THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 448] Punishment for house-trespass.

Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

COMMENT—

In order to sustain conviction under the section it has to be found that the intention of the accused to commit an offence or intimidate, insult or annoy the complainant. There must be an unlawful entry and there must be proof of one or the other of the intentions mentioned in section 441. In this case, the evidence produced clearly established the offence.[690.] The complainant was allotted a shop by the Rehabilitation Department because of his being a displaced person, but the accused persons did not allow him to enter the shop. Though the accused persons entered the shop lawfully they retained it unlawfully and dishonestly for more than 37 years. They were held to be guilty under this section read with section 34. The complainant died during the revision petition. The accused persons' conviction was maintained but they were released on probation and directed to restore the shop to the complainant's son.[691.] Allegation was that accused went to house of victim in order to commit offence of rape. Though rape was not committed at house of victim but committed at house of accused but entry of accused into house of victim was with intent to commit offence of rape. Accused is liable to be convicted under section 448 IPC, 1860.[692.]

[s 448.1] Accused acquitted of main offence, trespass stands.—

Case of trespass and culpable homicide. Cause of death was not clearly established. There might have been some jostling but that did not lead to the death of the victim. The cardiac arrest cannot be attributed to this act of the accused. Though the accused was acquitted of the offence under section 304, he was found to be guilty of section 447.[693.]

690. *Vidyadharan v State of Kerala*, (2004) 1 SCC 215 [LNIND 2003 SC 985] : AIR 2004 SC 536 [LNIND 2003 SC 985] : (2004) 1 KLT 105 [LNIND 2003 SC 985] : 2004 Cr LJ 605 : (2004) 2 MPLJ

251 .

691. *Kirpal Singh v Wazir Singh*, 2001 Cr LJ 1566 (Del); *NC Singhal (Dr.) v State*, 1998 Cr LJ 3568 (Del), the petitioner was carrying on medical practice in a licenced chamber of which the respondent always had actual physical possession. He alleged that the respondent demolished the chamber and committed theft of his books and equipment. The court found that there was written notice to the petitioner of demolition and also that the charge of theft was vague because no details of books and equipment alleged to be stolen were given. See also *Ram Chandra Singh v Nabrang Rai Burma*, 1998 Cr LJ 2156 (Ori); *Bimal Ram v State of Bihar*, 1997 Cr LJ 2846 (Pat), house trespass, the testimony of a witness could not be thrown overboard just only because he was a chance witness. Conviction. *Chintamani Sethi v Raghunath Mohanty*, 2003 Cr LJ 2866 (Ori), complaint against the *Sarpanch* was found to be motivated for other reasons, hence, dismissed. *Kishori Lal Agarwal v Ram Chandra Sindhi*, 2003 Cr. LJ 2299 (All), charge on tenant that he occupied an additional room in the house, he was given notice to vacate, the notice did not specify the date within which he should do so. An offence under the section, held, not made out.

692. *Krishna Bordoloi v State of Assam*, 2012 Cr LJ 4099 (Gau).

693. *Bappa Malik v The State of West Bengal*, 2016 Cr LJ 95 (Cal).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 449] House-trespass in order to commit offence punishable with death.

Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with [694].[imprisonment for life], or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

COMMENT—

An act can be said to be committed "in order to the committing of an offence" even though the offence may not have been completed. The words "in order to" have been used to mean "with the purpose of".[695.]

[s 449.1] Sentence to run concurrently.—

Offence under sections 302, 392, 404 and 449 committed in a gruesome manner. Considering the macabre nature of the crime the Court ordered the sentence to run consecutively.[696.]

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694. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

695. *Matiullah*, AIR 1965 SC 132 [LNIND 1964 SC 56] . See the decision of the Supreme Court in *Laxmi Raj Shetty v State of TN*, AIR 1988 SC 1274 [LNIND 1988 SC 260] : (1988) 3 SCC 319 [LNIND 1988 SC 260] , where death sentence for bank robbery and murder was reduced to life imprisonment. *Bhaskar Chattoraj v State of WB*, 1991 Cr LJ 451 (SC) : AIR 1991 SC 317 . One of the accused against whom there was no evidence, discharged. *Satrughana Lamar v State*, 1998 Cr LJ 1588 , the accused entered into a hut, killed a person there with an axe, seen coming out with axe, recovery of weapon at his instance, conviction under sections 304/349 held proper. *Muniappan v State of TN*, 1997 Cr LJ 2336 (Mad), charge of beating and murder not proved. All round failure of evidence.

696. *K Ramajayam v The Inspector of Police*, 2016 Cr LJ 1542 (Mad) : 2016 (2) CTC 135 [LNIND 2016 MAD 88] .

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 450] House-trespass in order to commit offence punishable with imprisonment for life.

Whoever commits house-trespass in order to the committing of any offence punishable with [697].[imprisonment for life], shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

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[698].COMMENT—

Section 450 deals with house trespass in order to commit offence punishable with life imprisonment. In the case, where the offence punishable with life imprisonment has been ruled out, one would have to look into actual act of the accused person. The act of the appellant is that of assaulting the complainant with chopper. The injury caused by the appellant is a simple injury. In such case, it would not attract life imprisonment and hence, section 450 of the IPC, 1860 would not be attracted.[699].

[s 450.1] Murder and house trespass.—

Where accused entered the house of deceased and killed him by giving sword blow, and his wife, who was the eye-witness to the incident lodged FIR within a period of three hours, it was held that accused was rightly convicted under sections 450 and 302 of IPC, 1860.[700].

[s 450.2] Rape and House trespass.—

Where the victim aged above 18 years alleged that while she was sleeping, accused entered her house and she woke-up when he was committing sexual intercourse with her, and it was proved that she did not bolted door of house from inside and when she woke-up she did not raise alarm for help, it was held that offences are not made out.[701]. Where it was proved that the accused entered the mentally challenged victim's house, threw her on the cot and after removing her underwear committed forcible sexual intercourse with her, conviction under section 450 and section 376 IPC, 1860 was upheld.[702].

697. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

698. *Her Chand v State of Rajasthan*, 1997 Cr LJ 345 (Raj), entry into parental house to which the right of access was there. Hence, criminal trespass was not made out. *Surjit Singh v State of Punjab*, (2007) 15 SCC 391 [LNIND 2007 SC 724] , 5 policemen were accused of entering into the house of a woman with the intention to rape her. Their attempt was foiled by her sons who cried for help. On the suggestion of one of them, the other killed the woman. They were not the persons before the court. These two were neither involved in killing nor there any evidence of common intention. Criminal trespass into the house was established against them. They were convicted for the same.

699. *Mohd. Kamar Abdul Ansari v State of Maharashtra*, 2008 Cr LJ 4736 (Bom).

700. *Mohanlal v State of Rajasthan*, 2012 Cr LJ 769 (Raj); *Bablu Alias Mahendra v State of Madhya Pradesh*, 2009 Cr LJ 1856 (MP)-material witnesses are not examined and evidence of identification is doubtful. Accused is entitled to benefit of doubt.

701. *Prahalad Mohanlal Sahu v State of Chhattisgarh*, 2013 Cr LJ 1726 (SC); *Ramesh v State*, 2011 Cr LJ. 3816 (Mad); *Wilson David v State of Chhattisgarh*, 2009 Cr LJ 1402 (Chh).

702. *Jhaduram Sahu v State of Chhattisgarh*, 2013 Cr LJ 1722 (Chh); *Moti Lal v State of MP*, 2008 Cr LJ 3543 (SC);2008 (11) SCC 20 [LNIND 2008 SC 1427] ; *Sadan v State of Madhya Pradesh*, 2011 Cr LJ 2488 (MP).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 451] House-trespass in order to commit offence punishable with imprisonment.

Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

COMMENT—

This section is similar to sections 449 and 450. It provides punishment for house-trespass committed with intent to commit an offence punishable with imprisonment. Where the accused was convicted of house-breaking, his object being to have sexual intercourse with the complainant's wife, it was held that the conviction was valid.[703.] The accused was held to be guilty of the offence under section 450 (lurking house-trespass where he entered the house at mid-night getting easy access because of acquaintance with the family and forcibly raped the victim girl finding her alone in her room. He was punished for rape and lurking house-trespass for committing an offence.[704.] Accused persons committed house trespass in order to commit an offence punishable with imprisonment. They went to the house of complainant with preparation by holding sticks in their hands for assaulting the complainant. Therefore, all the four accused are liable to be convicted under section 451 of the IPC, 1860.[705.] Where evidence shows that accused after entering the house unlawfully remained there and had even intimidated and insulted and annoyed the victim when they were called upon to quit the house. Court held that conduct of the accused will clearly come within the latter part of section 441 IPC, 1860 and the same will be punishable under section 451 IPC, 1860.[706.] There is enough material to show that the appellant had committed house trespass, however, not with intention to commit offence punishable with life imprisonment, hence, in such case section 451 IPC, 1860 would be attracted instead of section 450.[707.] The accused trespassed into the house of the victim girl who was nearly about ten years of age on the date of occurrence and committed unnatural offence on her. After finding the victim alone in the house the accused committed unnatural offence by putting his penis having carnal intercourse against order of nature. Order of acquittal is reversed by the Supreme Court.[708.]

It was alleged that the accused trespassed into the house of the victim when she was all alone in order to commit rape. But there was no evidence of any preparation or attempt to rape. The conviction under section 452 was held to be not proper. Since the trespass was not for any pious purpose because an offence under section 354 (outraging modesty) was likely to be involved, conviction was recorded under section 451.[709.] In another case the Courts below observed that from the evidence of PWs 1

and 2 it is seen that theft had taken place in the room in which PW 2 was sleeping; the thief entered the house and committed theft of gold chain which PW 2 was wearing and, therefore, this act will be covered by section 451 of the IPC, 1860, i.e., house-trespass in order to commit offence punishable with imprisonment. A1 and A3 have been acquitted because nothing links them to the offence. But, similar is the case with the appellant. The only evidence against him is the alleged recovery of gold chain at his instance. That cannot connect the appellant to the offence.[710.]

The accused was convicted for house trespass for committing unnatural offence. The accused was convicted by the trial court but acquitted by the High Court because of no corroboration of the testimony of the victim. The Supreme Court restored the conviction and observed that corroboration could not be required as a fossil formula, even if the story revealed by the victim appeals to the judicial mind as probable.[711.]

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703. (1875) 8 MHC (Appex) vi.
704. *Pacigi Narasimha v State of AP*, 1996 Cr LJ 2997 (AP).
705. *State of Maharashtra v Tatyaba Bajirao Jadhav*, 2011 Cr LJ 2717 (Bom).
706. *Appukuttan v State*, 2010 Cr LJ. 3186 .
707. *Mohd. Kamar Abdul Ansari v State of Maharashtra*, 2008 Cr LJ 4736 (Bom).
708. *State v Antony*, (2007) 1 SCC 627 [LNIND 2006 SC 940] : AIR 2007 SC Supp 1828.
709. *Ram Pratap v State of Rajasthan*, 2002 Cr LJ 1450 (Raj). *Gulam v State of Madhya Pradesh*, 2011 Cr LJ 179
710. *Azeez v State*, (2013) 2 SCC 184 [LNIND 2013 SC 54] ; *Alistait v State*, (2009) 17 SCC 794 .
711. *State of Kerala v Kurissum Moottil Antony*, (2007) 1 scc 627.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 452] House-trespass after preparation for hurt, assault or wrongful restraint.

Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

The Legislature has enacted this section to provide higher punishment where house-trespass is committed in order to cause hurt, or to assault, or to wrongfully restrain any person. For a conviction under this section, it is necessary to prove that the dominant intention of the accused was to cause hurt to or to assault or to wrongfully restrain any person.[712.] Preparation is the genesis of offence under section 452 of IPC, 1860. In absence of it being proved that any device as a metal rod, crow bar or even a stick was used by the accused due to which it could be described as "preparation for commission of offence," it appears to be impossible to hold that there exists adequate material even to frame the charge for offence under section 452 of IPC, 1860.[713.] Criminal trespass is committed by the accused when they entered the house of an individual with a view to insult, intimidate or annoy such owner of the house/property. If the accused entered the house of an individual to insult, intimidate or annoy any person other than the owner of the property, it would not constitute criminal trespass. Once the conduct of the accused is not criminal trespass, it would not be house trespass and would not become punishable under section 452 IPC, 1860.[714.]

712. *Pirmohammad*, AIR 1960 MP 24 [LNIND 1959 MP 33] . *Syam Lal v State of HP*, 2002 Cr LJ 3178 (HP), murder, rioting and house trespass, conviction. *Raghunandan Pd. v State of UP*, 1998 Cr LJ 1571 (All), probably accused persons were in possession and complainants fired at them causing gunshot injuries thus, the accused persons had the right of private defence of person and property and were given the benefit of doubt. See also *Jai Narain v State of Rajasthan*, 1998 Cr LJ 2199 (Raj); *Devkaran v State of Rajasthan*, 1998 Cr LJ 3883 (Raj). *Rala Singh v State*, 1997 Cr LJ 1313 (P&H), in a charge of trespass and kidnapping against the accused persons, the victim gave her age to be 20 years. She was examined but not subjected to ossification test.

School leaving certificate showed her age to be 18 but her parents were not examined for corroboration. Guilt not proved beyond reasonable doubt.

713. *Subhash Sahebrao Datkar v State of Maharashtra*, 2011 Cr LJ 736 (Bom); *Chandreee v State* 2011 (3) Crimes 215 (Raj)-although there is no evidence on record that the present accused Chandraee entered the house of the complainant with any preparation, therefore, the essential fact of preparation is missing in the evidence and in the absence of any preparation, the offence under section 452 IPC, 1860 cannot be said to be made out and thus, the offence of the accused petitioner comes within the purview of section 451 IPC, 1860.

714. *Koduri Venkata Rao v State of A P*, 2011 Cr LJ. 3512 (AP).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 453] Punishment for lurking house-trespass or house-breaking.

Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

COMMENT—

This section provides penalty for the offences defined in sections 443 and 444.

In all "house-breaking" there must be "house-trespass", and in all "house-trespass" there must be "criminal trespass". Unless, therefore, the intent necessary to prove "criminal trespass" is present, the offence of house-breaking or house-trespass cannot be committed. Where accused simply unlatched the chain and entered house of complainant in the night and there was nothing to show that any device such as metal rod, crow bar or even a stick was used by accused. It was held that preparation for commission of offence not proved. It is also held that house trespass without preparation is covered under section 453 IPC, 1860, not under section 452 IPC, 1860.[715.]

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715. *Subhash Sahebrao Datkar v State of Maharashtra*, 2011 Cr LJ 736 (Bom).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 454] Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.

Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

State Amendment

Tamil Nadu.—*The following amendments were made by Tamil Nadu Act No. 28 of 1993, Section 4*.

Section 454 of the Principal Act, shall be renumbered as sub-section (1) of that section and after sub-section (1) as to renumbered, the following sub-section shall be added, namely:—

"(2) Whoever commits lurking house-trespass or house-breaking in any building used as a place of worship, in order to the committing of the offence of theft of any idol or icon from such building, shall notwithstanding anything contained in sub-section (1), be punished with rigorous imprisonment which shall not be less than three years but which may extend to ten years and with fine which shall not be less than five thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three years."

COMMENT—

This is an aggravated form of the offence described in the last section. The latter portion of this section is framed to include the cases of house-trespassers and house-breakers by night who have not only intended to commit, but have actually committed, theft.[716.] Though the relationship between parties is of landlord and tenant and accused is tenant in complainant's premises, It cannot be said that origin of dispute being of civil nature. It is held that criminal proceedings are maintainable.[717.]

[s 454.1] Section 380 and section 454.—

In view of the conviction for section 454 of the IPC, 1860, separate conviction for the offence under section 380 of the IPC, 1860 is not needed as the offence under section 454 also includes section 380.[718.]

716. *Zor Singh*, (1887) 10 All 146 . See *Khuda Bakhsh*, (1886) PR No. 10 of 1886. Breaking open a person's godown and throwing out articles is an offence under this section. *Balai Chandra Nandy v Durga Charan Banerjee*, 1988 Cr LJ 710 (Cal).

717. *Balwant Singh Chuphal v State of Uttaranchal*, 2007 Cr LJ 1362 (Utt); *Kana Ram v State of Rajasthan*, 2002 Cr LJ 1867 (Raj)-possession of house/room in question remained with accused petitioner. Offence not made out.

718. *K E Lokesha v State of Karnataka*, 2012 Cr LJ 2120 (Kar).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 455] Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.

Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

The relation between this section and section 435 is the same as that between sections 452 and 450. This section is similar to section 458. The only difference is that the trespass here is committed by day, whereas under section 458 it is committed during night.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 456] Punishment for lurking house-trespass or house-breaking by night.

Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT—

Lurking house-trespass or house-breaking is ordinarily punishable under section 453; but when it is committed at night, this section is applicable. The intent necessary to prove 'criminal trespass' must be present and the Court must come to a definite inference as to the intention with which the entry was effected.[719.] Where the accused persons, execution creditors, broke open the complainant's door before sunrise with intent to distrain his property, for which they were convicted on a charge of lurking house-trespass by night or house-breaking by night, it was held that as they were not guilty of the offence of criminal trespass the conviction must be quashed.[720.]

719. *Sankarsan*, 1957 Cr LJ 286 .

720. *Jotharam Davay*, (1878) 2 Mad 30.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 457] Lurking house-trespass or house-breaking by night in order to commit off-ence punishable with imprisonment.

Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

State Amendment

Tamil Nadu.—*The following amendments were made by Tamil Nadu Act No. 28 of 1993, Section 5.*

Section 457 of the principal Act, shall be renumbered as sub-section (1) of that section and after sub-section (1) as to renumbered, the following sub-section shall be added, namely:—

"(2) Whoever commits lurking house-trespass by night or house-breaking by night in any building used as a place of worship, in order to the committing of the offence of theft of any idol or icon from such building, shall, notwithstanding anything contained in sub-section (1), be punished with rigorous imprisonment which shall not be less than three years but which may extend to fourteen years and with fine which shall not be less than five thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three years."

