage war against the Government of India. It was thought right to make the offence of conspiring by criminal force, or by show of criminal force, more severely penal than the offence of actual taking part in an unlawful assembly, having for its object the overawing of the Government.

A conspiracy to commit offences punishable under Section 121 of the code is punishable as a substantive offence. Therefore, Section 121A seeks to punish people for an act which may not even amount to an abetment of an offence. Section 121A obviously deals with conspiracies which have a political object of overthrowing the existing Government.

The words ‘conspires to overawe by means of criminal force or the show of criminal force, the Central Government, or any State Government’ in this section clearly embrace not merely a conspiracy to raise a general insurrection, but also a conspiracy to overawe the Central Government or any State Government by the organization of a serious riot or a large and tumultuous unlawful assembly.

The word ‘overawe’ connotes the creation of a situation in which the members of a Central or State Government feel themselves compelled to choose between yielding to force or exposing themselves or members of public to a serious danger. It is not necessary that the danger should be of assassination or of bodily injury. The danger might well be a danger to public property or the safety of the members of the general public.

A conspiracy is a combination of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. The offence of conspiracy is complete, as soon as two or more persons agree to do or cause to be done, an illegal act or a legal act by illegal means. The transpiring of this agreement into further concrete action is not required.

The agreement itself is enough to constitute an offence under section 121 A. A mere slogan that the Government can be changed by an armed revolution does not prove the existence of a conspiracy of overawing the Government. The explanation to this section says that to constitute a conspiracy under this section, it is not necessary that any act or illegal omission should take place in pursuance thereof.

## **Sedition:**

### **Meaning of Sedition under Section 124A of the IPC**

- “Whoever bring or attempts to bring hatred or contempt, or attempts to excite disaffection towards the government shall be punished with imprisonment for life or three years.”
- Explanation-1: The expression “disaffection” includes disloyalty and all feelings of enmity. [basic idea is to prevent misuse of right to free speech by anti-social elements]
- Explanation 2: Comments expressing disapprobation of the measures of the government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. [This explanation clearly states that “dissent or criticism without fueling hatred or violence” cannot be considered as sedition]

Explanation 3: Comments expressing disapprobation of the administrative or other action of the government, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

## **Unlawful Assembly, Rioting, Affray:**

### **Ingredients:**

- (i) An assembly of five or more persons;
- (ii) A common object;
- (iii) The common object must be one of the five mentioned in the section;
- (iv) Such object is common to all the members;
- (v) Members joined or continued to join such assembly;
- (vi) They acted dis-honestly; and
- (vii) They assembled knowingly.

Unlawful assembly is an assembly of five or more persons with the common object:

- i) to over-throw by criminal force the Government or the legislature or
- ii) To resist the execution of any legal process
- iii) To commit mischief (S. 425), criminal trespass (441)
- iv) To obtain property or right by criminal force or
- v) To criminally force a person to do an act which he is not bound to do, or to force him not to do an act which he is bound to do.

If a person is a member of an unlawful assembly then that person is punishable. An assembly which is not unlawful in the beginning may become unlawful subsequently. The purpose or common object decides the nature of the assembly. The essentials are that there should be five or more persons and there should be the common object as specified in Sn. 141.

This is different from common intention in Sn. 34. For unlawful assembly prior meeting of minds is not essential. To be called a "member" of the unlawful assembly the person must have joined knowing the facts, intentionally or continued in it. The punishment for being a member is 6 months imprisonment, fine or both. Aggravated forms are instances of persons armed with deadly weapons joining the unlawful assembly Sn.

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**In Chikkarange Gowda V State of Mysore**, the Supreme Court laid down the essentials of unlawful assembly. There should be the minimum of five members & they should have the common object of Sn. 141. The members should know that they are likely to commit an offence, in furtherance of the common object. The prosecution should prove the presence or participation of the member in the unlawful assembly.

**Riot: (Sec. 146)**

This means if an unlawful assembly or a member thereof, in pursuance of common object, uses force or violence, then every member is guilty of Rioting, (unlawful assembly +force = Riot)

An assembly which is not unlawful in the beginning may become unlawful subsequently. The purpose or common object decides the nature of the assembly. . To be called a "member" of the unlawful assembly the person must have joined knowing the facts, intentionally or continued in it

**Affray : (Sec. 159)**

If two or more persons, fight in a public place, disturb .public peace, they are guilty of affray. The punishment is imprisonment for one month or fine up to Rs.100/- or both. Affray means to terrify i.e., it creates a terror to the public. Actual fighting is necessary. Mere quarrel with some words or threatening words will not amount to affray. There must be physical exchange of blows. Fighting at public taps, or public urinals are examples. The place must be a public place. In Jagannath's case, two brothers were quarreling on a public road using abusive language. A large crowd gathered and the traffic was jammed. Held, no affray as there was no "fighting" by the brothers. Fight is a bilateral act and fighting by both parties is essential.

Affray is different from Riot. For affray there should be two or more persons.. For rioting there should be five or more persons.