U.P.—*The following amendments were made by U.P Act No. 24 of 1995, Section 11.*

Section 457 of the principal Act, shall be renumbered as sub-section (1) of that section and after sub-section (1) as to renumbered, the following sub-section shall be added, namely:—

"(2) Whoever commits lurking house-trespass by night or house breaking by night in any building used as a place of worship in order to the committing of the offence of theft of any idol or icon from such building shall notwithstanding anything contained in sub-section (1) be punished with rigorous imprisonment which shall not be less than three years but which may extend to fourteen years and with fine which shall not be less than five thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three years."

COMMENT—

The offence under this section is an aggravated form of the offence described in the preceding section. When a person is charged under section 457 IPC, 1860, on the allegation that he entered the dwelling house of another person with the intention of committing theft it will not be legal to convict him under section 456 on the ground that the entry was made with the intention of committing some other offence or with the intention of annoying or insulting the inmates.[721.]

[s 457.1] For committing offence under the section.—

To constitute an offence under section 457, it is necessary to prove that house trespass or breaking at night was committed in order to commit any offence punishable under this section. The mere fact that house trespass was committed at night does not attract the offence of lurking house trespass within the meaning of this section.[722.]

721. *Sankarasan Boral v State*, 1957 Cr LJ 286 ; *Narayanan v State*, AIR 1962 Ker.81 [LNIND 1961 KER 232] .

722. *Kandarpa Thakuria v State of Assam*, 1992 Cr LJ 3084 (Gau). *State of Rajasthan v Vinod*, 2002 Cr LJ 1308 (Raj), the accused and his family were proved to be persons known to the complainant being neighbours. The entry into the house could not be proved to be with the intention of committing an offence punishable with imprisonment. The finding of acquittal was not interfered with. *Satyanarayanan v State of Rajasthan*, 2000 Cr LJ 2529 (Raj) accused entered house at night, beat up the girl and subjected her to rape, conviction under section 458 was altered to one under section 457 as the accused had not committed lurking house trespass. He had made preparation for assault. *Harjit Singh v State of Haryana*, 1999 Cr LJ 580 (SC) offence under sections 457, 392, 397, 307, 332, 34, made out. See also *R Trinath v State of Orissa*, 1998 Cr LJ 3458 (Ori). *Joseph v State of Kerala*, 1997 Cr LJ 4289 (Ker), case of theft not made out. *Raghabacharan Panda v V Dindayal Patra*, 2003 Cr LJ 1307 (Ori), allegation that the shop of the chemist broken open by the landlord and handed over to another person for another purpose, evidence was in favour of the accused land lord and his new tenant. Benefit of doubt. *Md. Siddique Hussain v State of Assam*, 2003 Cr LJ 1487 (Gau), it was difficult for the court to believe that any one should force his way to the house of another just only to committing a hurt. Benefit of doubt.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 458] Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint.

Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

COMMENT—

This section is similar to sections 452 and 455. To prove the charge for the offence under section 458, IPC, 1860, the prosecution must prove:—

(i) that the accused committed lurking house-trespass by night, or house-breaking by night;

(ii) that he did as above after having made preparation for causing hurt, or for assaulting, or for wrongfully restraining some person, or for putting some one in fear of hurt, assault or wrongful restraint.[723.]

It only applies to the house-breaker who actually has himself made preparation for causing hurt to any person, etc., and not to his companions as well who themselves have not made such preparation.[724.] There should also be some evidence of lurking house-trespass, as defined in section 443, IPC, 1860.

[s 458.1] Section 458 is not a cognate offence of section 398.—

The accused was charged under section 398 of IPC, 1860 and section 25(1)(A) and section 27 of the Arms Act, 1959. Trial Court acquitted the accused from both the charges holding that prosecution has failed to prove the charges however, come to the conclusion that the accused committed an offence under section 458 of IPC, 1860. The High Court held that section 458 of Penal Code in no way was a cognate offence of offence under section 398, IPC, 1860. Hence, conviction for offence under section 458 IPC, 1860 without framing charge is liable to be set aside.[725.]

723. *Pania v State*, 2002 Cr LJ 3050 (Raj).

724. *Ghulam*, (1923) 4 Lah 399.

725. *Manik Miah v State of Tripura*, 2013 Cr LJ 1899 (Gau).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 459] Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with [726.][imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

The offence under this section is an aggravated form of the offence described in section 453.

This and the following section provide for a compound offence, the governing incident of which is that either a 'lurking house-trespass' or 'house-breaking' must have been completed in order to make a person, who accompanies that offence either by causing grievous hurt or attempt to cause death or grievous hurt, responsible under those sections.[727.]

During the period house-breaking lasts, if the trespasser causes grievous hurt to any person or attempts to cause death or grievous hurt, the provisions of this section will be attracted. It cannot be accepted that it is only in the process of making an entry into a house if the trespasser causes grievous hurt, that this section will be attracted, for, the essential ingredient of lurking house-trespass or house- breaking is 'criminal trespass' and that offence continues so long as the trespasser remains on the property in possession of another.[728.]

726. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

727. *Ismail Khan v State*, (1886) 8 All 649 ; *Hasmatullah Khan v State*, 2005 Cr LJ 2266 (Utt)-Charge U.S 459 convicted under section 457 since the injuries are simple in nature. *Gopal Singh v State of Rajasthan*, 2008 Cr LJ 3272 (Raj)-conviction and sentence of the accused under sections 458, 459, 395/397 and 396, IPC, 1860 are maintained.

728. *Bhanwarlal v Parbati*, 1968 Cr LJ 130 . See **contra** *Said Ahmed*, (1927) 49 All 864 . *Dharampal Singh v State of Rajasthan*, 1998 Cr LJ 3372 (Raj) murder in a chowk not owned and

possessed by the complainant party. The accused also had the right of way through it. He was not liable to be convicted under section 459 or 460.

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 460] All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with [729].[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT—

Before holding a person to be guilty of offence under section 460, IPC, 1860, the prosecution must prove:—

(i) that the accused committed lurking house trespass by night; or house breaking by night;

(ii) that he caused, or attempted to cause, death or grievous hurt;

(iii) that he did above whilst engaged in committing lurking house trespass by night or house breaking by night. On the aforesaid analysis of section, it is clear that this section applies to those persons who have actually committed lurking house trespass at night and not to those who may have accompanied their associates but did not commit the offence. Indeed, it applies to actual doers, and not the others.[730.] This section deals with the constructive liability of persons jointly concerned in committing 'lurking house-trespass' or 'house-breaking by night' in the course of which death or grievous hurt to any one is caused. It is immaterial who causes death or grievous hurt. Every person jointly concerned in committing such house-trespass or house-breaking shall be punished in the manner provided in the section. A person who actually commits murder in the course of committing house-breaking will attract the penalty under section 302.[731.] Every person who is jointly concerned in committing the offence of lurking house trespass by night or house breaking by night is to be punished with life imprisonment where death has been caused or with imprisonment which may extend to ten years where grievous hurt has been caused to any person. This joint liability is based upon the principle of constructive liability. Thus, the person who has actually committed the death or grievous hurt would be liable to be punished under the relevant provisions, i.e., section 302 or section 326, as the case may be, while committing the offence of lurking house trespass by night. It is possible that common intention or object be not the foundation of an offence under section 460 IPC, 1860. Thus, to establish an offence under section 460, it may not be necessary for the prosecution to establish common intention or object. Suffice it will be to establish that they acted

jointly and committed the offences stated in section 460 IPC, 1860. The principle of constructive liability is applicable in distinction to contributory liability. The Supreme Court in the case of *Abdul Aziz v State of Rajasthan*,[732.] clearly stated that if a person committing housebreaking by night also actually commits murder, he must attract the penalty for the latter offence under section 302 and the Court found it almost impossible to hold that he can escape the punishment provided for murder merely because the murder was committed by him while he was committing the offence of housebreaking and that he can only be dealt with under section 460.[733.]

The words "at the time of the committing of" are limited to the time during which the criminal trespass continues which forms an element in house-trespass, which is itself essential to house-breaking, and cannot be extended so as to include any prior or subsequent time.[734.] If the offender causes grievous hurt while running away, he will not be punishable under this section.[735.]

[s 460.1] Section 449 and section 460.—

The element of house-trespass is common in both the sections and section 460 has large ambit. In section 449 actual commission of offence punishable with death is not required and if the house trespass is proved in order to commit such offence, the accused persons would be liable for punishment under section 449, whereas in section 460 if a person guilty of lurking house trespass or housebreaking in night voluntarily cause or attempt to cause death or grievous hurt to any person then every person jointly concerned in committing such lurking house trespass in night shall be liable for punishment.[736.]

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729. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

730. *Badri Prasad Prajapati v State of Madhya Pradesh*, 2005 Cr LJ 1856 (MP).

731. *Sohan Singh v State*, AIR 1964 Punj 156 . Where in a case of house-breaking committed in well-lighted house, the victim identified the accused and the articles stolen from her house in two exercises of identification parades, conviction of the accused was sustained. *Kasu Bhai v State of HP*, 1992 Cr LJ 3251 (HP). *State of MP v Bhagwan Singh*, 2002 Cr LJ 3169 (MP), the accused assailants entered into a house during night time, assaulted a man and hanged him and also caused death of his daughter. The motive was to avenge the action against them to prevent them from opening drainage towards the disputed land. They were held guilty of lurking trespass and murder. *Abdul Aziz v State of Rajasthan*, (2007) 10 SCC 283 [LNIND 2007 SC 592] , house-breaking by several persons, death caused by one of them, others also constructively liable, attracted section 302. It would require the accused to be charged with murder also. *Mati Ratre v State of Chhattisgarh*, 2013 Cr LJ 560 (Chh)-Conviction set aside since testimony of sole witness found to be not reliable

732. *Abdul Aziz v State of Rajasthan*, 2007 (10) SCC 28 .

733. *Haradhan Das v State of West Bengal*, (2013) 2 SCC 197 [LNIND 2012 SC 817] ; *Dukalu v State of Madhya Pradesh*, 2011 CR LJ 1548 (Chh)- the appellants have been held responsible for causing death of the 2 deceased persons with the aid of section 149, IPC, 1860. It is not a case

in which at the time of committing lurking house trespass by night any one of the appellant caused death of the deceased person and liability has to be fastened on the principle of section 460. In the facts and circumstances of the case, if all the appellants were held liable for punishment under section 302 with the aid of section 149, IPC, 1860 on the principles of common object of the unlawful assembly, of which they were the members, it was not necessary to punish them separately under section 460, IPC, 1860 and punishment of the appellants under section 460, IPC, 1860, in the facts and circumstances of the case, also requires to be set aside.

734. *Muhammad*, (1921) 2 Lah 342. *State of Madhya Pradesh v Kalli*, 2012 Cr LJ 2399 (MP)- where death was caused while committing theft in the house of deceased, and looted property from house of deceased were recovered from possession of accused and identified by witnesses in test identification parade, conviction of accused is held proper.

735. *Ibid. Mohan Manjhi v State of Bihar*, 2000 Cr LJ 4482 (Pat), for an offence under sections 460 and 382, the accused was sentenced to undergo 3 years RI. The proceeding had lasted for 11 years. The accused had been in jail for 6 months. Considering their mental and financial strain, the court reduced their sentence to the period already undergone with a fine of Rs. 1000.

736. *Dukalu v State of Madhya Pradesh*, 2011 CR LJ 1548 (Chh).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 461] Dishonestly breaking open receptacle containing property.

Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT—

This and the following section provide for the same offence. As soon as the receptacle is broken open or unfastened the offence is complete. Where an IT raid could not be completed on the same day and the raiding team put the seized jewellery in an *almirah* and after locking and sealing it, left it in the custody of the accused, the latter was held liable of this offence because he cut the *almirah* to take out some articles.[737.]

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737. *State of Maharashtra v Narayan Champalal Bajaj*, 1990 Cr LJ 2635 : 1990 Tax LR 918 (Bom).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Trespass

[s 462] Punishment for same offence when committed by person entrusted with custody.

Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT—

An offence under section 462 of IPC, 1860 is an aggravated form of the offence made punishable under section 461 of IPC, 1860.[738.]

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738. *Yamunabai w/o Trimbak Lolge v The State of Maharashtra*, 1994 (2) Bom CR 73 [LNIND 1993 AUG 18] .

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 463] Forgery.

1. **[Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.**

COMMENTS.—

The definition of 'forgery' in section 463, Indian Penal Code, 1860 (IPC, 1860) is very wide. The basic elements of forgery are: (i) the making of a false document or part of it; and (ii) such making should be with such intention as is specified in the section, *viz.*, (a) to cause damage or injury to (i) the public, or (ii) any person, or (b) to support any claim or title, or (c) to cause any person to part with property, or (d) to cause any person to enter into an express or implied contract, or (e) to commit fraud or that fraud may be committed.[2.] If a document, which is not genuine, is being used as such and a person is made to part with money on that basis then not only the offence of cheating as defined under section 415 IPC but also the offence of forgery as defined under section 463 IPC is attracted.[3.]

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1. Subs. by The Information Technology Act (Act 21 of 2000), section 91 and First Sch for the words "Whoever makes any false documents or part of a document with intent to cause damage or injury w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.
2. *Sushil Suri v CBI,* (2011) 5 SCC 708 [LNIND 2011 SC 494] : AIR 2011 SC 1713 [LNIND 2011 SC 494] ; *State of UP v Ranjit Singh,* AIR 1999 SC 1201 : (1999) 2 SCC 617 .
3. *Nahul Kohli v State,* 2010 Cr LJ 4536 (Del).

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 464] Making a false document.

[4.] **[A person is said to make a false document or electronic record—**

First.—**Who dishonestly or fraudulently—**

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or, transmits any electronic record or part of any electronic record;

(c) affixes any [5.][electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the [6.][electronic signature],

with the intention of causing it to be believed that such document or part of document, electronic record or [7.][electronic signature] was made, signed, sealed executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.—**Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document an electronic record in any material part thereof, after it has been made, executed or affixed with [8.][electronic signature] 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 or an electronic record or to affix his [9.][electronic signature] or any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record 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 believed 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 of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any

sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payment. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C". A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order" and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property. A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery in as much as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

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

ILLUSTRATIONS

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person whose order it was payable; here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate of Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before. A was on the point of insolvency. A has committed forgery under the first head of the definition.

***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.**

[10]***[Explanation 3.*—For the purposes of this section, the expression "affixing [11] [electronic signature]" shall have the meaning assigned to it in clause (d) of subsection (1) of section 2 of the Information Technology Act, 2000].**

ILLUSTRATION

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

COMMENTS.—

An analysis of section 464 of IPC, 1860 shows that it divides false documents into three categories:

A. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

B. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

C. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind, or (b) intoxication, or (c) deception practised upon him, know the contents of the document or the nature of the alteration. In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else, or (ii) he altered or tampered a document, or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.[12.] Making of any false document, in view of the definition of 'forgery' is the *sine qua non* therefor. What would amount to making of a false document is specified in section 464 thereof. What is, therefore, necessary is to execute a document with the intention of causing it to be believed that such document *inter alia* was made by the authority of a person by whom or by whose authority he knows that it was not made.[13.] In the case of *Mir Nagvi Askari v CBI*, the Court held that:

> A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of some one else. The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore in our opinion the second criteria of the said section is also not applicable to the present case. The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e because of intoxication or unsoundness of mind etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.[14.]

To attract the second clause of section 464 there has to be alteration of document dishonestly and fraudulently. So in order to attract the clause 'secondly' if the document is to be altered it has to be for some gain or with such objective on the part of the accused. Merely changing a document does not make it a false document.[15.]

[s 464.1] Making of false document.—

False document is said to have been made when a person dishonestly or fraudulently makes a document with the intention of causing it to be believed that such document was made by some other person.[16.]

[s 464.2] Issuance of a caste certificate.—

The Sub-Divisional Officer (SDO) issued a caste certificate. The application for the same was supported by affidavit of the father of the applicant. Later, the High Power Scrutiny Committee cancelled the certificate. A complaint was filed alleging forgery, cheating, conspiracy, etc. The High Court held that no offence of forgery was constituted as neither signature nor seals, etc., of Sub-Divisional Officer were forged but the caste certificate was issued by the SDO, himself and therefore it was not a false document in the eyes of law according to the provisions of section 464 of IPC, 1860.[17.]

4. Subs. by The Information Technology Act (Act 21 of 2000), section 91 and First Schedule, w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

5. Subs. for the words "digital signature" by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51 (w.e.f. 27 October 2009).

6. Subs. for the words "digital signature" by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51 (w.e.f. 27 October 2009).

7. *Ibid.*

8. *Ibid.*

9. *Ibid.*

10. Ins. by The Information Technology Act (Act 21 of 2000), section 91 and First Sch, w.e.f. 17 October 2000.

11. Subs. for the words "digital signature" by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51 (w.e.f. 27 October 2009).

12. *Mohammed Ibrahim v State of Bihar,* (2009) 8 SCC 751 [LNIND 2009 SC 1774] : 2010 Cr LJ 2223 : AIR 2010 SC (Supp) 347; *Malay Chatterjil v State of Bihar,* 2012 Cr LJ 2240 (Pat).

13. *Devendra v State of UP*, 2009 (7) SCC 495 : 2009 (7) Scale 613 [LNIND 2009 SC 1158] .

14. *Mir Nagvi Askari v CBI,* AIR 2010 SC 528 [LNIND 2009 SC 1651] : (2009) 15 SCC 643 [LNIND 2009 SC 1651] .

15. *Parminder Kaurl v State of UP*, (2010) 1 SCC 322 [LNIND 2009 SC 1924] : AIR 2010 SC 840 [LNIND 2009 SC 1924] .

16. *Raj Shekhar Agrawal v State of WB,* 2016 Cr LJ 993 (Cal) : (2015) 4 CALLT 615 (HC).

17. *Harvir Singh v State of MP,* 2016 Cr LJ 3608 (MP) : 2016 (2) JLJ 422 .

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 465] Punishment for forgery.

Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

The offence of forgery is defined in sections 463 and 464 of the Code. Under section 463 the making of a false document with any of the intents therein mentioned is forgery, and section 464 sets forth when a person is said to make a 'false document' within the meaning of the Code.

The definition of forgery in the Code is not as simple and clear as the definition of forgery in common law. Forgery in common law is defined as the fraudulent making or alteration of a writing to the prejudice of another man's right.

[s 465.1] Ingredients.—

The elements of forgery are—

1. The making of a false document or part of it.
2. Such making should be with the intent
    (a) to cause damage or injury to (i) public, or (ii) any person; or
    (b) to support any claim or title; or
    (c) to cause any person to part with property; or
    (d) to cause any person to enter into express or implied contract; or
    (e) to commit fraud or that fraud may be committed.

1. 'Makes any false document'.— A school inspector prepared under his own signature false pay bills containing false claims for salaries of teachers who had not worked within his jurisdiction, some of whom being purely fictitious, and encashed them from the treasury. He was held to be guilty of making a false document but not of forgery because he had not made the signature or writing of another, nor had altered the pay bills.[18.]

The antedating of a document is not forgery, unless it has or could have operated to the prejudice of some one.[19.] Incorporation or inclusion of a false statement in a document would not *ipso facto* make the document false. For a document to be false, it has to tell a lie about itself.[20.]

[s 465.2] Publication of book.—

There was allegation that the accused person, in order to induce the public to purchase the book, falsely represented that the book was by a certain person. There was no allegation that the accused himself had written the book and represented it to be that of some other person. The Court said such allegations, even if true, do not make out a case of forgery. The offence of cheating could not also be said to have been made out because it was a consequential offence.[21.]

Where the allegation was that the accused, who was working as a stenographer in the High Court, had fabricated a forged bail order and the evidence showed that the bail order in question was in fact written by the accused, the finding of the High Court that the paper could not be said to be a document in the absence of signature of the accused was held to be not tenable. The document could have been used for causing wrongful loss or obtaining wrongful gain. Hence, the offence under sections 466 and 468 was made out.[22.]

2. 'To cause damage or injury to the public or to any person'.—The damage or injury must be intended to be caused by the false document to the public or any individual.[23.] Thus, a police-officer who alters his diary so as to show that he had not kept certain persons under surveillance does not commit forgery, inasmuch as there is no risk of loss or injury to any individual and the element of fraud as defined in section 25 is absent.[24.] It is the intent to cause damage or injury which constitutes the gist of this offence. It is immaterial whether damage, injury or fraud is actually caused or not.[25.] Mere making of a false document would not constitute defrauding unless injury or intent to cause injury to the person deceived was also proved.[26.]

To tamper with a proceeding in a Court of Justice in order to obtain from the Court a decision or order, which it otherwise would not make, is as much a public mischief as to attempt to secure the unauthorised release of a prisoner from jail or to obtain for an unqualified person credentials entitling him to practise as a surgeon or to navigate a ship.[27.]

3. 'Support any claim or title'.—Even if a man has a legal claim or title to property, he will be guilty of forgery if he counterfeits documents in order to support it. See illustrations (f), (g), (h) and (i). An actual intention to convert an illegal or doubtful claim into an apparently legal one is dishonesty and will amount to forgery.[28.]

The term 'claim' is not limited in its application to a claim to property. It may be a claim to anything, as for instance, a claim to a woman as the claimant's wife, a claim to the custody of a child as being the claimant's child, or a claim to be admitted to attendance at a law class in a college, or to be admitted to a university or other examination, or a claim to the possession of immovable or any other kind of property.[29.]

4. 'To cause any person to part with property'.—It is not necessary that the property with which it is intended that false document shall cause a person to part should be in existence at the time when the false document was made. For example, if A gave an order to B to buy the material for making and to make a silver tea service for him, and C, before the tea service was made or the materials for making it had been bought were to make a false letter purporting, but falsely, to be signed by A, authorizing B to deliver to D the tea service when made, C would have committed forgery within the meaning of section 463 by making that false document with intent to cause B to part with property, namely, the tea service, when made.[30.] A written certificate has been held to be 'property' within the meaning of this section.[31.]

5. 'Intent to commit fraud'.—The Supreme Court had held that the expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived the second condition is satisfied.[32.]

6. 'Fraudulently'.—This word is used in sections 471 and 464 together with the word 'dishonestly' and presumably in a sense not covered by the latter word. If, however, it be held that 'fraudulently' implies deprivation, either actual or intended, then apparently that word would perform no function which would not have been fully discharged by the word 'dishonestly' and its use would be mere surplusage. So far as such a consideration carries any weight, it obviously inclines in favour of the view that the word 'fraudulently' should not be confined to transactions of which deprivation of property forms a part.[33.]

7. 'Makes'.—"The 'making of a document, or part of a document, does not mean 'writing' or 'printing' it, but signing or otherwise executing it; as in legal phrase we speak of 'making an indenture' or 'making a promissory note', by which is not meant the writing out of the form of the instrument, but the sealing or signing it as a deed or note. The fact that the word 'makes' is used in the section in conjunction with the words 'signs', 'seals' or 'executes', or 'makes any mark denoting the execution', etc., seems to very clearly to denote that this is its true meaning. What constitutes a false document or part of a document is not the writing of any number of words which in themselves are innocent, but affixing the seal or signature of some person to the document, or part of a document, knowing that the seal or signature is not his, and that he gave no authority to affix it. In other words, the falsity consists in the document, or part of a document, being signed or sealed with the name or seal of a person who did not in fact sign or seal it".[34.]

[s 465.3] Fabricating letter or certificate.—

In a case, the allegation was that the accused made false document for getting sim cards of mobile phones. Handwriting expert deposed that he was not in a position to give any finding on basis of specimen signature of appellant. It was held that since finding recorded by Special Judge was contrary to evidence given by handwriting expert, conviction of appellant for offence punishable under section 465 read with section 471 of IPC, 1860, could not be sustained.[35.] Where accused was alleged to have obtained employment on strength of forged document, finding that accused had not been proved to have forged the documents, it was held that offence under section 465 is not made out.[36.]

[s 465.4] Creation of a website by the company—

Where the appellant created a website with the name Devi Consultancy Services for the development of the existing company named Devi Polymers Private Limited, in the absence of any possibility to impute any intent to cause damage or injury or to enter into any express or implied contract or any intent to commit fraud in the making of the said website, no offence of forgery is made out, especially when he has not received a

single rupee or nor has he entered into any contract in his own name on the basis of the above website.[37.]

[s 465.5] Acting for society after takeover.—

Where the entire management of a society was taken over by the petitioners and they were looking after its affairs by writing letters, drawing cheques and operating bank accounts by signing their names on behalf of the society and not on anybody else's names or behalf, the offence of forgery/making false document was not made out.[38.]

[s 465.6] Alteration of document.—

The mere alteration of a document does not make it a forged document. The alteration must be for some gain or for some objective. The Court said that presuming that figure "1" was added to the date mentioned on the document, it could not be said that the document became false. The accused had nothing to gain from it, nor it affected the period of limitation.[39.]

[s 465.7] Clause second.—Alteration on or cancellation of document [Section 464].—

This clause requires dishonest or fraudulent cancellation or alteration of a document in any material part without lawful authority after it has been made or executed by a person who may be living or dead.

The conduct of an Advocate's clerk in forging the signature of another Advocate on a surety bond and in altering certain endorsements for the purposes of identification and attestation, was held by the Supreme Court as amounting to an offence under this section and not under section 468.[40.]

[s 465.8] Sentence.—

Accused employed as a sanitation supervisor was found to have committed offence of making fake trade licences and issuing them to various persons. Court below convicted him for one year under section 471 read with section 465 IPC, 1860, and two years' simple imprisonment (SI) under section 468, IPC imposed upon him. Considering the fact that he was a first offender and an orphan and sole bread earner of his family which consisted of a minor child and an unemployed wife, the sentence under section 471 read with section 465 IPC, 1860 was reduced to one month and the sentence under section 468 IPC, 1860 was reduced to two months.[41.]

18. *Shankerlal Vishwakarma v State of MP*, 1991 Cr LJ 2808 (MP).
19. *Gobind Singh*, (1926) 5 Pat 573.
20. *AK Khosla v TS Venkatesan*, 1994 Cr LJ 1448 (Cal); *Lee Cheung Wing v R*, 1992 Cr App R 355 (PC), falsification of a withdrawal slip to enable the withdrawal of money, offence; *Premlata v State of Rajasthan*, 1998 Cr LJ 1430 (Raj); *Manilal v State of Kerala*, 1998 Cr LJ 785 (Ker). See also *Joginder Lal v State (Delhi Admn.)*, 1998 Cr LJ 3175 (Del); *Mohandas v State of TN*, 1998 Cr LJ 3409 (Mad); *Bharat Hiralal v Jaysiri Amarsinh*, 1997 Cr LJ 2509 (Bom), forgery of a document is possible even if the accused himself is the author and signatory of the document. A case of a false bill, magistrate justified in taking cognizance.
21. *Guru Bipin Singh v Chongtham Manihar Singh*, AIR 1997 SC 1448 [LNIND 1996 SC 1690] : 1997 Cr LJ 724 .
22. *State of UP v Ranjit Singh*, AIR 1999 SC 1201 : 1999 Cr LJ 1830 .
23. *RR Diwakar v B Guttal*, 1975 Cr LJ 90 (Kant).
24. *Sanjiv Ratnappa*, (1932) 34 Bom LR 1090 : 56 Bom 488.
25. *Kalyanmal*, (1937) Nag 45.
26. *Sadanand*, 1977 Cr LJ NOC 103 (Goa); *Tul Mohon Ram*, 1981 Cr LJ NOC 223 (Del); see also *Harnam Singh*, 1976 Cr LJ 913 (SC), as in 'Comments' under section 477A *infra*. *TN Rugmani v C. Achutha Menon*, AIR 1991 SC 983 [LNIND 1990 SC 803] , application for permission for construction made in another's name, but without any intention of causing harm, no offence under the section.
27. *Mahesh Chandra Prasad v State*, (1943) 22 Pat 292.
28. *Ibid.*
29. *Soshi Bhushan*, (1893) 15 All 210 , 217.
30. *Soshi Bhushan*, (1893) 15 All 210 , 217, 218.
31. *Ibid*, p 218.
32. *Dr. Vimla*, (1963) 2 Cr LJ 434 .
33. *Abbas Ali*, (1896) 25 Cal 512 , 521, FB **overruling** *Haradhan*, (1892) 19 Cal 380 .
34. *Per* Garth CJ in *Riasat Ali*, (1881) 7 Cal 352 , 355.
35. *Nazeem Ahmed Wahid Ahmed Khanl v State of Maharashtra*, 2011 Cr LJ 1786 (Bom).
36. *Rupa Bania v State of Assam*, 2006 Cr LJ 3455 (Gau).
37. *Ramesh Rajagopal v Devi Polymers Pvt Ltd*, AIR 2016 SC 1920 [LNIND 2016 SC 170] : 2016(4) Scale 198 [LNIND 2016 SC 170] .
38. *PN Parthasarthy v GK Srinivasa Rao*, 1995 Cr LJ 3406 (Kant).
39. *Parminder Kaur v State of UP*, 2010 Cr LJ 895 : AIR 2010 SC 840 [LNIND 2009 SC 1924] : (2010) 1 SCC 322 [LNIND 2009 SC 1924] .
40. *Sharvan Kumar v State of UP*, AIR 1985 SC 1663 [LNIND 1985 SC 231] : (1985) 3 SCC 658 [LNIND 1985 SC 231] , reducing the sentence to nine months, already undergone.
41. *Tashi Dadul Bhutia v State of Sikkim*, 2011 Cr LJ 1315 (Sik).

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 466] Forgery of record of Court or of public register, etc.

[42] **[Whoever forges a document or an electronic record], purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.**

[43] ***[Explanation***.—**For the purposes of this section, "register" includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000].**

COMMENT.—

Forging a document and using the forged document are quite different and distinct offence. The reliance on the false documents will not *ipso facto* implicate the person who relied upon, under sections 465 and 466.[44] If by virtue of preparing a false document purporting it to be a document of a Court of Justice and by virtue of such document, a person who is not entitled to be released on bail could be released then, undoubtedly damage or injury has been caused to the public at large and, therefore, there is no reason why under such circumstances the accused who is the author of such forged document cannot be said to have committed offence under section 466 of IPC, 1860. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. The expression 'defraud' involves two elements, namely deceit and injury to the person deceived. Injury is something other than economic loss and it will include any harm whatever caused to any person in body, mind, reputation or such others. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. The preparation of a forged bail order by the utilisation of which the person concerned obtained an advantage of being released deceiving the courts and the society at large cannot but be said to have made the document fraudulently, thereby attracting section 466 of IPC, 1860.[45]

42. Subs. by The Information Technology Act (Act 21 of 2000), section 91 and First Sch for the words "whoever forges a document', w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

43. Ins. by the Information Technology Act (21 of 2000), section 91 and First Sch, (w.e.f. 17 October 2000).

44. *C R Alimchandani v I K Shah*, 1999 Cr LJ 2416 (Bom).
45. *State of UP v Ranjit Singh*, AIR 1999 SC 1201 : 1999 (2) SCC 617 .

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 467] Forgery of valuable security, will, etc.

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with [46.][imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—

The offence under this section is an aggravated form of the offence described in the preceding section. The forged document must be one of those mentioned in the section. A complaint by the court is necessary for cognizance of the offence.[47.] Section 467, IPC, 1860, does not require the prosecution to prove that the accused who commits forgery, has benefitted thereby or any loss has occasioned to anyone thereby.[48.] There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he has a *bona fide* belief that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code is attracted.[49.]

[s 467.1] Quashing of complaint.—

There were bold allegations in the complaint that the shares of the complainant had been transferred on forged signatures. There was nothing to show how all or any of the accused persons were involved. No offence was constituted under sections 406, 420, 467, 468 and 120-B. The order taking cognizance was held to be improper. It was

quashed in respect of accused persons who preferred special leave petition and also in respect of those who did not file a petition.[50.]

[s 467.2] CASES.—

Where the allegation was that a company, acting through its directors in concert with the chartered accountants and some other persons: (i) conceived a criminal conspiracy and executed it by forging and fabricating a number of documents, like photographs of old machines, purchase orders and invoices showing purchase of machinery in order to support their claim to avail hire-purchase loan from Bank; (ii) on the strength of these false documents, bank parted with the money by issuing pay orders and demand drafts in favour of the Company; and (iii) the accused opened six fictitious accounts in the banks to encash the pay orders/bank drafts issued by Bank in favour of the suppliers of machines, thereby directly rotating back the loan amount to the borrower from these fictitious accounts, and in the process committed a systematic fraud on the Bank and obtained pecuniary advantage for themselves. Precise details of all the fictitious accounts as also the further flow of money realized on encashment of demand drafts/pay orders have been incorporated in the charge sheet additionally, by allegedly claiming depreciation on the new machinery, which was never purchased, on the basis of forged invoices, etc.; the accused cheated the public exchequer as well. The Supreme Court held that proceedings are not liable to be quashed merely because dues of bank have been paid up.[51.]

A deed of agreement for purchase of shares is not a valuable security.[52.] A person who received money from a postman under a false representation that he was the payee when in fact he was not, and signed the postal acknowledgement in the name of the payee, was held to have committed an offence under this section.[53.] Where the accused fraudulently brought into existence a registered sale deed, said to have been executed by the widow of a person, intending to deceive and also to injure the reversioners of that person, it was held that they were guilty under this section.[54.] Where the accused falsely identified a person before the Oaths Commissioner as the deponent and the said person affixed his thumb impression on the document and it was also apparent that the document could not even become an affidavit without identification of the deponent by the accused, it was held that the accused abettor having been present at the time of the commission of the offence of impersonation he was guilty under section 467 read with section 114, IPC, 1860.[55.] A bank draft is a security for the purposes of this section and the bank manager signing a forged draft is guilty of this offence.[56.] Making out cheques for withdrawing money for official purposes and obtaining the signature of the signing officer under that pretence was held to be punishable offence under this section.[57.]

[s 467.3] Bar under section 195(1)(b)(ii) of the Code of Criminal Procedure, 1973 (Cr PC, 1973).—

Section 195(1)(b)(ii), Cr PC mandates that no court shall take cognizance of any offence described in section 463, or punishable under sections 471, 475 or 476, of IPC, 1860, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, except on the complaint in writing of that court, or of some other court to which that court is subordinate. It contemplates a situation where offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court.[58.] The petitioner stood before the Court as surety in favour of

the accused person and filed the affidavit, bail declaration form and title document of the Land record-of-rights book before the Court. It was further revealed that the petitioner filed the false declaration as well as false affidavit in support of the said declaration. It was further found that both the documents, i.e., the declaration form as well the affidavit of accused were prepared just before production of them in the Court. Admittedly, the offence was committed before the documents were filed in the Court. Section 195(1)(b)(ii) of Cr PC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it had been produced or given in evidence in a proceeding in any court, i.e., during the time when the document was in *custodia legis*. This being the settled position of law, there appears to be no justification in quashing the prosecution of the petitioner-accused on the ground that provisions of section 195(1)(b)(ii) are applicable.[59.]

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46. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

47. See *Sardul Singh v State of Haryana,* 1992 Cr LJ 354 (P&H).

48. *Suresh Hingorani v State of Haryana,* 2013 (1) Scale 225 [LNIND 2013 SC 21] : JT 2013 (8) SC 66 [LNIND 2013 SC 21] .

49. *Shiv Charan v State of Rajasthan,* 2012 Cr LJ 211 (Raj).

50. *Ashok Chaturvedi v Shitual H Chanchani,* 1998 Cr LJ 4091 : AIR 1998 SC 2796 [LNIND 1998 SC 751] .

51. *Sushil Suri v CBI,* (2011) 5 SCC 708 [LNIND 2011 SC 494] : AIR 2011 SC 1713 [LNIND 2011 SC 494] .