Riot may be in a private place, but affray should be in public place.

## **Module 6: Offences against Human Body :**

### **1. Culpable Homicide, Murder**

Culpable homicide is genus and murder its specie. All murder is culpable homicide but not vice- versa.

Section 299 and Section 300 IPC deal with the definition of Culpable Homicide and murder. The word comes from Latin where homo means man and cide means I cut. Thus homicide means the killing of a man by man. The homicide may be lawful or unlawful. Culpable homicide means death through human agency punishable by law

Homicide is unlawful when the death is caused by an intentional act. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

#### **Illustrations**

(A) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(B) A knows Z to be behind a bush. B does not know it. A, intending to cause or knowing it to be likely to cause Z's death induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(C) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B or to cause death by doing an act that he knew was likely to cause death.

**Explanation 1** - A person who causes bodily injury, to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

**Explanation 2** - where death is caused by bodily injury, the person who causes such bodily



injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

**Explanation 3** - the causing of the death of a child in the mothers womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

The important elements of culpable homicide are: -

1. Causing death-With the intention of causing death,
2. By doing an act- With the intention of causing such bodily injury as is likely to cause death, or
3. The act of death must be done: - With the knowledge that such act is likely to cause death.

**There are two classes of culpable homicide:**

Culpable Homicide Amounting to Murder: It is known as simple murder.

Culpable homicide not amounting to Murder: There is necessarily a criminal or knowledge in both. The difference does not lie in quality; it lies in the quantity or degree of criminality closed by the act. In murder, there is greater intention or knowledge than in culpable homicide not amounting to murder.

### **Section 300 of the Indian Penal Code: Murder**

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

1. If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-
2. If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-
3. If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

## **Distinction between Culpable Homicide and Murder**

According to Sir James Stephen, the definition of culpable homicide and murder are the weakest part of the code, as they are defined in forms closely resembling each other and times it becomes difficult to distinguish between the two as the causing of death is common to both. However, the difference between culpable homicides is real though very fine and based upon a very subtle distinction of the intention and knowledge involved in these crimes. The true difference lies in the degree, there being the greater intention or knowledge of the fatal consequences in the one case than the other.

The distinction between sections 299 and 300 was made clear by Melvil J. in *Reg. vs Govinda* [1876 ILR Bom 342]. In this case the accused had knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the closed fist, producing extraversion of blood on the brain and she died in consequence, either on the spot, or very shortly afterwards, there being no intention to cause death and the bodily injury not being sufficient in the ordinary course of nature to cause death. The accused was liable for culpable homicide not amounting to murder.

## **Exceptions to Section 300 of the Indian Penal Code 1862**

Culpable homicide amounts to murder when the act is done with the intention of causing death but in the cases mentioned below this principle doesn't apply. The following acts can amount to culpable homicide not amounting to murder. Exceptions 1-5 in the (d) and (f) illustrations of section 300 of the IPC define conditions when culpable homicide is not amounting to murder, these are as follows-

- It is not culpable homicide amounting to murder if it is committed by a person who gets deprived of the power of self-control and causes the death of someone because of a grave and sudden provocation.
- It is not culpable homicide amounting to murder when the offender causes the death of someone while exercises his right of private defense of person and property in good faith
- It is not culpable homicide amounting to murder if a public servant causes someone's death while performing his duties and in good faith and he believes that his acts were lawful.

- It is not culpable homicide amounting to murder if a person causes the death of someone commits it in a sudden fight in the heat of passion upon a sudden quarrel
- It is not culpable homicide amounting to murder when a person suffers death with his own consent when he is above 18 years of age.

### **Causing Death by Negligence:**

Section 304(a) states as follows:

“Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or both.”

### **Attempt to commit suicide:**

Section 309 of the Indian Penal Code provides that:

“Whoever attempts to commit suicide and does any act towards the commission of such offence shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.”

‘Attempt’ means “To make an effort to effect some object; to endeavour; an effort or endeavour to effect the accomplishment of an act; an intention to do a thing combined with an act which falls short of the thing intended”.

An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted. The offence of attempting to commit a crime may be committed in cases in which the offender voluntarily desists from the actual commission of the crime itself.

‘Suicide’ is no crime under IPC. Its attempt alone is punishable under Section 309. The fact that an attempt to commit suicide is made a crime shows that in the eye of the law suicide is not necessarily the outcome of deranged intellect, but it may be a crime committed by a person in his sober sense.

Mens rea is one of the essential elements of the offence of attempt to commit suicide.

If, therefore, a person takes an overdose of poison by mistake, or in a state of intoxication, or in order to evade his arrest by his pursuers, he could not be held

accountable for his action. But if there was an intention to commit suicide, and an attempt for that purpose was made, the accused could not escape responsibility for his action except, on the ground of insanity.

In **Dwarka Poonja v. Emperor** [14 Bom LR 146], the accused jumped into a well to avoid and escape from the police and came out of the well of his own accord. He was convicted of this offence but his conviction was quashed by the High Court on the ground that he had no intention to commit suicide.