52. *AK Khosla v TS Venkatesan,* 1992 Cr LJ 1448 (Cal).

53. *Jogidas v State,* (1921) 24 Bom LR 99 ; *Sanjay Gaikwad v State of Maharashtra,* 2013 Cr LJ (NOC) 304 —using genuine special adhesive stamps fraudulently obtained for making false document— offence is under section 468 not under section 256–259 IPC.

54. *Ganga Dibya,* (1942) 22 Pat 95.

55. *Calcutta Singh,* 1978 Cr LJ 477 (P&H).

56. *Adithela Immanuel Raju v State of Orissa,* 1992 Cr LJ 243 ; *State of Haryana v Parmanand,* (1995) 1 Cr LJ 396 , embezzlement by forging entries in records, but neither signature nor handwriting proved by expert evidence, conviction on the statement of a sole witness not justified.

57. *State of Punjab v Baj Singh,* (1995) 2 Cr LJ 1311 (P&H); *Joginder Pal Dhiman v UOI,* 2002 Cr LJ 677 (HP), bank manager defrauded bank by forging amounts on FDRs and issuing drafts in his own and wife's name. But on being detected he returned the whole amount involved. Sentence reduced to one year and amount of fine maintained.

58. *Iqbal Singh Marwah v Meenakshi Marwah,* (2005) 4 SCC 370 [LNIND 2005 SC 261] ; *Mahesh Chand Sharma v State of UP*, AIR 2010 SC 812 [LNIND 2009 SC 1740] : (2009) 15 SCC 519 [LNIND 2009 SC 1740] ; *CP Subhash v Inspector of Police Chennai*, 2013 Cr LJ 3684 : JT 2013 (2) SC 270 [LNIND 2013 SC 74] , sale deed had not been forged while in custody of court, bar under section 195 not applicable.

59. *Jagannath Singh v State of MP,* 2011 Cr LJ 3008 (MP).

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 468] Forgery for purpose of cheating.

Whoever commits forgery, intending that the [60.][document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—

This section does not require that the accused should actually commit the offence of cheating. What is material is the intention or purpose of the offender in committing forgery.[61.] Where documents had been forged and fabricated only to be used as genuine to make fraudulent and illegal claim over land owned by complainant, the Supreme Court held that it cannot be held that respondents were not makers of documents or that filing of civil suit based on same would not constitute an offence.[62.] The Supreme Court has expressed the opinion that the conduct of an Advocate's clerk in forging the signature of another advocate on a surety bond and forging some endorsements for identification and attestation, would not constitute an offence under this section and that the conviction should have been under section 465.[63.]

[s 468.1] Banking and other frauds.—

Where the accused, being the BDO, who was authorised to recommend the sanctioning of housing loans to the villagers misappropriated the money of the bank by availing loans in their names by forging their signatures, he was held to be guilty based on the evidence of the villagers that they did not apply under the scheme.[64.]

[s 468.2] Signing differently in *vakalatnama*.—

Where it was alleged that in order to cheat the Complainant the accused signed in his *vakalathnama* differently from his signatures available in his income tax returns, the Court quashed the complaint as neither the Complainant has alleged any 'forgery' by the petitioners causing any damage, or injury to the public nor to any person, nor to cause any person to part with property, nor to enter into any express or implied contract, nor with intent to commit fraud to any person or the Complainant in particular.[65.]

60. Subs. by The Information Technology Act (Act 21 of 2000) for the words "document forged", w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

61. *Shivaji Narayan,* (1970) 73 Bom LR 215 . *Mallinath Ambanna Shedjale v Purushottam Vasudeo Somshetty,* 2002 Cr LJ 506 (Bom), forgery of signature on partnership registration form, the mere fact that the handwriting expert could not positively say who committed the forgery, the accused partners could not be acquitted. *Chandu Mahto v State of Bihar,* 2000 Cr LJ 4472 (Pat), forgery of signature for operating colleague's PF Account. Held, guilty under sections 120-B, 419, 420, 468, 471 and 477-A. *Srinivas Rao v State of AP,* 2002 Cr LJ 3880 (AP), the offence took place about nine years ago. The sentence of six months was reduced to two months. *Saroj Kumar Sahoo v State of Orissa,* 2003 Cr LJ 1872 , allegation that the officers of the State Financial Corporation and accused persons entered into a conspiracy to cheat the owner of the unit of disposing it of at a lower value than the market price. The allegation was not proved on evidence.

62. *CP Subhash v Inspector of Police Chennai*, 2013 Cr LJ 3684 : JT 2013 (2) SC 270 [LNIND 2013 SC 74] ; *Siba Prasad Satpathy v Republic of India,* 2011 Cr LJ 3656 .

63. *Sharvan Kumar v State of UP,* AIR 1985 SC 1663 [LNIND 1985 SC 231] : (1985) 3 SCC 658 [LNIND 1985 SC 231] : 1985 SCC (Cr) 437. A complaint by the Court concerned is necessary for cognizance of this offence. See *Sardul Singh v State of Haryana,* 1992 Cr LJ 354 (P&H) *vide* section 195, Cr PC, 1973. *Surender Singh v State,* 2013 Cr LJ 3211 (Del), allegation of using fake number plates, not proved. Mere recovery of fake number plate does not establish guilt of appellant that he intended to cheat police official, accused acquitted.

64. *Sukh Ram v State of HP,* 2016 Cr LJ 4146 (SC) : 2016 (7) Scale 354 .

65. *Padam Chand v State of Bihar,* 2016 Cr LJ 4998 (Pat) : 2016 (3) PLJR 258 .

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 469] Forgery for purpose of harming reputation.

Whoever commits forgery, [66][intending that the document or electronic record forged] shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

66. Subs. by The Information Technology Act (Act 21 of 2000), section 91 and First Sch for the words "intending that the document forged", w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 470] Forged **[document or electronic record].

A false [67.][document or electronic record] made wholly or in part by forgery is designated "a forged [68.][document or electronic record]".

COMMENT.—

A person who forges a document or electronic record for the purpose of harming the reputation of another and thereby commits an offence under section 500 (defamation) commits an offence also under this section.

67. Subs. by The Information Technology Act (Act 21 of 2000), section 91 and First Sch for the words "document", w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

68. Subs. by Act 21 of 2000, section 91 and Sch I, for "document" (w.e.f. 17 October 2000).

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 471] Using as genuine a forged ***[document or electronic record].

Whoever fraudulently or dishonestly uses as genuine [1] any [69.] [document or electronic record] which he knows or has reason to believe to be a forged [70.] [document or electronic record], [2] shall be punished in the same manner as if he had forged such [71.] [document or electronic record].

COMMENT.—

What this section requires is the use as genuine of any document which is known or believed to be a forged document; it does not lay down that such use can only occur when the original itself is produced, for the section does not require the production of the original.[72.]

[s 471.1] Ingredients.—

There must be—

1. Fraudulent or dishonest use of a document as genuine.
2. The person using it must have knowledge or reason to believe that the document is a forged one.

1. **'Uses as genuine'.—** Accused registered various documents relating to a project without verifying the credentials of the purchaser and seller and without examining that the land covered by the sale deeds was in existence or not or the land belongs to the State Government. Documents were *prima facie* found to be forged so as to get the benefit of the package which was meant for the project affected persons/oustees displaced from the land. Order of High Court quashing the proceedings was held liable to be set aside.[73.]

[s 471.2] Sections 467 and 471.—

Where there is forgery of a document purporting to be a valuable security as defined in section 471 becomes an offence under section 471 when it is used as genuine. The Supreme Court observed that the basic ingredient of both the offences is that there should be "forgery" as defined in section 463 and forgery in turn depends upon creation of a "false document" as defined in section 464. If there is no "false document" as defined in section 464, offences under sections 467 and 471 are not made out. Further the mere execution of a sale deed by claiming that property being sold was executant's property did not amount to commission of offences under sections 467 and 471 even if title to property did not vest in the executant. This was for the reason that no "false document" as defined in section 464, was created.[74.]

2. 'Knows or has reason to believe to be a forged document'.—These words are of general application.[75.] Where it was not shown that the accused had knowledge of the forged nature of the cheque[76.] or the lottery ticket[77.] which he used as genuine he cannot be convicted under sections 467 and 471, IPC, 1860.

"Knowledge" is an awareness on the part of the person concerned indicating his state of mind. Reason to believe is another fact of the state of mind. It is not the same thing as "suspicion" or "doubt". The mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of the state of mind. Likewise knowledge will be slightly on a higher plane than reason to believe. A person can be supposed to know when there is a direct appeal to his senses and a person is presumed to have reason to believe if he has sufficient cause to believe the same. In substance, what is meant is that a reason to believe requires that a reasonable man would, by probable reasoning conclude or infer regarding the nature of the thing concerned. "Knowledge" and "reason to believe" has to be deduced from the various circumstances of the case.[78.] The section is intended to apply to persons other than the forger himself but the forger is not excluded from the operation of the section. It is not required that the person forging the document must necessarily be convicted along with the person using the document.[79.]

[s 471.3] Compounding.—

Where there is no chance of recording a conviction insofar as the accused is concerned and the entire exercise of trial is destined to be an exercise in futility, the High Court by exercising the inherent power under section 482 Cr PC, 1973, even in offences which are not compoundable under section 320 may quash the prosecution.[80.]

[s 471.4] Punishment.—

in *Bank of India v Yeturi Maredi Shanker Rao*,[81.] the Supreme Court confirmed the sentence of nine months of rigorous imprisonment to a person who had knowledge of the forged signatures on withdrawal forms and who used them to affect withdrawal of money. A forged will was prepared and executed in favour of the accused, but he could not draw any benefit under it, nor it was acted upon in any civil proceedings. He had faced trial for more than 26 years. He was in jail for more than seven months. His sentence was accordingly reduced to the period already undergone.[82.] The accused filed a false marks sheet and gained admission. His past record was good. He had already lost a job. The sentence of imprisonment was reduced to the period already undergone.[83.]

[s 471.5] CASE.—

Accused while working as a lower division clerk in the office of the Deputy Superintendent of Police had temporarily misappropriated an amount of Rs. 1,839 and made false entry in the record. Admittedly the sum had been deposited in the post office before the due date and that no loss had been caused to the department. Offence alleged under IPC, 1860, against the accused are trivial in nature and have caused no harm and in fact no offences in the eye of law. The benefit of section 95, IPC is available to the appellant.[84.]

[s 471.6] Certificate.—

Where the accused applied to the Superintendent of Police for employment in the Police force, and in support of his application presented two certificates which he knew to be false, it was held that he was guilty of offences under sections 463 and 471.[85.] Where the accused used a forged certificate of competency as an engine-room first Tindal, he was held guilty under sections 471 and 463.[86.] With a view to qualify for appearance at the competitive P.C.S examination the accused presented a certified copy of the certificate granted to him by the University at his Matriculation examination, in which the date of birth had been altered from "5 January 1901" to "15 January 1904". It was held that he was guilty of an offence under this section inasmuch as the document presented, being a false document, was used with intent to cause damage and injury to the other candidates in the competitive examination for P.C.S. and to support his claim to appear.[87.] Where a forged certificate of age was filed by an employee for the purpose of getting his superannuation postponed by two years, his conviction under sections 471, 420 and 511 was upheld. It was immaterial that the employer had not acted upon the certificate.[88.]

[s 471.7] Passport.—

A person who forges a passport and uses it as genuine to get entry into India is guilty under section 471and section 467.[89.] Where unauthorised endorsements were made in a passport with a view to helping the person having his photograph on the passport to travel to countries to which he was not entitled to go, such endorsements were made dishonestly and fraudulently and, therefore, the use of such a passport constituted an offence under section 471, IPC, 1860. Where, however, the very basis of the prosecution case was that the endorsements were in the handwriting of the accused but the expert opinion was hesitant and unsatisfactory, the conviction of the accused could not be sustained.[90.]

Where passport alleged to have issued by using the former seal of the passport officer, it is the duty of the investigating officer to find out in whose custody the unused seal was kept and how the accused obtained possession of the same, for using it for committing forgery.[91.]

[s 471.8] Sanction.—

The offence of cheating under section 420 or for that matter offences relatable to sections 467, 468, 471 and 120B can by no stretch of imagination, by their very nature, be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence.[92.]

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69. Subs. by *Ibid*.

70. Subs. by *Ibid*.

71. Subs. by *Ibid*.

72. *Budhu Ram v State,* (1963) 2 Cr LJ 698 (SC).

73. *State of Madhya Pradesh v Surendra Kori*, 2013 Cr LJ 167 (SC); (2012) 10 SCC 155 [LNIND 2012 SC 681] .

74. *Mohd Ibrahim v State of Bihar,* (2009) 8 SCC 751 [LNIND 2009 SC 1774] : (2009) 3 SCC (Cr) 929.

75. *Ranchhoddas,* (1896) 22 Bom 317.

76. *Abdul Karim v State,* 1979 Cr LJ 1123 (SC).

77. *Chatt Ram*, 1979 Cr LJ 1411 (SC).

78. *AS Krishanan v State of Kerala,* (2004) 11 SCC 576 [LNIND 2004 SC 349] : AIR 2004 SC 3229 [LNIND 2004 SC 349] : 2004 Cr LJ 2833 , forged marksheets were used in this case for securing admission to medical college. The candidate (accused) deserved no leniency in the matter of punishment.

79. *Ibid*.

80. *Jayrajsinh Digvijaysinh Rana v State of Gujarat,* 2012 AIR (SCW) 4092 : 2012 Cr LJ 3900 ; *Ashok Sadarangani v UOI,* AIR 2012 SC 1563 [LNIND 2012 SC 180] : (2012) 11 SCC 321 [LNIND 2012 SC 180] , where emphasis is more on the criminal intent of the petitioners than on the civil aspects involving the dues of the bank in respect of which a compromise was worked out, proceedings cannot be quashed.

81. *Bank of India v Yeturi Maredi Shanker Rao,* (1987) 1 SCC 577 [LNIND 1987 SC 104] : AIR 1987 SC 821 [LNIND 1987 SC 104] : 1987 Cr LJ 722 . Encashing a forged bank draft is an offence under this section. *Adithelo Immanuel Raju v State of Orissa,* (1992) Cr LJ 243 .

82. *Jagdish v State of Rajasthan,* 2002 Cr LJ 2171 (Raj).

83. *Tulsibhai Jivabhai Changani v State of Gujarat,* 2001 Cr LJ 741 (SC).

84. *NK Illiyas v State of Kerala,* 2012 Cr LJ 2418 : AIR 2012 SC 3790 [LNIND 2011 SC 646] .

85. *Khandusingh,* (1896) 22 Bom 768.

86. *Abbas Ali,* (1896) 25 Cal 512 (FB).

87. *Chanan Singh,* (1928) 10 Lah 545.

88. *Galla Nageswara Rao v State of AP,* 1992 Cr LJ 2601 (AP).

89. *Daniel,* AIR 1968 Mad 349 [LNIND 1967 MAD 140] . *Hema v State,* 2013 Cr LJ 1011 : AIR 2013 SC 1000 [LNIND 2013 SC 1240] , where accused in conspiracy with the owner of a travel agency filed application for passport by giving bogus particulars, court held that she is guilty.

90. *Mahendra Singh v State,* 1972 Cr LJ 34 (SC).

91. *Vijayachandran KK v The Supdt. of Police,* 2008 (2) Ker LJ 751 : 2008 (3) Ker LT 307 .

92. *Om Dhankar,* (2012) 11 SCC 252 [LNINDORD 2012 SC 439] : 2012 (3) Scale 363 [LNINDORD 2012 SC 439] ; *Prakash Singh Badal v State of Punjab*, 2007 (1) SCC 1 [LNIND 2006 SC 1091] : AIR 2007 SC 1274 [LNIND 2006 SC 1091] ; *Rakesh Kumar Mishra v State of Bihar*, 2006 (1) SCC 557 [LNIND 2006 SC 8] : AIR 2006 SC 820 [LNIND 2006 SC 8] .

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 472] Making or possessing counterfeit seal, etc., with intent to commit forgery, punishable under section 467.

Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with [93][imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—

This section and the section following are akin to sections 235, 255 and 256.

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93. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 473] Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.

Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this Chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 474] Having possession of document described in sections 466 or 467 knowing it to be forged and intending to use it as genuine.

94.[Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code], be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with 95.[imprisonment for life], or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—

This section resembles sections 242, 243 and 259.

The offence under section 474, IPC, 1860, is made out by the mere fact of possession of forged documents knowing them to be forged and intending the same to be fraudulently and dishonestly used. So even if such documents are not actually used, it need not absolve the accused from the mischief of provisions contained in section 474, IPC. Thus, where the accused falsely posed as an I.A.S. officer and as a Joint Director (Vigilance) attached to the Central Bureau of Investigation and was also found in possession of fictitious documents supporting such claim and such documents were being created by him from time to time with a view to entangle people in bogus criminal cases, it was held that the accused was an impostor and had intended to use these faked documents in furtherance of his criminal design. He was, therefore, rightly convicted under section 474, IPC.96.

94. Subs. by The Information Technology Act (Act 21 of 2000), section 91 and First Sch for the words "whoever has in his possession ...., section 466 of this code", w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

95. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

96. *Dharam Pal,* 1985 Cr LJ 474 (Del).

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 475] Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.

Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished [97.][with imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—

The commencement of the forgery of banknotes and other similar securities, where it has proceeded to the length which is described in this section, is treated as a substantive offence and punished. This section supplements the provisions of section 472.

97. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 476] Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.

Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating [98].[any document or electronic record] other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—

This section is similar to the preceding section, but as the document, the counterfeit of which is made punishable, is not of so much importance as in that section, the punishment is not so severe.

98. Subs. by The Information Technology Act (Act 21 of 2000), section 91 and First Sch for the words "any document", w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 477] Fraudulent cancellation, destruction, etc., of will, authority to adopt or valuable security.

Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect of such documents, shall be punished with [99.][imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—

This section applies when the document tampered with or destroyed is either a will or an authority to adopt or a valuable security. Owing to the great importance of documents of this kind the punishment provided is severe.

1. 'Document'.—The document must be a genuine one. The offence under this section cannot be committed in respect of a document which is a forgery.[100.]

99. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

100. *Akbar Hossain,* (1938) 43 Cal WN 222.

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

[s 477A] Falsification of accounts.

Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any [101][book, electronic record, paper, writing], valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such [102][book, electronic record, paper, writing], valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.]

COMMENT.—

This section refers to acts relating to book-keeping or written accounts. It makes the falsification of books and accounts punishable even though there is no evidence to prove misappropriation of any specific sum on any particular occasion.

[s 477A.1] Ingredients.—

This section requires that—

1. The person coming within its purview must be a clerk, an officer, or a servant, or acting in the capacity of a clerk, an officer, or a servant.

2. He must wilfully and with intent to defraud—

(i) destroy, alter, mutilate, or falsify, any book, electronic record, paper, writing, valuable security, or account which:

(a) belongs to or is in the possession of his employer, or

(b) has been received by him for or on behalf of his employer;

(ii) make or abet the making of any false entry in or omit or alter or abet the omission or alteration of any material particular from or in any such book, paper, writing, valuable security or account.

To convict a person under section 477-A IPC, 1860, the prosecution has to prove that there was a wilful act, which had been made with an intent to defraud and while proving "Intention to defraud" the prosecution has to further prove two elements that the act

was an act of deceit and it had caused an injury. In the present case, there may be an injury, but there is no deceit.[103.]

The principles laid down by the Supreme Court in Harnam Case[104.] are that there should be a wilful act of an accused with an intention to defraud. So both elements must be present and in other words it would mean that the act should be a wilful act and should also be done with an intention to defraud. While trying to define "intent to defraud", the Court noted that it contains two elements, deceit and injury. There is no doubt that to convict a person under section 477-A IPC, the prosecution has to prove that there was a wilful act, which had been made with an intent to defraud and while proving "Intention to defraud" the prosecution has to further prove two elements that the act was an act of deceit and it had caused an injury. In the present case, there may be an injury, but there is no deceit.[105.]

[s 477A.2] CASES.—

Where, however, the documents alleged to have been falsified are found to be missing from office records, no charge under section 477A, IPC, 1860, can be made out;[106.] where the *Nazir* of Special Judicial Magistrate's Court accepted an amount as fine but failed to deposit it in the treasury and made false entries in the Register of Judicial Fines saying that the amount had been deposited, it was held that he was guilty of offences under sections 409, 467, 468 and 477A, IPC.[107.]

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101. Subs. by The Information Technology Act (Act 21 of 2000), section 91 and First Sch for the words "book, paper, writing", w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

102. Subs. by The Information Technology Act (Act 21 of 2000), section 91 and First Sch for the words "book, paper, writing", w.e.f. 17 October 2000. The words "electronic record" have been defined in section 29A.

103. *Kandipalli Madhavarao v State of AP*, 2007 Cr LJ 4555 (AP).

104. *Supra.*

105. *Kandipalli Madhavarao v State of AP*, 2007 Cr LJ 4555 (AP).

106. *Rasul Mohd v State of Maharashtra,* 1972 Cr LJ 313 : AIR 1972 SC 521 ; *V Srinivasa Reddy v State of AP,* AIR 1998 SC 2079 [LNIND 1998 SC 158] : 1998 Cr LJ 2918 , false advance shown by bank employee to customers against their FDs. This was abuse of position as public servant. Audit report was against any such manipulation. Proper documents were also not produced before the court. Evidence actually produced was also not examined properly. The case was sent back for fresh disposal without calling for additional evidence. See also *Mohandass v State,* 1998 Cr LJ 3409 (Mad); *Sharif Masin v State (UT Chandigarh),* 1998 Cr LJ 1689 (P&H).

107. *State of Punjab v Rathanchand,* 1984 Cr LJ NOC 153 (P&H). See also *Ravichandran v State by Dy. Supdt. of Police, Madras,* 2010 Cr LJ 2879 (SC) : AIR 2010 SC 1922 [LNINDORD 2010 SC 76] ; *Mir Nagivi Askari v CBI,* AIR 2009 SC 528 [LNIND 2008 SC 1354] : (2009) 15 643; *State v Mohan,* AIR 2008 SC 368 [LNIND 2007 SC 1250] : (2007) 14 SCC 667 [LNIND 2007 SC 1250] .

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of [108.] [***] Property and Other Marks

[s 478] ***[Omitted]***

[Rep. by the Trade and Merchandise Marks Act, 1958 (43 of 1958, section 135 and Sch. (w.e.f. 25-11-1959).]

108. *Amendment.*—The word "trade" has been omitted by the Trade and Merchandise Marks Act, 1958 (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of [108.] [***] Property and Other Marks

[s 479] Property mark.

A mark used for denoting that movable property belongs to a particular person is called a property mark.

COMMENT.—

The distinction between 'trade mark' and 'property mark' is not recognised in English law.

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108. *Amendment.*—The word "trade" has been omitted by the Trade and Merchandise Marks Act, 1958 (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of [108.] [***] Property and Other Marks

[s 480] ***[Omitted]***

[Rep. by the Trade and Merchandise Marks Act, 1958 (43 of 1958), section 135 and Sch. (w.e.f 25-11-1959).]

108. *Amendment.*—The word "trade" has been omitted by the Trade and Merchandise Marks Act, 1958 (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of [108.] [***] Property and Other Marks

[s 481] Using a false property mark.

Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

COMMENT.—

False property mark.—This section defines the offence of using a false property mark.

A property mark is intended to denote ownership over all movable property belonging to a person whether it is all of one kind or of different kinds. So long as the person owns movable property, his property mark impressed upon them remains his, though any particular article out of it may after such impression pass out of his hands and cease to be his.[109.]

The function of a property mark to denote certain ownership is not destroyed because any particular property on which it was impressed has ceased to be of that ownership.

[s 481.1] Ingredients.—

This section requires two essentials:—

1. Marking any movable property or goods, or any case, package or receptacle containing goods; or using any case, package or receptacle, with any mark thereon.
2. Such marking or using must be in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or the property or goods, contained in such receptacle, belonged to the person to whom they did not belong.

The Supreme Court in *Sumant Prasad's* case said that the concept of a trade mark under section 2(1)(g) of Trade and Merchandise Marks Act, 1958, is distinct from that of a property mark under section 479 of IPC, 1860. It means the concept of trade mark has not nullified the concept of property mark. Thus, where the accused finding that his 'Puspa Raj' scent could not capture the market copied the property mark from the carton of complainant's best-selling scent 'Basant Bahar' *in toto* and marketed his inferior product under the same name, it was held that he had committed the offence of both using a false property mark as well as of selling goods marked with a

counterfeit property mark. The fact that the complainant loosely mentioned in his complaint 'trade mark' did not make any difference, for despite this the complainant's allegations clearly made out that the accused tried to palm off his inferior scent as if it was manufactured by and belonged to the complainant. He was, therefore, rightly convicted under sections 482 and 486, IPC.[110.]

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108. *Amendment.*—The word "trade" has been omitted by the Trade and Merchandise Marks Act, 1958 (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

109. *Dahyabhai,* (1904) 6 Bom LR 513 .

110. *Sumant Prasad v Sheojanan,* 1972 Cr LJ 1707 (SC).

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of [108.] [***] Property and Other Marks

[s 482] Punishment for using a false property mark.

Whoever uses [111.][***] any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—

To succeed on the charges under sections 482 and 486 the complainant had to establish that the appellant marked the scent manufactured and sold by him, or the packets and receptacles containing such scent or used packets or receptacles bearing that mark, and that he did so in a manner reasonably calculated to cause it to be believed that the goods so marked or the scent contained in the packets and receptacles so marked belong to the complainant.[112.]

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108. *Amendment.*—The word "trade" has been omitted by the Trade and Merchandise Marks Act, 1958 (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

111. The words "any false trade mark or" omitted by Act 43 of 1958, section 135 and Sch (w.e.f. 25 November 1959).

112. *Sumat Prasad Jain v Sheojanam Prasad,* AIR 1972 SC 2488 [LNIND 1972 SC 399] : (1973) 1 SCC 56 [LNIND 1972 SC 399] .

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of [108.] [***] Property and Other Marks

[s 483] Counterfeiting a property mark used by another.

Whoever counterfeits any [113.][***] property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

108. *Amendment.*—The word "trade" has been omitted by the Trade and Merchandise Marks Act, 1958 (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

113. The words "trade mark or" omitted by Act 43 of 1958, section 135 and Sch (w.e.f. 25 November 1959).

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of [108.] [***] Property and Other Marks

[s 484] Counterfeiting a mark used by a public servant.

Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.—

The offence under this section is an aggravated form of the offence described in the preceding one. Enhanced punishment is inflicted where the mark used by a public servant is counterfeited.

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108. *Amendment.*—The word "trade" has been omitted by the Trade and Merchandise Marks Act, 1958 (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of [108.] [***] Property and Other Marks

[s 485] Making or possession of any instrument for counterfeiting a property mark.

Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a property mark, or has in his possession a property mark for the purpose of denoting that any goods belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

COMMENT.—

The making or possession of instruments for counterfeiting a property mark is hereby punished.

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108. *Amendment.*—The word "trade" has been omitted by the Trade and Merchandise Marks Act, 1958 (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of [108.] [***] Property and Other Marks

[s 486] Selling goods marked with a counterfeit property mark.

[114.][Whoever sells, or exposes, or has in possession for sale, any goods or things with a counterfeit property mark] affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

(a) **that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and**

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) **that otherwise he had acted innocently,**

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—

This section punishes those who sell or have in possession for sale goods marked with a counterfeit property mark. For the purpose of section 486, it is necessary to establish that the appellant had sold, or exposed for sale, or had in his possession for sale goods having a mark calculated to cause it to be believed that the scent was the scent manufactured by and belonging to the complainant.[115.]

108. *Amendment.*—The word "trade" has been omitted by the Trade and Merchandise Marks Act, 1958 (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

114. Subs. by Act 43 of 1958, section 135 and Sch, for certain words (w.e.f. 25 November 1959).

115. *Sumat Prasad Jain v Sheojanam Prasad,* AIR 1972 SC 2488 [LNIND 1972 SC 399] : (1973) 1 SCC 56 [LNIND 1972 SC 399] .

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of [108.] [***] Property and Other Marks

[s 487] Making a false mark upon any receptacle containing goods.

Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.—

This section is more comprehensive than sections 482 and 486. The fraudulent making of false marks of any description on goods for the purpose of deceiving public servants, such as customs officers, is punishable under this section.

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108. *Amendment.*—The word "trade" has been omitted by the Trade and Merchandise Marks Act, 1958 (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of [108.] [***] Property and Other Marks

[s 488] Punishment for making use of any such false mark.

Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud be punished as if he had committed an offence against that section.

COMMENT.—

This section punishes the making use of a false mark. The preceding section punishes the making of such a mark.

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108. *Amendment.*—The word "trade" has been omitted by the Trade and Merchandise Marks Act, 1958 (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of [108.] [***] Property and Other Marks

[s 489] Tampering with property mark with intent to cause injury.

Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—

This section punishes the tampering with a property mark, criminal intention or knowledge on the part of the accused is necessary.

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108. *Amendment.*—The word "trade" has been omitted by the Trade and Merchandise Marks Act, 1958 (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of Currency-Notes and Bank-Notes

[s 489A] Counterfeiting currency-notes or bank-notes.

[Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with [116.] [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—For the purposes of this section and of sections [117.][489B, 489C, 489D and 489E], the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money.]

COMMENT.—

The term counterfeit is defined in section 28 of the Code. Circulation of counterfeit currency would cause irreparable harm to our economy. Existence of a parallel economy would be highly detrimental to the growth of the nation. It affects the society as a whole. Offences affecting the people at large are to be viewed in a different angle. In such cases, harm would be caused not to an individual or to a few individuals. The adverse impact of trafficking in counterfeit currency in a large scale would be disastrous. It would appear that the society does not cast much of a stigma on people, who deal with counterfeit currency.[118.] Sections 489A, 489B, 489C and 489D were introduced in order to provide more adequately for the protection of currency-notes and banknotes from forgery. Under the IPC, 1860, which was passed prior to the existence of a paper currency in India, currency-notes were not protected by any special provisions, but merely by the general provisions, applying to the forgery of valuable securities. Before these sections were introduced charges for forging currency-notes had to be preferred under section 467, for uttering them under section 471, and for making or possessing counterfeit plates under section 472. The provisions of section 467 afforded sufficient means for dealing both with forgery generally and with forgery of currency-notes. But it was at times difficult to obtain a conviction under the other sections. This provision says that the prosecution is required to prove that the accused was knowingly performing any part of the process to counterfeit currency-notes. It is needless to mention that for proving the offence of conspiracy, there must be some convincing evidence to the prosecution to prove that it was pre-arranged plan of all or some of the accused either for preparing fake currency or for their circulation. Only on the basis of circumstance like some persons were found in possession of counterfeit currency-notes at or about the same time, inference cannot be drawn that all of them had engaged themselves in a conspiracy. However, if an accused is found in possession of counterfeit currency-notes, it is up to him to furnish satisfactory explanation regarding the possession. This proposition is also applicable in respect of

the material which can be used for preparing fake currency-notes and the process which can be used for making fake currency-notes. If there is no such explanation, a person found in possession of such material and counterfeit currency-notes can be convicted for offence under section 489-A of IPC.[119.]

The object is not only to protect the economy of the country but also to provide adequate protection to currency-notes and banknotes.[120.] The section deals not only with the complete act of counterfeiting, it also covers cases where the accused performs any part of the process of counterfeiting.[121.]

[s 489A.1] Counterfeit currency-notes and terrorism.—

The Act 3 of 2013 introduced amendment in the Unlawful Activities (Prevention) Act 1967 to include the act of doing damage to the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material within the purview of terrorism. Thus, the act of dealing with high quality counterfeit Indian currency-notes and coins with the intention of threatening the economic security of India is viewed as a terrorist act. (For details see UA (P) Act, 1967, as amended by Act 3 of 2013.)

[s 489A.2] Foreign currency.—

The Supreme Court in *State of Kerala v Mathai Vergheese*[122.] held that the expression 'any currency-note' refers to all currency-notes and cannot be confined only to Indian currency. The purpose of the provisions is to maintain market respectability of the currency by assuring people that notes being offered to them are genuine and not worthless pieces of paper. The Legislature could not have intended to exclude from the protection counterfeiting of currency-notes issued by foreign States. Further, the expression 'bank-note' as used by sections 498A–498E would include a dollar bill or note because they are also issued under the authority of a State or sovereign power. This section is similar to sections 231 and 255.

[s 489A.3] CASES.—

Where many fake currency-notes, hundreds of stamp and some material required for preparing fake currency-notes were allegedly recovered from room and also from person of appellant, and evidence and material was seized by police. The Court ruled out possibility of implanting the material by police for falsely implicating the accused. It was held that accused appellant liable to be convicted under section 489-A, IPC, 1860.[123.]

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116. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

117. Subs. by Act 35 of 1950, section 3 and Sch II, for "489C and 489D".

118. *Ahammed v State,* 2010 Cr LJ 1797 (Ker).

119. *Narayan Maruti Waghmode v State of Maharashtra,* 2011 Cr LJ 3318 (Bom).

120. *K Hashim v State of TN,* (2005) 1 SCC 237 [LNIND 2004 SC 1142] : AIR 2005 SC 128 [LNIND 2004 SC 1142] .

121. *K Hashim v State of TN,* 2005 Cr LJ 143 : (2005) 1 SCC 237 [LNIND 2004 SC 1142] : AIR 2005 SC 128 [LNIND 2004 SC 1142] .

122. *State of Kerala v Mathai Vergheese,* (1986) 4 SCC 746 [LNIND 1986 SC 461] : AIR 1987 SC 33 [LNIND 1986 SC 461] : 1987 Cr LJ 308 ; *Surinder Pal v State of Punjab,* 2009 Cr LJ 4100 (P&H), counterfeiting US dollars, accused convicted. *K Hashim v State of TN,* 2005 Cr LJ 143 : AIR 2005 SC 128 [LNIND 2004 SC 1142] : (2005) 1 SCC 237 [LNIND 2004 SC 1142] , the evidence of accomplice, the artist, provided material for corroboration of evidence, being the evidence of an accomplice, reliable. *Chuwan Suba v State of Sikkim,* 2013 Cr LJ 2135 (Sik), allegation of possession of machinery to print fake notes. Conviction was held improper since the disclosure statement was not voluntary.

123. *Narayan Maruti Waghmode v State of Maharashtra,* 2011 Cr LJ 3318 (Bom); *Md Amir Hussain v State of Assam,* 2010 Cr LJ. 4201 [Gau]. See also *Roney Dubey v State of WB*, 2007 Cr LJ 4577 (Cal); *Jayeshkumar Panchal v State,* 2007 Cr LJ 2254 (Guj); *Golo Mandla Ram Rao v State of Jharkhand,* 2004 Cr LJ 1738 (Jha).

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of Currency-Notes and Bank-Notes

[s 489B] Using as genuine, forged or counterfeit currency-notes or bank-notes.

[Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counter-feit currency-note or bank-note, knowing or having reason to believe the same to be forged or counter-feit, shall be punished with [124.][imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.]

COMMENT.—

This section resembles sections 239, 241 and 258. It provides against trafficking in forged or counterfeit notes. The section deals with the use of counterfeited currency-notes.[125.]

An offence under section 489-B has the following essential ingredients:—

(i) selling, buying or receiving from any person or otherwise trafficking currency-note or banknote;

(ii) any forged or counterfeit currency-note or bank-note;

(iii) knowing (or having reason to believe) that such note was forged or counterfeit.