The constitutional validity of Section 309 was initially struck down as a cruel and irrational provision and violative of Article 21 of the Constitution i.e., right to life under Article 21 also includes right to die, in the case of **State of Maharashtra v. Maruti Sripati Dubai** [1987 Cr.LJ 549] and **P. Ratnam and Nagabhushan Patnaik v. Union of India**.

However, a five Judge Constitutional Bench of the Supreme Court, in **Gian Kaur v. State of Punjab** [(1996) 2 SCC 648], declared that Section 309 IPC is not violative of Articles 14, 19 and 21 of the Constitution. Thus, Section 309 IPC is constitutionally valid.

As per Section 309 of the Code, the punishment for attempt to commit suicide is simple imprisonment for a term which may extend to one year or with fine or with both.

### **Hurt and Grievous Hurt:**

Sec. 319 I.P.C. defines hurt. Hurt means causing bodily pain, disease, infirmity to any person. Pulling a woman by hair is hurt. This is also 'trespass to the person. Voluntarily causing hurt is punishable.

### **Grievous hurt :**

Under section 320 I.P.C. the following are declared as grievous :

- 1) Emasculation (Depriving a man of masculine vigour)
- 2) Permanent privation of eye-sight of either eye
- 3) Permanent privation of hearing
- 4) Privation of any joint
- 5) Destruction or permanent impairing of the powers of any member or joint of the body

6) Permanent disfiguration of the head or face. A person created scars with a red hot iron on the face of a girl, This was grievous hurt.

7} Fracture or dislocation of bone or teeth

8) Any hurt which endangers life, and any hurt which causes the person suffer for more than twenty days severe bodily pain or which makes him unable to follow his day to day pursuits.

Mere hospitalization for twenty days will not make the hurt grievous. That person must not be in a position to attend his day to day work for twenty days. This is the test adopted by the courts.

e.g. i) A with an intention to disfigure Z:s face hits him. Z suffer.-. for more than twenty days in the hospital. There is grievous hurt.

ii) A hits-hard with his fist on the left ear of B, with an intention to cause hurt, but B lost his hearing permanently. Held A is guilty of Grievous hurt.

Hurt becomes grievous, when it endangers life. A blow on the . head of B with an axe, which made a deep half inch wound was likely to endanger life (Panduranga V. State)  
Voluntarily Causing hurt is punishable under Sn. 321.

Voluntarily Causing grievous hurt is punishable under Secs. 323 to 336.

## **WRONGFUL RESTRAINT AND CONFINEMENT**

### **Wrongful restraint ;md wrongful confinement : Sn339, and 340**

The fundamental rule is that 'every man's person is sacred and law visits penalties on the accused who violates this rule and molests the person in his free movement. Wrongful restraint and wrongful confinement are two offences according to the I.P.C. under Sn. 33" and 340, which punish individuals for violation of a person's movements.

#### **Wrongful restraint :**

A person who voluntarily obstructs another so as to prevent him from proceeding in any direction in which that person had a right to go, is guilty of wrongful restraint.

**Exception:** A person who, in good faith, believes that he has a right to pass.

- 1) A obstructs Z of his way 'A's intentions are not in good faith. Z is prevented from passing. This is wrongful restraint.
- 2) A removed the ladder and prevented B from getting down the roof of a house.
- 3) A builds a wall across a path along which B had a right to pass.
- 4) A threatens to set his savage dog at Z, to prevent Z from passing along the road where he had a right to pass.
- 5) B and his family were living in a house. A put a lock in the- temporary absence of the family. A had locked without any good faith. in all these cases thee accused is guilty of wrongful restraint.

#### **Wrongful confinement:**

A person who wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is guilty of wrongful confinement.

E.g. a) A causes Z to go within a walled space and locks Z in. Z is thereby prevented from proceeding in any direction beyond the circumscribing line of the wall. A is guilty.

b) A keeps his men with guns and warns Z that if he ever tries to leave the building they would kill him. A is guilty. Punishment: This depends on how many days a person is confined by the accused. In Shamlal's case, a police constable detained some persons for several days as suspects; it was held that he was guilty under this section.

## **Criminal force :**

**Sec. 249 defines farce and Sec. 350 defines criminal force.**

**1) Force :** A is said to use force to B, if A causes motion or change of motion to B, or if A causes with any substance such motion or change of motion so as to make that substance come in contact with the body of B or anything he is carrying so as to affect his sense of feeling. The means adopted may be a) By A, with his own bodily power or b) By setting the substance in motion without further acting on it. c) By inducing an animal to move

ii) Using criminal force is an offence punishable under I.P.C. Any person who intentionally uses 'force' to another without his consent with a view to commit an offence or knowingly uses force to cause injury, fear or annoyance to him, is guilty of using criminal force.

E.g. 1) Z is sitting on a boat that is moored. A to cause fear and annoyance to Z, releases the mooring. The boat sets out down the stream. A is guilty, of using criminal force.

2) A intentionally pulls the veil (purdha) of a woman without her consent to annoy her. A is guilty under this section.

3) A incites his dog to spring upon Z without Z's consent. This annoys Z. A is guilty.

4) Z is carrying a pot of water. A, without Z's consent, intentionally to annoy Z, hits the pot with a stone. The stone makes a hole and water rushes out causing annoyance to Z. A is guilty.

5) A is riding a chariot. B lashes the horse, without A's consent, to frighten or annoy A. B is guilty.

6) A is on the palanquin on a visit to a place. Z holds the pole to rob A. Z has used force there is use of criminal force.

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**Assault : Sec. 351.**

Any person who intentionally or knowingly makes any gesture or preparation to apprehend another with a preparation to use criminal force is guilty of assault. Mere words do not amount to assault. But the words with the use of gestures or preparations bring such a meaning that criminal force is about to be applied.

Eg. 1) A shakes his fist at Z, and moves towards Z in such a manner that Z believes that criminal force is about to be used on him. This is assault.

2) A begins to let loose a ferocious dog to cause fear and annoyance to Z. This is assault. 3) A takes up a stick saying to Z 'I will give you a good beating'. These words will not amount to assault. But, if A with gestures moves towards Z to beat him, this becomes assault. (Actual beating is not necessary).

**Kidnapping:**

It means, literally carrying a child by illegal force. Kidnapping is of two kinds. Kidnapping from India and Kidnapping from lawful guardianship.

Kidnapping from lawful guardianship:

The object of these sections is to protect the minor children from being seduced for improper purposes, & also to protect the rights of the guardians.

Sec. 359: If a person takes or entices a minor, under sixteen if a male, and under eighteen if a female, or any person of unsound mind, out of the keeping of the lawful guardianship without the consent of such guardian, he is guilty of kidnapping. Essentials : i) Lawful guardian means any person who is lawfully entrusted with the care and custody of such minor or other person. There is an exception to this. If a person in good faith, believes that he is the father of an illegitimate child, he is not guilty. But he becomes guilty if he has taken the child for an immoral or illegal purpose.

ii) The taking must be of a boy below sixteen or a girl below eighteen, or a person of unsound mind.

**Abduction : Sec. 362.**

If a person by force or by deceitful means induces any person to go from one place to another, he is guilty of abduction.



## **Module 07 Offences relating to Woman :**

The offence against women has increased to such an extent that the law needs to protect the women. There are several laws to prevent crime against women and give them justice.

These are some of the laws in India to prevent the crime against them excluding the laws in Indian Penal Code, 1860.

### **Cruelty by husband or his relatives (Section 498A)**

#### **Husband or relative of husband of a woman subjecting her to cruelty —**

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

**Explanation.** — For the purposes of this section, “cruelty” means—

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

#### **Cruelty is defined under the Explanation of Section 498A.**

The husband or the relatives of the husband of a woman, when subjected to commit cruelty, shall be punished with maximum of 3 years of imprisonment and also liable to pay fine.

**In *Russel vs. Russel***, it was defined cruelty as the conduct of such a character as to have caused danger to life, limb, or health, bodily or mental, or a reasonable apprehension of it. Cruelty implies and means harsh conduct and of such intensity and persistence which would make it impossible for the spouse to operate the marriage and to live with agony, torture, or distress or that the mental or physical health of any of the parties. Cruelty means “reasonable apprehension” that it will be harmful or injurious for the spouse to live with the other.

**In *Shoba Rani vs. Madhukar Reddi***, the court has observed that the cruelty may be mental or physical, intentional, or unintentional. The cruelty will be established if the conduct itself is proved or admitted. The intention is not a necessary element in cruelty.

The offences which are included in the Indian Penal Code, 1860 after the Criminal Law (Amendment) Act, 2013 are mentioned under this heading.

### **Acid Attack (Sections 326A and 326B)**

Section 326A and 326B is inserted by the Criminal Law (Amendment) Act, 2013. Though this offence is not specifically against women, most of the time, the women are affected by this offence.

When someone causes permanent or partial damage or deformity of any part of the body of a person by the use of acid, with sufficient knowledge that he is likely to cause, shall be punished with life imprisonment and fine that will meet the medical expenses of the treatment of the victim.

### **Dowry Death:**

This offence of dowry death was added in order to punish the criminals who have increased in number, committing crimes against women. That is there have been so many deaths due to harassment and cruelty for dowry demands to be fulfilled.

### ***Section 304B Dowry death—***

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death

**Explanation—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961)**

2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life”

## **Essentials**

1. Death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances
2. Death must occur “within seven years of her marriage”
3. And it must be proved that “soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband”
4. Such “cruelty or harassment” must be subjected is or was “for or in connection with any demand for dowry”.