To bring home an offence under section 498-B, IPC, 1860: (a) the prosecution is to prove that the relevant currency-note or banknote was forged or counterfeit; (b) that the accused sold to or received from, some person, or trafficked in, or used as genuine the aforesaid currency-note or banknote; (c) that when the accused did so he had knowledge or reason to believe about its being forged or counterfeit. In order to sustain the conviction of an accused, the prosecution has not only to prove that he had the possession of counterfeit note, having reason to believe it as such, but also to prove circumstances which lead clearly, indubitably and irresistibly to his intention to use/circulate the notes in the public. Such intention can be proved by a collateral circumstance that he had palmed off such notes before, or that he was in possession of such notes in such large a number, that his possession for any other purpose was inexplicable.[126.] Merely because the petitioner had been found to be in possession of the counterfeit notes of similar denomination of the same series and numbers closer to the numbers of the notes detected by the bank, it would be difficult to accept that the notes have been used or circulated by the applicant.[127.] Mere possession does not necessarily indicate that there was mal-intention or intention to use. Intention to use the counterfeit currency-notes, being an essential ingredient of the offence under sections 489B and 489C of IPC, prosecution is, no doubt, saddled with the liability to establish such intention or attempt on the part of the appellant/accused to use such counterfeit notes. On careful scrutiny of the evidence on record there was no evidence,

whatsoever, which suggests that the appellant had made any effort to use the counterfeit currency-notes. Since evidence on that issue is lacking manifestly, hence, the conviction of the appellant under section 489B of IPC cannot be sustained.[128.]

[s 489B.1] Burden of proof.—

Under section 489B of IPC, 1860, the burden is on the prosecution to prove that at the time when the accused was passing the counterfeit notes, he knew that they were forged one and the mere possession of such notes by him does not shift the burden of the accused to prove his innocent possession of such notes. The knowledge or reason to believe that the note was forged has to be proved to fix the liability under sections 489B and 489C of IPC. In the case of *Golo Mandla Ram Rao v State of Jharkhand*,[129.] the counterfeit currency-notes and incriminating articles were recovered from the possession of the accused and only the counterfeit coins from the possession of the co-accused.

[s 489B.2] Information regarding the involvement of the accused admissible.—

Where on the basis of information regarding the source of counterfeit currency notes accused, who supplied it and subsequently all the others involved in the racket were arrested, though there were no recovery of notes from the intermediaries, the information was held admissible as the police were not aware of the other accused, who were involved in the offence.[130.]

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124. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

125. *K Hashim v State of TN,* 2005 Cr LJ 143 : AIR 2005 SC 128 [LNIND 2004 SC 1142] : (2005) 1 SCC 237 [LNIND 2004 SC 1142] .

126. *Kiran Kumar K Khanda v State of Maharashtra,* 2011 Cr LJ 2748 (Bom).

127. *Aditya Yadav v State,* 2013 Cr LJ 3352 (Bom).

128. *Ashu Mondal v State of WB,* 2013 Cr LJ 715 (Cal); *Tej Pratap Singh v State,* 2012 Cr LJ 486 (Del).

129. *Golo Mandla Ram Rao v State of Jharkhand*, 2004 Cr LJ 1738 : 2004 AIR Jhar HCR 453.

130. *Mehboob Ali v State of Rajasthan,* 2015 (4) Crimes 357 (SC) : (2016) 14 SCC 640 [LNIND 2015 SC 630] .

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of Currency-Notes and Bank-Notes

[s 489C] Possession of forged or counterfeit currency-notes or bank-notes.

[Whoever has in his possession any forged or counterfeit currency-note or banknote, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.]

COMMENT.—

The ingredients which are required to constitute an offence under section 489C are as follows:

(1) The note in question is a currency-note or bank-note;

(2) Such note was forged or counterfeited;

(3) The accused was in possession of the currency-note or bank-note;

(4) The accused intended to use the same as genuine;

(5) The accused knew or had reason to believe the note to be forged.[131.]

This section resembles sections 242, 243 and 257. It deals with possession of a forged or counterfeit currency-note or banknote. The mere possession of a forged note is not an offence. It is not only necessary to prove that the accused was in possession of the forged note; but it should be further established that (1) at the time of this possession he knew the note to be forged or had reason to believe it to be so, and (2) he intended to use it as genuine. The onus lies on the prosecution to prove circumstances which lead clearly, indubitably and irresistibly to the inference that the accused had the intention to foist the notes on the public.[132.] Possession and knowledge that the currency-notes in question were counterfeit are both necessary. The section is not confined to Indian currency-notes alone.[133.] Possession of a large number of counterfeit currency-notes may itself justify drawing up of a presumption that the intention of the accused was to use them as genuine or that they may be used as genuine within the meaning of section 489C, IPC, 1860. Thus, where the accused led the searching officer to his Press premises and after digging the floor of it brought out a box containing many bundles of counterfeit currency-notes or where he produced 20 bundles of counterfeit currency-notes from his sachet, it was held an offence under section 489C, IPC, was made out.[134.] This is, however, not to say that such a presumption can always be drawn from the mere fact of possession of a large bundle of counterfeit currency-notes by the accused. Thus, where the accused while trying to alter a two-rupee counterfeit note was caught and on search of his person 99 more such counterfeit notes were recovered but the accused claimed in course of his

examination that he got these notes by selling three quintals of tamarind to an unknown person and that he had no knowledge that they were counterfeit till his interrogation by the police and the notes too were not of such description that a mere look at them will convince anyone that they were counterfeit, it was held that the accused could not be convicted under sections 389B and 389C, IPC, in the absence of any evidence or circumstance showing that he had knowledge that the notes were counterfeit notes. In this case the accused was not even asked in his examination under section 342, Cr PC, 1973 (now section 313) if he knew the notes to be counterfeit.[135.]

In *Umashankar v State of Chhatisgarh*,[136.] the Supreme Court examined the facts of the case and principle involved therein as follows:[137.]

A perusal of the provisions, shows that *mens rea* of offences under Section 489B and 489C is, "knowing or having reasons to believe the currency-notes or bank-notes are forged or counterfeit". Without the afore-mentioned *mens rea,* selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency-notes or bank-notes is not enough to constitute offence under Section 489B of IPC. So also possessing or even intending to use any forged or counterfeit currency-notes or bank-notes is not sufficient to make out a case under Section 489C in the absence of *mens rea,* noted above. No material is brought on record by the prosecution to show that the appellant had the requisite *mens rea.* The High Court, however, completely missed this aspect. The learned trial Judge on the basis of the evidence of [some prosecution witnesses] that they were able to make out that currency note alleged to have been given to [one of them] was fake "presumed" such a *mens rea.* On the date of the incident, the appellant was said to be 18 years old student. On the facts of this case the presumption drawn by the trial Court is not warranted under Section 4 of the Evidence Act. Further, it is also not shown that any specific question with regard to the currency-notes being fake or counterfeit was put to the appellant in his examination under Section 313 of the Criminal Procedure Code. On these facts, we have no option but to hold that the charges framed under Sections 489B and 489C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489B and 489C of IPC and acquit him of the said charges.[138.]

[s 489C.1] Burden of proof.—

In order to uphold conviction under section 489C of IPC, 1860, intention to use counterfeit currency-notes as genuine, is also to be proved beyond reasonable doubt. Since the burden lies on the prosecution to prove the possession, knowledge and intention to use the currency-notes, it is also burden of the prosecution to establish the circumstances which lead clearly and irresistibly to the inference that the accused had intention to pass the currency-notes to the public. When a large number of counterfeit notes are recovered from the accused, in absence of any reasonable explanation tendered by the accused, this case must give rise to the presumption that possession of such notes was for trafficking in currency-notes. That presumption, no doubt, is a presumption of fact, which can be drawn from the circumstances of the case. The fact that the accused was found in possession of a large number of notes gives rise to inference that it might be used as genuine.[139.]

131. *Panna Lal Gupta v State of Sikkim,* 2010 Cr LJ 825 (Sik); See also *Karunakaran Nadar v State of Kerala,* 2000 Cr LJ 3748 (Ker).

132. *Bur Singh,* (1930) 11 Lah 555. *Md Amir Hussain v State of Assam,* 2010 Cr LJ 4201 [Gau].

133. *K Hashim v State of TN,* 2005 Cr LJ 143 : AIR 2005 SC 128 [LNIND 2004 SC 1142] : (2005) 1 SCC 237 [LNIND 2004 SC 1142] .

134. *State of Karnataka v KS Ramdas,* 1976 Cr LJ 228 (Kant). See also *Ashu Mondal v State of WB,* 2013 Cr LJ 715 (Cal), recovery of large number of counterfeit notes gives rise to presumption that possession was for trafficking in currency notes. Conviction under section 489C upheld. *Chuwan Suba v State of Sikkim,* 2013 Cr LJ 2135 (Sik), conviction was held improper since the disclosure statement is found not voluntary. *Tej Pratap Singh v State,* 2012 Cr LJ 486 (Del), difference in number of currency, held not material, conviction was held proper. *Prabhakar Narayan Patlola v State of Maharashtra,* 2011 Cr LJ 738 (Bom); *Kurukshetra Sena v State of Chhattisgarh,* 2011 Cr LJ 2493 ; *Inthiyas Ahmed v State,* 2011 Cr LJ 4802 (Kant), prosecution has not proved that the notes seized from the possession of the accused were the same notes which were subjected for examination and further that on examination they were found to be counterfeit notes. Accused acquitted.

135. *M Mammutti v State of Karnataka,* 1979 Cr LJ 1383 (SC). **Followed** in *Mohan Lal Sarma v State of WP*, 1990 Cr LJ 215 (Cal), where the court added that mere possession does not shift the burden to the accused. The prosecution has to prove the presence of the type of *mens rea* required by these sections. *Vijayan v State of Kerala,* 2002 Cr LJ 187 (Ker), the informant stated that even at first blush he was convinced that the notes in the possession of the accused were counterfeit as there was difference in colour. The accused held liable under the section. *Abdul Majeed v State of Maharashtra,* 2002 Cr LJ 720 (Bom), the notes in question did not carry any sign of being counterfeit, the accused was an ordinary person, mere possession by him did not create a presumption of guilty knowledge. *Mohammed Yasin v State of UP,* 1997 Cr LJ 3188 (All), a note of which two parts were pasted together was presented to a shopkeeper. He suspected genuineness and consulted another shopkeeper for guidance. Counterfeiting was so tactful that the accused could not detect it. He did not run away. He remained at the shop till police arrived. He had no other note. Ingredients of the offence not made out.

136. *Umashankar v State of Chhatisgarh*, AIR 2001 SC 3074 [LNIND 2001 SC 2237] : 2001 Cr LJ 4696 .

137. *Ibid* at p 3075.

138. Citing *M Mammutti v State of Karnataka,* AIR 1979 SC 1705 [LNIND 1979 SC 125] : 1979 Cr LJ 1383 .

139. *Ashu Mondal v State of WB,* 2013 Cr LJ 715 (Cal).

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of Currency-Notes and Bank-Notes

[s 489D] Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.

[Whoever makes, or performs, any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with [140].[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.]

COMMENT.—

This section is analogous to sections 233, 234, 256, 257 and 485.

Where there is no evidence to show that the printing machine found on the land of the accused had any connection with the printing of the counterfeit notes found in the possession of the accused, he could not be held guilty under section 489, IPC, 1860.[141] It is not necessary that the machinery for counterfeiting found in possession of the accused should be the whole set required for counterfeiting.[142]

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140. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

141. *State of Karnataka v Ramdas, Supra*.

142. *K Hashim v State of TN,* 2005 Cr LJ 143 : AIR 2005 SC 128 [LNIND 2004 SC 1142] : (2005) 1 SCC 237 [LNIND 2004 SC 1142] .

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of Currency-Notes and Bank-Notes

[s 489E] Making or using documents resembling currency-notes or bank-notes.

(1) [Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note shall be punished with fine which may extend to one hundred rupees.

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose to a police-officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that person caused the document to be made.]

COMMENT.—

This section was introduced by Act VI of 1943 because photo prints and other reproductions of currency-notes and banknotes, though printed for innocent purposes, had passed into circulation in a number of cases and it was considered undesirable that in a country like India with a large mass of illiterate and ignorant persons such reproductions should be permitted to go unchecked before they menaced the safety of the currency.

While the counterfeiting of any currency-note or banknote constituted a criminal offence under section 489A read with section 28, there was no legal provision prohibiting the reproduction, or the production of imitations, of currency-notes and banknotes for such purposes as advertisement and the like where there was no intention to practise deception on any one, nor even a knowledge that deception was likely to be practised with the help of imitations.[143.] There is no material on the record to show that the xerox machine, the voltage stabiliser, the blank papers and the paper containing some impression of the Indian currency-note belonged to the convict. Mere fact that they were seized is not enough. Therefore, the question of the convict becoming liable for possession of the aforesaid articles does not arise.[144.]

143. *Statement of Objects and Reasons, Gaz of India*, 1943, Part V, p 56, dated 10 February 1943.

144. *Roney Dubey v State of WB*, 2007 Cr LJ 4577 (Cal).

THE INDIAN PENAL CODE

CHAPTER XIX OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

The authors of the Code observe:

We agree with the great body of Jurists in thinking that in general a mere breach of contract ought not to be an offence but only to be the subject of a civil action.

To this general rule there are, however, some exceptions. Some breaches of contract are very likely to cause evil such as no damages or only very high damages can repair, and are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. Such breaches of contract are, we conceive, proper subjects for penal Legislation.[1.]

[s 490] *[Repealed]*

[2.][* * *].

1. The Works of Lord Macaulay - Note P.
2. Omitted by Act 3 of 1925.

THE INDIAN PENAL CODE

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[s 491] Breach of contract to attend on and supply wants of helpless person.

Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

COMMENT.—

Object.—The authors of the Code say:

> We also think that persons who contract to take care of infants of the sick and of the helpless, lay themselves under an obligation of a very peculiar kind, and may with propriety be punished if they omit to discharge their duty. The misery and distress which their neglect may cause is such as the largest pecuniary payment would not repair; they generally come from the lower ranks of life, and would be unable to pay anything. We, therefore, propose to add to this class of contracts the sanction of the penal law.[3.]

[s 491.1] Ingredients.—This section requires:—

1. Binding of a person by a lawful contract.
2. Such contract must be to attend on or to supply the wants of a person who is helpless or incapable of providing for his own safety or of supplying his own wants by reason of
   - (i) youth; or
   - (ii) unsoundness of mind; or
   - (iii) disease; or
   - (iv) bodily weakness.
3. Voluntary omission to perform the contract by the person bound by it.

Under this section it is not the breach of contract towards the other party to the contract that is to be regarded, but the breach of the legal obligation towards the

incapable person, which had been accepted and transferred by the contract.

[s 491.2] Ordinary servants do not come within this section.—

The accused, a cook, on a morning whilst the complainant's wife was ill and unable to supply her wants, left his service without warning or permission. It was alleged that the illness of the complainant's wife was aggravated thereby. It was held that the accused was engaged only as an ordinary cook to a family, and was not bound to attend on, or to supply the wants of, any helpless person, and that, therefore, this section did not apply.[4.]

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1. The Works of Lord Macaulay - Note P.
3. The Works of Lord Macaulay - Note P.
4. *Vithu*, (1892) (Unrep) CrC 608.

THE INDIAN PENAL CODE

CHAPTER XIX OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

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We agree with the great body of Jurists in thinking that in general a mere breach of contract ought not to be an offence but only to be the subject of a civil action.

To this general rule there are, however, some exceptions. Some breaches of contract are very likely to cause evil such as no damages or only very high damages can repair, and are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. Such breaches of contract are, we conceive, proper subjects for penal Legislation.[1.]

[s 492] *[Repealed]*

[5.][* * *].

1. The Works of Lord Macaulay - Note P.
5. Omitted by Act 3 of 1925.

THE INDIAN PENAL CODE

CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

[s 493] Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

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.

COMMENT.—

Upon perusal of section 493 of the IPC, 1860 to establish that a person has committed an offence under the said section, it must be established that a person had deceitfully induced a belief to a woman, who is not lawfully married to him, that she is a lawfully married wife of that person and thereupon she should cohabit or should have had sexual intercourse with that person. Looking at the afore-stated section, it is clear that the accused must induce a woman, who is not lawfully married to him, to believe that he is married to her and as a result of the afore-stated representation, the woman should believe that she was lawfully married to him and there should be cohabitation or sexual intercourse as a result of the deception. The essence of an offence under section 493 IPC, 1860 is, therefore, practice of deception by a man on a woman as a consequence of which the woman is led to believe that she is lawfully married to him although she is not and then make her cohabit with him.[1.] The offence under this section may also be punished as rape under section 375, clause (4).[2.]

[s 493.1] Ingredients.—

The section contains two ingredients:—

(1) Deceit causing a false belief in the existence of a lawful marriage.

(2) Cohabitation or sexual intercourse with the person causing such belief.

[s 493.2] Proof of marriage.—

Section 493 IPC, 1860 do not presuppose a marriage between the accused and the victim necessarily by following a ritual or marriage by customary ceremony. What has been clearly laid down and emphasised is that there should be an inducement of belief in the woman that she is lawfully married to the accused/ appellant and the inducement of belief of a lawful marriage cannot be interpreted so as to mean or infer that the marriage necessarily had to be in accordance with any custom or ritual or under the Special Marriage Act, 1954. If the evidence on record indicate inducement of a belief in any manner in the woman which cannot possibly be enlisted but from which it can reasonably be inferred by ordinary prudence that she is a lawfully married wife of the man accused of an offence under section 493 IPC, 1860 the same will have to be treated as sufficient material to bring home the guilt under section 493 IPC, 1860.

Interpretation of the section in any other manner including an assertion that the marriage should have been performed by customary rituals or in similar manner only in order to establish that a belief of marriage had been induced, is bound to frustrate the very object and purpose of the provision for which it has been incorporated in the IPC, 1860 which is clearly to prevent the deceitful act of a man inducing the belief of a lawful marriage for the purpose of cohabitation merely to satisfy his lust for sexual pleasure.[3.]

Where a man and woman exchanged garlands, the man promising to marry formally, and had sex as a result of which the woman became pregnant, it was held that the exchange of garlands did not amount to falsely inducing the woman to believe that she was married to the man. Section 493 was not attracted.[4.] Where a woman married a man with full knowledge that he was already a married man and there was no proof that the man falsely induced her to believe anything, it was held that the ingredients of the offence under section 493 were not made out.[5.]

[s 493.3] Rape and section 493.—

In a case, the complainant made the allegation of fraud played by the petitioner by suppressing the fact of earlier marriage and the alleged physical relationship were under a belief that she was a legally wedded wife of the petitioner. The Court held that a bare perusal of provision of sections 493 and 495 of IPC, 1860 shows that the bodily relationship or sexual intercourse by a husband with his second wife falls under the category of offence under sections 493 and 495 of IPC, 1860 and it cannot be treated as rape as defined in section 375 of IPC, 1860. It is an independent offence, the cognizance of which can be taken by the Court on the basis of complaint filed by the complainant herself, therefore, the offence punishable under section 376 of IPC, 1860 is not made out as the alleged act of sexual intercourse by the petitioner with the complainant may fall within the category of sections 493 and 495 of IPC, 1860 but not in the category of rape as defined in section 375 of IPC, 1860 and made punishable under section 376 of IPC; therefore, the cognizance of section 376 of IPC, 1860 is against the settled principles of law.[6.]

[s 493.4] Cohabitation during the operation of divorce decree, set aside later.—

The fact that the marriage between the appellant and the respondent was dissolved by an *ex parte* decree and while that order was in force, the respondent husband continued sexual relationship with the appellant, until he married another woman. Subsequently the *ex parte* decree was set aside by the Court. The Supreme Court held that the allegation that there was deception on the part of the husband for having sexual relationship and that constituted an offence under section 493 of IPC, 1860 would not arise for the reason that there was subsistence of valid marriage during this period as the *ex parte* decree was set aside later.[7.]

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1. *Ram Chandra Bhagat v State of Jharkhand,* 2013 (1) SCC 562 [LNIND 2010 SC 1138] .

2. *Kartick Kundu,* 1967 Cr LJ 1411 (Cal). *Sammun v State of MP,* 1988 Cr LJ 498 (MP) where the court added that the accused promising to marry the woman and passing her to others as his wife does not come under this section. *Moideenkutty Haji v Kunhikoya,* 1987 Cr LJ 1106 (Ker—FB), a woman, who knows that the man whom she is permitting sex is not married to him, cannot have recourse to this section to punish him.

3. *Ram Chandra Bhagat v State of Jharkhand,* 2013 (1) SCC 562 [LNIND 2010 SC 1138] . The three-Judge Bench accepted the view of Gyan Sudha Mishra J, in the referral order.

4. *Amruta Gadtia v Trilochan Pradhan,* 1993 Cr LJ 1022 (Ori).

5. *Saurava Barik v Gouri Kaudi,* 1994 Cr LJ 440 . The court **referred** to *Raghunath Padhy v State,* AIR 1954 Ori. 198 [LNIND 1954 ORI 28] . *Akhaya Kumar v State or Orissa,* 1998 Cr LJ 1757 (Ori), the accused and prosecutrix were in love with each other for several years. The accused married another and still continued to cohabit with the prosecutrix on false pretences of marrying her. The prosecutrix was aware of this fact. Hence, there was no deception. Framing of charge against the accused was not proper. *Mana Begum v Jula Mohd,* 1998 Cr LJ 3244 (Ori), evidence of the victim that the accused on promise to marry her had sex with her. The court said that ingredients of the offence under s 493 were not made out.

6. *Mahesh Kumar Dhawan v State of MP,* 2012 Cr LJ 1639 .

7. *Ravinder Kaur v Anil Kumar,* AIR 2015 SC 2447 [LNIND 2015 SC 268] : (2015) 8 SCC 286 [LNIND 2015 SC 268] .

THE INDIAN PENAL CODE

CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

[s 494] Marrying again during lifetime of husband or wife.

Whoever, having a husband or wife living, marries [1] in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, [2] shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception[3].—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.

State Amendment

Andhra Pradesh.—*In A.P. the offence is cognizable, non-bailable, triable by the Magistrate of the first class and non-compoundable vide A.P. Act No. 3 of 1992, Section 2 (w.e.f. 15-2-1992).*

COMMENT.—

This section punishes the offence known to the English law as bigamy.

[s 494.1] Scope.—

The section does not apply to Mohammedan males, who are allowed to marry more than one wife, but it applies to Mohammedan females, and to Hindus, Christians[8.] and Parsis[9.] of either sex.

[s 494.2] Ingredients.—

Section 494, IPC, 1860, *inter alia*, requires the following ingredients to be satisfied, namely,

(i) the accused must have contracted first marriage;

(ii) he must have married again;

(iii) the first marriage must be subsisting; and

(iv) the spouse must be living.[10.]

1. 'Having a husband or wife living, marries, etc'.—The validity of a marriage in the case of Mohammedans and Jews will be determined in accordance with their religious usages: in the case of Native Christians, by Act XV of 1872, in the case of Parsis, by Act III of 1936; and in the case of Hindus, Buddhists, Sikhs and Jains, by Act XXV of 1955. The validity of a marriage solemnised under the Special Marriage Act, 1954 will be determined by its provisions.[11.]

There must be at the time of the second marriage a previous valid and subsisting marriage.[12.] If the first marriage is not a valid marriage, no offence is committed by contracting a second marriage.[13.]

Divorce dissolves a valid marriage, and the parties obtaining such dissolution can re-marry.[14.]

A Mohammedan woman marrying within the period of her *iddat* (the period of four months which a divorced wife was to observe after divorce before re-marrying) is not guilty of bigamy.[15.]

[s 494.3] Second marriage under Special Marriage Act, 1954.—

SI Jafri J, of the Allahabad High Court observed:[16.]

> Notwithstanding the fact that the personal law permits a muslim male to contract four marriages, if a second marriage is contracted under the Special Marriage Act 1954 *vis-a-vis* the fact that he has a legally wedded wife who has been married to him under the Mohammedan law, s. 494 has to claw at the erring male … Mohammedan law does not take preference over Special Marriage Act 1954 … There being no saving clause for the applicant to purge him of the charges u/s. 494 …, the applicant is liable to be punished under [this section].

2. 'Marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife'.—The Supreme Court has observed that *prima facie*, the expression "whoever marries" must mean "whoever marries validly" or "whoever … marries and whose marriage is a valid one". If the marriage is not a valid one according to the law applicable to the parties no question of its being void by reason of its taking place during the life of the wife or the husband of the person arises. If the marriage is not a valid marriage, it is no marriage in the eyes of the law.[17.] The Supreme Court in another case had held that in a bigamy case, the second marriage as a fact, that is to say, the essential ceremonies constituting it, must be proved.[18.] Admission of marriage by the accused is not evidence of it for the purposes of proving marriage in an adultery or bigamy case.[19.] Thus, where the second Hindu marriage was not proved by showing *saptapadi* and *homam*, the mere production of a marriage certificate under section 16 of the Special Marriage Act, 1954 would not be sufficient to prove that the second marriage was performed validly by performing all the essential ceremonies of a valid marriage. The mere fact of subsequent registration of the second marriage does not prove the validity of second marriage.[20.] Merely because the second marriage even if performed by performing all the essential ceremonies turns out to be void by virtue of section 17 of the Hindu Marriage Act, 1955, it cannot be said that section 494, IPC, 1860 will not be attracted.[21.] If the second marriage was not proved to have been validly performed by observing essential ceremonies and customs in the community, the conviction under section 494, IPC, 1860 could not be maintained.[22.] Perhaps the Courts in India were obliged to take the view they have taken because of the word "solemnised" occurring in section 17 of the Hindu Marriage Act, 1955 and the inhibition contained in the proviso to section 50 of the Indian Evidence Act, 1972 which forbids taking into consideration even the opinion of a person with special means of

knowledge to show that the two persons were always received and treated as husband and wife by their friends and relatives so far offences under sections 494, 495, etc., IPC, 1860 are concerned.[23.]

> Thus, if one deliberately keeps a small lacuna, e.g., instead of taking the seven steps (*saptapadi*), takes only six steps while celebrating the second marriage, one can easily avoid the penalty prescribed by these sections even though one virtually ruins the lives of two girls. If we are to effectively root out polygamy from this country, we must amend s. 494, IPC, and s. 17 of the Hindu Marriage Act, in such a way that anyone who goes through a form of marriage during the lifetime of his or her spouse will come within the mischief of the offence of bigamy. At the same time we should also delete from the proviso to s. 50 of the Indian Evidence Act, the last portion which says 'or in prosecutions u/s. 494, 495, 497 or 498 of the Indian Penal Code'. The National Committee on the Status of Women too made, more or less, similar recommendations in its report. It is also felt that ss. 493, 494, 495 and 496, IPC, which have an element of cheating in them and affect unsophisticated rural women more than women in urban areas should be made cognizable so that these poor women could get justice without being required to engage lawyers at their own cost.[24.]

The Courts are also changing their viewpoint. In *Indu Bhagya Natekar v Bhagya Pandurang Natekar*,[25.] it was held that it is not correct to say that in every case of bigamy, unless the second marriage can be proved by bringing in the evidence of the performance of ceremonies itself, a conviction under section 494 is virtually impossible. The accused can be convicted even if there is other reliable evidence to establish the charge.

Where in a particular community 'saptapadi' was not an essential ceremony, the provisions of section 7-A of the Hindu Marriage Act, 1955 applied and, therefore, the performance of other ceremonies prevalent in the community constituted a valid marriage.[26.]

Under the provisions of the Indian Christian Marriage Act (XV of 1872), the first accused, who was a Roman Catholic Indian Christian, married the complainant, who was a Protestant, in a Protestant Church, the ceremony being performed by a Protestant Pastor, and subsequently, after obtaining a release deed from her, he married the second accused in a Roman Catholic Church, the ceremony being performed by a Roman Catholic priest. It was held that the first accused had committed the offence of bigamy punishable under this section. The release deed executed by the complainant did not operate as a dissolution of the marriage between the first accused and herself. The marriage between the first accused and the complainant was a legal and valid marriage and, as it was subsisting when the first accused married the second accused, the marriage of the first accused with the second accused was void by reason of its taking place during the life of the complainant.[27.]

Good faith and mistake of law are no defences to a charge of bigamy.[28.]

[s 494.4] Conversion from Hinduism.—

A married Hindu person contracted second marriage after embracing Islam. The Supreme Court said that despite his conversion he was guilty of the offence under section 17 of the Hindu Marriage Act, 1955 read with section 494, IPC, 1860 since mere conversion did not automatically dissolve his first marriage.[29.] The Court followed its own decision in *Sarla Mudgal v UOI*,[30.] which was to the effect that a Hindu husband who had, after conversion to Islam, contracted a second marriage without dissolving his first marriage was guilty of the offence under section 494.

[s 494.5] *Ex parte* divorce.—

The accused husband entered into second marriage after obtaining *ex parte* divorce against his first wife. The Court said that he could not possibly be convicted under the section, even if the *ex parte* divorce is subsequently set aside. Criminal proceeding against the husband was quashed, it being only an exercise in futility.[31.]

[s 494.6] Custom of second marriage in the community.—

A person was not allowed to be prosecuted under the section because of a custom in the community. The parties belonged to a scheduled tribe. Their marriage was governed by the customs and usages applicable to the tribe. There was no allegation in the complaint nor a proof of it that there was a custom of monogamy in the community.[32.]

3. Exception.—The Exception lays down three conditions:—

1. Continual absence of one of the parties for the space of seven years;

2. The absent spouse not having been heard of by the other party as being alive within that time; and

3. The party marrying must inform the person with whom he or she marries of the above fact.

[s 494.7] *Locus standi* to file complaint.—

According to section 198 of Cr PC, 1973, no Court shall take cognizance of an offence punishable under Chapter XX of the IPC (45 of 1860) except upon a complaint made by some person aggrieved by the offence. Where the person aggrieved by an offence punishable under sections 494 or 495 of the IPC (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, (with the leave of the Court) or by any other person related to her by blood, marriage or adoption.

[s 494.8] Complaint by Second wife.—

Section 494 is intended to achieve laudable object of monogamy. This object can be achieved only by expanding the meaning of the phrase "aggrieved person". Having regard to the scope, purpose, context and object of enacting section 494 IPC, 1860 and also the prevailing practices in the society sought to be curbed by section 494 IPC, 1860 there is no manner of doubt that the second wife should be an aggrieved person. Until the declaration contemplated by section 11 of the Hindu Marriage Act, 1955 is made by a competent Court, the woman with whom second marriage is solemnised continues to be the wife within the meaning of s 494 IPC and would be entitled to maintain a complaint against her husband.[33.]

[s 494.9] Police report.—

In the case of *Ushaben v Kishorbhai Chunilal Talpada*[34.],[35.] taking note of sub-section (4) of section 155, Cr PC, 1973 the Apex Court held that if a complaint contains the allegation about commission of offences both under section 498-A of the IPC, 1860 as well as section 494 of the IPC, 1860 the Court can take cognizance thereof even on a police report. The bar under section 198 would not be applicable as complaint lodged before police for offence under section 494 IPC, 1860 also related to other cognizable offences and if police files a charge-sheet, the Court can take cognizance also of offence under section 494 along with other cognizable offences by virtue of section 155(4) of the Cr PC, 1973.[36.]

[s 494.10] Jurisdiction.—

According to section 182(2) of the Cr PC, 1973 any offence punishable under sections 494 or 495 of the IPC (45 of 1860), may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage or the wife by the first marriage has taken up permanent residence after the commission of the offence.[37.]

[s 494.11] Divorce in foreign country.—

The marriage of the accused with the complainant was dissolved by a decree of divorce granted by a District Court in Sweden. The marriage of the accused with another lady after expiry of the period of appeal was held to be not an offence under the section.[38.]

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8. Act XV of 1872.
9. Act III of 1936.
10. *Pashaura Singh v State of Punjab,* AIR 2010 SC 922 [LNIND 2009 SC 1988] : 2010 Cr LJ 875 (SC).
11. Act XLIII of 1954.
12. *Padi v State*, AIR 1963 HP 16 [LNIND 1962 HP 8] .
13. *Chadwick*, (1847) 11 QB 173 , 205.
14. Where without granting divorce the court passed orders relieving the physically weak wife from the burden of the husband's sex demands and at the request of the wife permitted him to take another wife; that was held to be wrong. *Santosh Kumari v Surjit Singh,* AIR 1990 HP 77 [LNIND 1989 HP 19] : 1990 Cr LJ 1012 .
15. *Abdul Ghani v Azizul Huq,* (1911) 39 Cal 409 .
16. *Anwar Ahmed v State of UP,* 1991 Cr LJ 717 at 719. *Radhika Sameena v SHO Habeebnagar PS,* 1997 Cr LJ 1655 (AP), a Muslim entered into second marriage under the Special Marriage Act, 1954. He was liable to be prosecuted for the offence of bigamy.

17. *Bhaurao,* (1965) 67 Bom LR 423 (SC). For a critical examination of such cases, see MP Singh, *Bigamy* : *A Conjecture for Deconstruction*, (1988) 30 J ILI 225.

18. Proof must be by cogent evidence. The mere fact of living together as husband and wife or of some letters on the point would not do. Religious ceremony of *saptapadi* also not proved. *Revanasiddaswamy HM v State of Karnataka,* 1990 Cr LJ 1001 (Kant), no specific allegation that saptapadi was not required in the community. Second marriage not proved. *Santi Deb Berma v Kanchan Prava Devi,* AIR 1991 SC 816 : 1991 Cr LJ 660 .

19. *Kanwal Ram,* AIR 1966 SC 614 [LNIND 1965 SC 198] .

20. *Baby Kar v Ram Rati,* 1975 Cr LJ 836 (Cal); see also *Chandra Bahadur,* 1978 Cr LJ 942 (Sikkim).

21. *Gopal Lal v State of Rajasthan*, 1979 Cr LJ 652 (SC).

22. *L Obulamma,* 1979 Cr LJ 849 (SC). Acting upon these cases in *Kashiram v Somvati,* 1992 Cr LJ 760 , the MP High Court found evidence of second formally valid marriage, but the earlier one was performed while the accused was a child, lesser sentence was awarded and the parents who arranged the second marriage were not awarded jail term **citing**, *Bhunda Sukru v Chetram,* 1976 MPLJ 600 [LNIND 1975 MP 112] : 1977 Cr LJ 134 ; and *Priya Bala v Suresh Chandra,* AIR 1971 SC 1153 [LNIND 1971 SC 163] : 1971 Cr LJ 939 . Where the second marriage was performed according to the Arya Samaj Custom and it was pleaded that accordingly only three and a half-rounds of sacred fire were enough to complete the marriage, it was held that without *saptapadi* the marriage was not complete; *Urmila v State of UP,* 1994 Cr LJ 2910 (All). Where there was no proof of performance of necessary ceremonies in the second marriage, it was held that conviction for bigamy was not permissible and the accused could not be punished for attempt to commit bigamy, *Subir Kumar Kundu v State of WB,* 1992 Cr LJ 1502 (Cal). *D Vijyalakhsmi v D Sanjeeva Reddy,* 2001 Cr LJ 1583 , the first and second marriages should be proved to have been performed according to the legal or customary requirements applicable to the caste or community. The Andhra Pradesh State Amendment which has been approved by the President and which makes the offence cognizable would prevail over the Central Legislation in case of conflict. *P Satyanarayana v P Mallaiah,* 1997 Cr LJ 211 : (1996) 6 SCC 122 , the husband admitted second marriage after 10 years of desertion by his wife. The court said that the prosecution was not absolved of its burden of proving that the second wife was taken after solemnising due ceremonies of Hindu marriage. *Manju Ram Kalita v State of Assam,* (2009) 13 SCC 330 [LNIND 2009 SC 1363] , concurrent finding of three courts below of the existence of second marriage, the Supreme Court refused to interfere in such finding at the fourth place, and also not in the punishment awarded. *Purandar Sahoo v Golapi Sahoo,* (2007) 15 SCC 696 , disputes between man and wife, the latter left and lived with parents for 14 years, complaint of second marriage by the husband about four years ago from the date of complaint, prosecution not successful because neither there was any good proof of a second marriage, nor any explanation of four years' silence. *Manju Ram Kalita v State of Assam,* (2009) 13 SCC 330 [LNIND 2009 SC 1363] , petty quarrels could not be termed as "cruelty".