### **Section 312:- Causing miscarriage :**

Whoever voluntarily causes a woman with child to miscarry, shall if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **Sec 354: Assault or criminal Force to Women with Intent to Outrage her Modesty:**

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty<sup>1</sup>, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

### **Voyeurism,**

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image<sup>1</sup> shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with

imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

### **Explanations**

1. For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim’s genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.
2. Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this **section**.

### **Sec 354 D: Stalking**

#### **(1) Any man who—**

1. follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
2. monitors the use by a woman of the internet, email or any other form of electronic communication,  
commits the offence of stalking<sup>1</sup>;

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

1. it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
2. it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
3. in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

### **Sec. 354A: Sexual Harassment**

1. A man committing any of the following acts—
  1. physical contact and advances involving unwelcome and explicit sexual overtures; or
  2. a demand or request for sexual favours; or
  3. showing pornography against the will of a woman; or
  4. making sexually coloured remarks, shall be guilty of the offence of sexual harassment<sup>1</sup>.
2. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
3. Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

### **Deceitful Cohabitation:**

#### **1) Cohabitation caused by a man deceitfully inducing a belief of lawful marriage**

According to Section 493 of Indian Penal Code - Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

## **2) Marrying again during lifetime of husband or wife**

Section 494 of Indian Penal Code provides that whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **Exceptions**

This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

### **Section 494:- Marrying again during lifetime of husband or wife :**

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **Exceptions**

This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

### **Sec.497: Adultry:**

Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

Offence of adultery held unconstitutional: Understanding *Joseph Shine v. Union of India* Sections 497 IPC and 198(2) CrPC insofar it deals with the procedure for filing a complaint in relation to the offence of adultery, are violative of Articles 14, 15(1) and 21 of the Constitution, and are therefore struck down as being invalid.

### **Sec 375: Rape:**

A man is said to commit “rape” if he—

1. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
2. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
3. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
4. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions<sup>1</sup>:
  1. Against her will.
  2. Without her consent.

3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
4. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
5. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.
6. With or without her consent, when she is under eighteen years of age.
7. When she is unable to communicate consent.

### **Explanations**

1. For the purposes of this section, “vagina” shall also include labia majora.
2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act;  
Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

### **Exceptions**

1. A medical procedure or intervention shall not constitute rape.
2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

### **Sec 376 Punishment for Rape:**

1. Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.



2. Whoever—

1. being a police officer, commits rape,
  1. within the limits of the police station to which such police officer is appointed; or
  2. in the premises of any station house; or
  3. on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or
2. being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
3. being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
4. being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
5. being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
6. being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
7. commits rape during communal or sectarian violence; or
8. commits rape on a woman knowing her to be pregnant; or
9. commits rape, on a woman incapable of giving consent; or
10. being in a position of control or dominance over a woman, commits rape on such woman; or
11. commits rape on a woman suffering from mental or physical disability; or

12. while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
  13. commits rape repeatedly on the same woman,  
shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.
3. Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:
- Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:
- Provided further that any fine imposed under this sub-section shall be paid to the victim.

### **Explanations**

1. For the purposes of sub-section 2
  1. "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any Law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government, or the State Government;
  2. "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;
  3. "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861;
  4. "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or

an institution called by any other name, which is established and maintained for the reception and care of women or children.

## **Module 08 Offences against Property and Person, Etc. :**

### **THEFT Sec. 378.**

Sec, 378 Indian Penal Code defines theft. A person is guilty of theft if he takes with dishonest intention, any moveable property, out of the possession of any person, without his consent and moves with the property.

a) If an item is attached to the earth, it cannot be stolen, but if it is freed from the earth it may be stolen.

b) Moving the property is essential. Removing an obstacle amounts to theft.

**Eg. :** i) A cuts down a tree from the field of Z with a view to dishonestly taking the tree. He has committed theft, when he severs the tree. ii) A meets a bullock cart carrying valuable articles, he causes it to be moved in a different direction with a dishonest intention to take it. This is theft.

iii) A is the paramour of Z's wife. She gives valuable property of Z without the authority of Z. A takes the property dishonestly. He commits theft.

### **Essentials: i) Dishonest taking:**

The dishonest intention is the gist of the offense. The accused must make wrongful gain or wrongful loss. The taking must be dishonest. E.g. a) Taking a cow by force, in satisfaction of a debt, is a wrongful gain and therefore theft. Animo Furtandi (Intention) is essential.

### **ii) Moveable property:**

The property for theft must be moveable only. Human body is not moveable property and therefore cannot be stolen. Once the property is severed from the earth it becomes moveable.

**iii) Out of the possession of the person:**

Taking a thing out of the possession of the person is essential. Hence the offender, must take the property otherwise there is no offense.

**iv) Without consent :**

If there is consent of the owner, there is no offense of theft at all. Consent may be expressed or implied.

**v) Moving with the property:**

Theft is completed when there is dishonest moving with the property. A guest who takes away dishonestly the bed sheets while going was held guilty of theft when he moved out of the house.

**In Mehra V. St. of Rajasthan**, moving out with dishonest intention was essential for theft the Supreme Court said

A person may commit a theft of his own property.

**A pledges his goods with P. Subsequently he takes them without the consent of P. dishonestly. A is guilty of theft of his own property.**

**EXTORTION, ROBBERY AND DACOITY**

**Extortion :Sec. 383.**

Extortion is an offense under Sn. 383 Indian Penal Code, if a person intentionally puts another person in fear of any injury to him or any other person, thereby dishonestly induces the person so put in fear to deliver to any person, any property or valuable security or any such thing, is guilty of extortion.

A threatens to publish a libel against Z, unless Z gives money. Here A has induced Z to give him the money.' Therefore. A is guilty.

A keeps B's child in wrongful confinement, and, demands from B Rs.2, 25,000 - B, so put in fear pays to A. A is guilty of extortion. Moveable or immoveable property may be taken under extortion.

### **Robbery: Sec. 390.**

Robbery is an offence under Sn. 390 I.P..C. In all cases of Robbery there is either theft or extortion.

i) Theft is robbery if the offender in order to commit theft or to carry away the property so obtained by theft, voluntarily causes to any person death or hurt or wrongful restraint (or fear of death or instant hurt or wrongful restraint).

E.g. A is standing on the doorway. B pulls him out into a ditch, enters the house, and takes away jewels. This is robbery (theft + Force = Robbery). ii) Extortion is robbery if, the offender at the time of committing extortion is in the presence of the person, who is put in fear of instant death or hurt or wrongful restraint. The offender by so putting the person in fear induces to deliver up the property then and there.

E.g. i) A holds Z down and fraudulently takes Z's money and jewels without Z's consent. A has committed theft. But here he has put Z in fear of instant hurt and has forced Z to deliver the purse then and there. A has committed robbery.

ii) A has kept ready the goods after committing theft but he is caught by B. A puts B in fear of instant death and takes away the goods. This is robbery.

iii) A meets Z on the road, shows-a pistol and demands Z's purse. Z surrenders the purse. A has put Z in fear of instant hurt forcing Z to deliver the purse then and there. A has committed robbery.

### **Dacoity : Sec. 391.**

If Five or more persons can jointly commit robbery then it is dacoity. Hence in dacoity there is robbery done by a group of persons five or more in number. i) A with his four friends wrote a letter to Z "Your pretty child is in our hands, if you do not bring Rs.2, 50,000 to a particular place to-day evening, you will get only the dead body". Z pays the money. This is Dacoity. The reason is there are five persons.

ii) A, with his four associates, keeps Z in fear of instant death of Z's child, by throwing it down the hill, and demands Rs.20,000. Z pays then and there the amount. This is Dacoity.

### **Criminal Misappropriation: Sn. 403.**

A person who dishonestly misappropriates or converts to his own use any movable property is guilty of criminal misappropriation of property. The punishment is imprisonment for two years or fine or both.

A dishonest misappropriation for a small interval of time also amounts to misappropriation.

The person gets the property innocently i.e.. he chances to get the property. If he takes the property to protect it or to restore it to the owner, he is not guilty. But if he does not restore it and if he does not discover the owner using reasonable means, he becomes guilty.

A finds a bundle of currency notes on the highway. He picks up the bundle with an intention to hand it over to the real owner. He is not guilty. But after taking home he changes his mind and uses for his own purposes. He is guilty when he changes his mind.

A finds a valuable ring on the road, A takes it without any idea of finding the owner and handing it over to him. He is guilty.

A and B are joint owners, A sells the house without B's consent and appropriates the entire amount for himself. He is guilty of criminal misappropriation.

Criminal misappropriation is different from theft. In 403, the person gets the property accidentally or innocently. But in theft, the person dishonestly takes the property without the consent of the owner.

### **Criminal breach of Trust : Sec. 405 :**

Sec. 405 makes the criminal breach of trust an offense. If a person, entrusted with the property, or any dominion over property, dishonestly misappropriates or converts to his own use or disposes of, against law he is guilty of criminal breach of trust. This is embezzlement according to English law. Eg. i) A, a carrier is entrusted with furniture to deliver to the consignee. A sells the furniture to B. A is guilty under Sn. 405. It is important that the property must be entrusted to the accused, and he must dishonestly misappropriate it.

Provident Fund Contribution to E S I etc. If Persons entrusted dishonestly misappropriate they are guilty. ii) Prize competition: The prize winners were not given the prizes. A was tried on the ground of criminal breach of trust. Ramaswamy Nadar V. State of Madras, the Supreme Court held that there was no breach of trust, as he had not appropriated any money for his own purposes.

in) A, a revenue cashier, appropriates Rs. 5000 instead of remitting to the treasury. This is criminal breach of trust.

iv) A servant, who mixed liquor with water (without permission) and appropriated the difference of money got by selling the liquor was held guilty under this section. v) A executes his will. E is appointed as executer. E divided the property & used for his own use. He is guilty.

### **Criminal misappropriation and criminal breach of Trust.**

Property is got innocently or the person chances to get it in Cr. Misappropriation. But, in Cr. Breach of trust, property in entrusted or dominion is given.

**Cheating: Sn. 415-420.**

A person who by deceiving another, fraudulently or dishonestly induces him to deliver any property or intentionally induces him to do or not do an act which causes damage to him or to his person, reputation and property, is guilty of cheating.

Eg.: i) A pretends to be an I.A.S. officer and dishonestly takes food items from B on credit. A is guilty of cheating by personation.

ii) A puts counterfeit mark on an article and sells. A cheats. Hi) A sells diamonds which are not so. He cheats. iv) A person enters an exhibition without a ticket. He cheats. v) A sells his property to B, but possession is not given to B.

A then mortgages to C. A cheats. The essential ingredient is deception. The injury may be to a person, his reputation or property he makes a wrongful gain or wrongful loss.

A dishonest concealment of facts is deception.

Sn. 420 provides for punishment of person who cheats and induces any person to part with any part of the valuable security. This refers to alteration or destruction of the valuable security. The punishment is imprisonment for seven years and fine.

Cases: On cheating:

1. A, the accused told B that he would double currency notes, which B doubted. But, B gave currency notes for the purpose. Held, there 'was no cheating as B knew that doubling was false. A was convicted of attempt to cheat. (Ramnath V state )

2. A, accused, advertised for "gupta mantra" which would solve all problems if certain instructions are followed. B took the instruction by paying. One condition was gazing at the moon for 15 minutes .with- out winking. Held, this was almost an impossible condition. & hence there was cheating (Arab Mihan V. state).

3. A, a doctor certified that the life of B to be insured was first class. The company believing the certificate insured B. B had a bad health record & died within a few days A cheats



## **CRIMINAL TRESPASS AND HOUSE BREAKING**

### **Sec. Criminal Trespass : Sn. 441.**

If a person enters upon the property in the possession of another, with an intention to commit an offence or to intimidate, insult or annoy any person he commits criminal trespass. If having lawfully entered he remains there unlawfully and commits an offence, he is guilty of criminal trespass.

A landlord who forcibly enters his land in the possession of his tenant B, to beat B, commits criminal trespass.

Use of criminal force, is not essential. The intention is aiming at the desired object or motive. (Maithri V. St. of Punjab).

### **Sec. 447 provides for punishment for criminal trespass.**

#### **House trespass: Sec. 442.**

If a person enters into or upon the property of another with an intention to commit an offence, he is guilty of criminal trespass. A person who lawfully enters but who stays unlawfully may have an intention to commit an offence; he is guilty of criminal trespass. If a person commits criminal trespass by entering into or remaining in any building, tent or vessel or place used for worship, he is guilty of house trespass. The introduction of any part of the body of the accused is sufficient.

#### **Lurking house trespass: Sec. 443.**

A person who commits house trespass taking precautions to conceal himself, is guilty of lurking house trespass. The accused should have taken active steps and means to conceal his presence. It becomes lurking house trespass by night if he conceals after sunset but before sunrise (Sn. 444).

**House breaking: Sec. 445.**

A person is guilty of house breaking, if he enters the house -piafter entering quits through an entrance, in any of the six ways

- i) A passage made by himself: Ex. A makes a hole through the wall and puts his hand: f ii) Through a passage which he had opened, which passage is not intended for human entrance. He may enter by scaling or climbing over the wall; Ex. A enters by breaking the window or by breaking open the door. This is house-breaking. iii) Any passage which he has opened to commit house trespass by any means, by which that passage was not intended by the occupier of the house to be opened. . Ex : A enters B's house in the evening through the main door but after committing theft he leaves the house by opening an inner door, which had been fastened by the owner. This is house-breaking, iv) If the offender enters by opening any lock.
- v) The offender enters by using criminal force or committing assault or threatening to commit assault. Ex : X is standing in his doorway. A knocks him down and enters the house to commit house trespass. vi) The offender enters or quits by any passage which he knows to have been fastened. Ex : A enters B's house through a door after opening it.

Punishment for lurking house, trespass & house-breaking in Sns. 453 to 461,1. P. C. depends on the nature of the description given in them.

In Chellappan V. St. of Kerala, the accused, with dangerous weapons, had entered a wireless station & was concealing. Held, there was lurking house trespass & hence guilty under Sn. 455

**DEFAMATION : Sec. 499.**

Defamation is an offence as defined in Sn. 499. I.P.C.

A person is guilty of defamation if he

- i) by words - spoken or written,
- ii) by signs or visible representation,
- iii) makes or publishes any imputation concerning a person iv) Intending to harm or knows it would harm the reputation of such a person. Punishment: two years simple imprisonment or fine or

both

**Explanation:** i) it amounts to defamation if the imputation harms the reputation of a deceased person.

ii) A Company or an Association or a group of persons may be subject to defamation. iii) Ironical expressions amount to defamation.

Test: The imputation when amounts to defamation is explained in Sn. 499. In the estimation of others, directly or indirectly, the imputation must

- i) Lower his moral or intellectual character,
- ii) Lower his character in his caste, business or credit in society
- iii) Cause to believe that he was suffering from a loathsome or disgraceful disease. There is no difference between slander and libel, in criminal law.

**Essentials :**

The above test must be answered

ii) Publication is the essence of the offence. This means communication to some person other than the defamed. The person (maker) and the publisher are both guilty for publication in newspapers.

E.g. a) A says Z is an "honest" man. He never stole B's watch to make others believe that Z did steal B's watch. This is defamation.

**b) A draws a picture showing B running away with A's wrist watch. A's intention was to make others believe that B was a thief, this is defamation. Exceptions:**

**There are 10 exceptions provided for in Sn. 499.**

Four such exceptions are :

i) If a person expresses in good faith any opinion on the merits of a civil or criminal case decided by a court, it is not defamation. The comment may be with reference to any witness or agent or his character (as reflected in the case). . •

A says : 'I think Z's evidence in the court is so contradictory that he must be stupid or dishonest'. If he has stated this in good faith regarding Z's conduct, he is within this exception. If A says: 'Z is known to be without any veracity'. This is not protected. ii) The author who presents any public performance has submitted that for public opinion. Hence, any person who expresses, in good faith, his opinion for criticism, is within this exception. a) A person, who publishes a book, submits that book to the judgement of the public.

b) An actor, singer, public speaker submits himself to the judgement of the public.

c) A says : 'Z's book is foolish, it is indecent, he must be a man with impure mind.

A is protected if he has said in good faith. But, if A says 'Z's book is foolish. Z is a lunatic'. A is not protected.

iii) Any censure, in good faith, by person having lawful authority over another is protected.

a) A, a judge, censured a police officer but in good faith, is protected.

b) The Manager of a Bank, censuring in good faith, the cashier for his conduct, is within this exception.

iv) Any imputation made on the character of another in good faith, is protected if the same is done for safeguarding the interests of that person. A, a Company Director, tells B, the Manager 'Do not give anything to Z on credit, for I have doubts about his honesty'. If this is made in good faith, he is protected.

Punishment: Sn. 500 Provides for punishment of 2 years S. 1., fine or both.

### **Criminal Intimidation : Sn. 503,**

A person commits criminal intimidation, if he threatens another with injury to him or his reputation or property, with an intention to cause harm or to cause him to do or not to do a thing.

The gist of the offence is threat. A threat to the reputation of a dead person is also an offence under Sn. 503.

E.g. A wants to sue B. B threatens A to burn A's house. B is guilty under Sn. 503.

The essentials are:

1. There should be a threat to cause injury to that person, his reputation or his property (or of another)
2. With intent to cause alarm,
3. Causing that person to do any act which he is not legally bound to it, or omit to do legal act.

### **Pu FORGERY : Sec. 463.**

There are two sections defining forgery. Sn 463 defines forgery. Sn. 464 defines "making a false document", which is one of the essentials of forgery.

Forgery:

A person who makes a false document or part of it with an intention i) to cause damage or injury to the public or to any person ,

ii) to support any claim or title

iii) to cause any person to part with property or enter into contract

iv) to commit fraud or that fraud may be committed - is guilty of forgery;

**False Document:**

A person is said to make a false document in the following circumstances:

- i) He must dishonestly or fraudulently, make, sign, seal or execute a document, with knowledge or an intention to make others believe that it was genuinely done by the concerned authority.
- ii) The person, without lawful authority, dishonestly or fraudulently cancels, or alters the document made by himself or by any other (living or not).
- iii) The person may cause any other person who is insane, or intoxicated or deceived, to sign or seal or execute or alter a document.

E.g. : 1) A without authority affixes the signature and seal of the controller of examinations to a marks-card and secures a seat in a Medical college. A is guilty of forgery. 2) A picks up a blank cheque duly signed by B. A without authority but dishonestly fills up and takes Rs. 8000/- from the Bank. A is guilty. 3) Z has written a will giving "the remaining property to A and B'. A dishonestly scratches B's name. This is forgery. A person may commit forgery of his own signature,

- i) A money-order is received in the name of B, A person with the same name takes it dishonestly. He is guilty of forgery.
- ii) "A picks up a bill of exchange payable to another person of the same name. A endorses the bill, intending to make others believe that it was done duly by A. A has committed forgery. Making of a false document in the name of a fictitious person or by a dead man may amount to forgery. A draws a bill of exchange in the name of a fictitious person He fraudulently accepts it, in that name with a view to negotiate it. A commits forgery.

i) Rarn Narain V. State of Punjab.

Accused had forged the signature of the drawer of cheque and encashed dishonestly. Held: Guilty.

**464. Making a false document**

A person is said to make a false document-

First- Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or the nature of the alteration.

#### Illustrations

(a) A has a letter of credit upon B for rupees 10,000 written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000 intending that it may be delivered by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention to selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.

**Explanation 1-** A man's signature of his own name may amount to forgery.

**Explanation 2-** The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

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