23. R Deb, *Offences Against Women*, 1985 Cr LJ, Journal portion, pp 9–16 (at p 11).

24. *Ibid*.

25. *Indu Bhagya Natekar v Bhagya Pandurang Natekar*, 1992 Cr LJ 601 (Bom).

26. *S Nagalingam v Sivagami,* AIR 2001 SC 3576 [LNIND 2001 SC 1898] , the accused being already a married man at the time he was convicted of the offence under the section. The matter was **remanded** to the trial court for proper punishment. *Manju Devi v State of Bihar,* 2000 Cr LJ 3382 (Pat), mere exchange of garlands could not take the place of a ceremony unless there was a custom to that effect. *Manjula v Mani,* 1998 Cr LJ 3244 (Ori), first marriage subsisting, second marriage proved by witnesses and entries in the marriage register under the

Hindu Marriage Act, 1955. Those who came to bless the second marriage were not held to be guilty of abetment. The court also said that solemnisation of second marriage in accordance with applicable ceremonies is not necessary for conviction, viz., section 7A of the Hindu Marriage Act, 1955. *Yelamanchali Nageswari v Venkata Prasada Rao,* 1998 Cr LJ 4128 (AP), admission of second marriage by the accused in the application for mutual divorce was not considered to be sufficient unless there was evidence of ceremonies or some other legally sanctioned form. See also, *Bhagwan Swaroop Srivastava v Asha Srivastava,* 1998 Cr LJ 265 (Raj); *Sutesh Kurnat v State of Rajasthan,* 1998 Cr LJ 601 (Raj); *Elango S v S Ravindran,* 1998 Cr LJ 3095 (Mad); *Sham Singh v Satabjit Kaur,* Cr LJ 4788 (P&H).

27. *Gnanasoundari v Nallathambi,* (1946) Mad 367. *Prasanna Kumar v Dhanalaxmi,* 1989 Cr LJ 1829 (Mad), where the date, place and form of second marriage were not given, nor witnesses indicated, complaint not good. *B Chandra Manikyamma v B Sudarasna Rao,* 1988 Cr LJ 1849 (AP), second marriage must be strictly proved. Converting into another faith for show off and solemnising a marriage under that faith, no second marriage is valid in law.

28. *Narantakath v Parakkal,* (1922) 45 Mad 986; *Abdul Ghani v Azizul Hiq,* (1911) 39 Cal 409 , dissented from. *Gomathi v Vijayaraghavan,* (1995) 1 Cr LJ 81 (Mad), the court did not order blood test of a child alleged to be from second wife for the purpose of proving a bigamous marriage. The mere birth of a child does not bring about a ceremonised marriage.

29. *Lily Thomas v UOI,* AIR 2000 SC 1650 [LNIND 2000 SC 827] : 2000 Cr LJ 2433 .

30. *Sarla Mudgal v UOI,* AIR 1995 SC 1531 [LNIND 1995 SC 661] : 1995 AIR SCW 2326 : 1995 Cr LJ 2926 : (1995) 3 SCC 635 [LNIND 1995 SC 661] .

31. *Krishna Gopal Divedi v Prabha Divedi,* AIR 2002 SC 389 [LNIND 2002 SC 142] .

32. *Surajmani Stella Kujur (Dr) v Durga Charan Hansdah,* AIR 2001 SC 938 [LNIND 2001 SC 412] .

33. *A Subhash Babu v State of AP,* AIR 2011 SC 3031 [LNIND 2011 SC 679] : 2011 (7) SCC 616 [LNIND 2011 SC 679] ; *Babu Ram Saini v State of Uttaranchal,* 2013 Cr LJ 1896 (Utt).

34. *Also see Pintu Alias Sujit Kumar Giri v State Of Orissa,* 2013 Cr LJ 2099 (Ori).

35. *Ushaben v Kishorbhai Chunilal Talpada*, (2012) 6 SCC 353 [LNINDU 2012 SC 25] : 2012 Cr LJ 2234 .

36. *A Subhash Babu v State of AP,* AIR 2011 SC 3031 [LNIND 2011 SC 679] : 2011 (7) SCC 616 [LNIND 2011 SC 679] ; *Victor Auxilium v State,* 2008 Cr LJ 774 (Mad).

37. *Azad @Naresh Kr Azad v State of Bihar,* 2012 (2) Crimes 652 [LNIND 2012 PAT 329] (Pat).

38. *T Venkateswarlu v State of AP,* 1999 Cr LJ 39 (AP).

THE INDIAN PENAL CODE

CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

[s 495] Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

State Amendment

Andhra Pradesh.— *The offence is cognizable, non-bailable, triable by the Magistrate of the first class and non-compoundable vide A.P. Act No. 3 of 1992, Section 2 (w.e.f. 15-2-1992), in A.P.*

COMMENT.—

The offence mentioned in section 495 IPC, 1860 is extension of section 494 IPC, 1860 and also is an aggravated form of bigamy provided in section 494 IPC, 1860. The complainant (second wife) has adduced enough evidence to prove that the accused had concealed the fact of the former marriage by assuring her that he had taken divorce from his first wife and subsequently married her by performing the essential Hindu rites and ceremonies in accordance with section 7 of the Hindu Marriage Act, 1955. It is undisputed that accused first got married to Smt. Vijay Saini and thereafter to the complainant, as admission to this effect has been made by the accused himself in his statement under section 313 Cr PC, 1973. Accused was rightly convicted under section 495 IPC, 1860.[39.]

[s 495.1] Right to file complaint.—

Non-filing of the complaint under sections 494 or 495 IPC, 1860 by the first wife does not mean that the offence is wiped out. Even otherwise, the second wife suffers several legal wrongs and legal injuries and hence, complainant (second wife) was having every right to file the complaint under section 495 IPC, 1860.[40.]

A bare perusal of the provisions of sections 493 and 495 of IPC, 1860 shows that the bodily relationship or sexual intercourse by a husband with his second wife falls under the category of offence under sections 493 and 495 of IPC, 1860 and it cannot be treated as rape as defined in section 375 of IPC, 1860.[41.]

39. *Babu Ram Saini v State Of Uttaranchal,* 2013 Cr LJ 1896 (Utt).

40. *Babu Ram Saini v State Of Uttaranchal,* 2013 Cr LJ 1896 (Utt); *A Subhash Babu v State of AP,* AIR 2011 SC 3031 [LNIND 2011 SC 679] : 2011 (7) SCC 616 [LNIND 2011 SC 679] .

41. *Mahesh Kumar Dhawan v State of MP,* 2012 Cr LJ 1639 .

THE INDIAN PENAL CODE

CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

[s 496] Marriage ceremony fraudulently gone through without lawful marriage.

Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

State Amendment

Andhra Pradesh.— *The offence is cognizable, non-bailable, triable by the Magistrate of the first class and non-compoundable vide A.P. Act No. 3 of 1992, Section 2 (w.e.f. 15-2-1992), in A.P.*

COMMENT.—

This section punishes fraudulent or mock marriages.

It applies to cases in which a ceremony is gone through which would in no case constitute a marriage, and in which one of the parties is deceived by the other into the belief that it does constitute a marriage, or in which effect is sought to be given by the proceeding to some collateral fraudulent purpose. Where the ceremony gone through does, but for the previous marriage, constitutes a valid marriage, and both parties are aware of the circumstances of the previous marriage, s. 494 applies.[42.]

[s 496.1] Ingredients.—

The section requires two essentials:—

1. Dishonestly or with a fraudulent intention going through the ceremony of marriage.

2. Knowledge on the part of the person going through the ceremony that he is not thereby lawfully married.

[s 496.2] Sections 493 and 496.—

The two sections are somewhat alike: the difference appears to be that under section 493, deception is requisite on the part of the man, and cohabitation or sexual intercourse consequent on such deception. The offence under section 496 requires no deception, cohabitation, or sexual intercourse as a *sine qua non*, but a dishonest or fraudulent abuse of the marriage ceremony. In the latter case the offence can be committed by a man or woman, in the former, only by a man.

[s 496.3] Sections 494 and 496.—

An offence under section 494 is different from an offence under section 496, IPC, 1860. If the accused intends that there should be valid marriage and honestly goes through the necessary ceremonies during the lifetime of the other spouse, then it may be a case under section 494, IPC, 1860, but if the accused only intends that there should only be a show of marriage and dishonestly and fraudulently goes through the marriage ceremony knowing fully well that he is not legally married thereby, then it is an offence under section 496, IPC, 1860.[43.]

[s 496.4] CASE.—

Where the accused married for the second time during the pendency of special appeal against decree of divorce in violation of section 15 of the Hindu Marriage Act, 1955 but without concealing the fact of pendency of the appeal from the girl or her parents, no conviction could be entered under section 496, IPC, 1860 as the act of the accused was neither dishonest nor fraudulent.[44.]

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42. *Rama Sona,* (1873) Unrep Cr C 77.

43. *Kailash Singh,* 1982 Cr LJ 1005 (Raj).

44. *Ibid*. Where the second marriage is performed fraudulently, complaint can be made by the person so deceived, and not by the first regular wife. *Prasanna Kumar v Dhanalaxmi,* 1989 Cr LJ 1829 (Mad).

THE INDIAN PENAL CODE

CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

[s 497] Adultery.

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.

State Amendment

Andhra Pradesh.— *Punishment–Imprisonment for 5 years, or fine, or both–Non-cognizable, bailable triable by 1st class Magistrate and non-compoundable vide A.P. Act 3 of 1992, w.e.f. 15-2-1992.*

COMMENT.—

In *Joseph Shine v UOI*,[45.] a Constitution bench of the Supreme Court decriminalised adultery and held section 497 of the IPC, 1860 unconstitutional as violative of Articles 14 and 21 of the Constitution. Under section 397 a man who had sex with a married woman without getting her husband's permission could be charged and face punishment with imprisonment for a term up to five years, or with fine, or with both, if convicted. Before, it was struck down, the cognizance of the offence was limited to adultery committed with a married woman, and the male offender alone was made liable to punishment. Thus, under the Code, adultery was an offence committed by a third person against a husband in respect of his wife. A married man was not liable if had sexual intercourse with an unmarried woman, or with a widow, or even with a married woman whose husband consented to it.

> Prior to the judgment in *Joseph Shine case,* the Supreme Court in *Sowmithri Vishnu's* case[46.] had upheld the constitutional validity of section 497, IPC, 1860. In *Joseph Shine v UOI,* AIR 2018 SC 4898 , the Supreme Court observed that: Adultery is different from an offence committed under Section 498-A or any violation of the Protection of Women from Domestic Violence Act, 2005 or, for that matter, the protection conceived of under Section 125 of the Code of Criminal Procedure or Sections 306 or 304B or 494 IPC. These offences are meant to sub-serve various other purposes relating to a matrimonial relationship and extinction of life of a married woman during subsistence of marriage. Treating adultery an offence would tantamount to the State entering into a real private realm. The act, i.e., adultery does not fit into the concept of a crime. If it is treated as a crime, there would be immense intrusion into the extreme privacy of the matrimonial sphere. *It is better to be left as a ground for divorce.* For any other purpose as the Parliament has perceived or may, at any time, perceive, to treat it as a criminal offence will offend the two facets of Article 21 of the Constitution, namely, dignity of husband and wife, as the case may be, and the privacy attached to a relationship between the two.

45. *Joseph Shine v UOI*, AIR 2018 SC 4898 .

46. *Sowmithri Vishnu v UOI*, 1985 Cr LJ 1302 (SC) : AIR 1985 SC 1618 [LNIND 1985 SC 202] : (1985) Supp SCC 137 . Again **emphasised** in *V Revathi v UOI*, (1988) 2 SCC 72 [LNIND 1988 SC 20] : AIR 1988 SC 835 [LNIND 1988 SC 144] : (1988) 1 Ker LT 771 : (1988) 2 HLR 39 : (1988) 1 Punj LR 649 .

THE INDIAN PENAL CODE

CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

[s 498] Enticing or taking away or detaining with criminal intent a married woman.

Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, [1] shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

Under section 498, IPC, 1860 enticing or taking away a married woman with criminal intent is an offence. Entering or taking away somebody's wife for the purpose other than mentioned in section 498, IPC, 1860 does not constitute an offence. Therefore, in order to bring home guilt of a person under section 498, IPC, 1860, the prosecution has to prove that a married woman was enticed or taken away with an intention that she might have illicit intercourse with any person.[47.]

Sections 361 and 366 may be compared with this section, which may come into operation when the two former sections fail to apply, but only in respect of a married woman. This and the preceding sections are evidently intended for the protection of husbands, who alone can institute prosecutions for offences under them.

The gist of the offence under this section appears to be the deprivation of the husband of his custody and his proper control over his wife with the object of having illicit intercourse with her.[48.]

[s 498.1] Ingredients.—

The section requires three things:—

1. Taking or enticing away or concealing or detaining the wife of another man from that man or from any person having the care of her on behalf of that man.

2. Such taking, enticing, concealing or detaining, must be with intent that she may have illicit intercourse with any person.

3. Knowledge or reason to believe that the woman is the wife of another man.

[s 498.2] Sections 366 and 498.—

A comparison of the ingredients constituting an offence under sections 366 and 498 shows that though there are some ingredients which are common, but the ingredients for the offence under section 498 constitute of some of the very important particulars which are not in an offence under section 366, IPC, 1860. The additional ingredients of

section 498, IPC, 1860 namely, (i) that the woman said to have been taken away is the married wife of another man, and (ii) that the accused has taken her away with the knowledge that she is the wife of that person are not at all in the offence under section 366, IPC, 1860. Therefore, the offence under section 498 cannot be said to be a minor offence or an offence under section 366 within the meaning of the term used in section 222(2) of the Cr PC, 1973.[49.]

1. 'Detains with that intent any such woman'.—The word "detains" means "keeps back". The keeping back need not necessarily be by physical force, it may be by persuasion or by allurement and blandishment. The use of the word requires that there should be something in the nature of control or influence which can properly be described as a keeping back of the woman. To constitute detention proof of some kind of persuasion is necessary. It cannot properly be said that a man detains a woman if she has no desire to leave and on the contrary wishes to stay with him.[50.] The Supreme Court has held that the keeping back may be by force, but it need not be by force. It can be the result of persuasion, allurement or blandishment, which may either have caused the willingness of the woman, or may have encouraged, or co-operated with, her initial inclination to leave her husband.[51.]

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47. *Singana Naga Nooka Chakrarao v State of AP,* 2007 Cr LJ 3466 .

48. *Alamgir v State of Bihar,* (1959) Pat 334 : AIR 1959 SC 436 [LNIND 1958 SC 145] : 1959 Cr LJ 527 : (1959) 2 SCA 116 [LNIND 1958 SC 145] . *Natarajan v Ramanujam,* 1977 Cr LJ 389 (Mad), the main ingredient is enticing away married woman from her husband. Criminal intent on the part of the accused has to be proved. The consequence of not examining the material witness, the wife, led to acquittal of accused. No interference.

49. *Satya Narain v State of Bihar,* 1985 Cr LJ 747 (Pat).

50. *Prithi Missir v Harak Nath,* (1937) 1 Cal 166 .

51. *Alamgir,* (1959) Pat 334 : AIR 1959 SC 436 [LNIND 1958 SC 145] .

THE INDIAN PENAL CODE

[1][CHAPTER XX-A OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND

[s 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 purpose of this section, "cruelty" means—**

(a) any wilful 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.]

State Amendment

Andhra Pradesh.—In Andhra Pradesh, offence is compoundable.

COMMENT.—

This section has been introduced in the Code by the Criminal Law (Amendment) Act, 1983 (Act 46 of 1983) to combat the menace of dowry deaths. By the same Act section 113A has been added to the Indian Evidence Act, 1872 to raise a presumption regarding abetment of suicide by a married woman.

[s 498A.1] **Ingredients.—**

Ingredients of 498A of the Indian Penal Code (IPC), 1860 are:

a) The woman must be married;

b) She must be subjected to cruelty or harassment; and

c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.[2.]

If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognisable.[3.]

Concept of cruelty under section 498A IPC, 1860 and its effect under section 306 IPC, 1860 varies from individual to individual also depending upon the social and economic status to which such person belongs. The Supreme Court held that cruelty for the

purpose of offence and the said Section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty or harassment in a given case.[4.] Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life.[5.]

The usual and common domestic discord in any matrimonial home cannot amount to 'cruelty' within the meaning of section 498A of IPC, 1860.[6.] Assault on a woman offends her dignity. It is one thing to say that every wear and tear of married life need not lead to suicide and it is another thing to put it so crudely and suggest that one or two assaults on a woman is an accepted social norm. Judges have to be sensitive to women's problems. What effect it will have on a woman depends on facts and circumstances of each case. There cannot be any generalisation on this issue.[7.]

In a case before the Supreme Court[8.] involving the death by burning of a newly married woman, the circumstances did not establish either murder or an abetted suicide and thus the in-laws escaped the jaws of sections 300 and 306, but they were caught in the web of this newly-enacted section for prevention of harassment for dowry. Not to speak of the things they were persistently demanding from the girl's side, the fact that a large number of articles were taken back by her father after her death from her matrimonial abode, showed that there was pressure being exerted on in-laws and continued to be exerted till death for more money and articles. The Supreme Court observed in another case that this section has given a new dimension to the concept of cruelty for the purposes of matrimonial remedies and that the type of conduct described here would be relevant for proving cruelty.[9.] It is no impediment to a conviction under the section that the accused has been acquitted of the larger offence of murder under section 302. Where the charge was that of murdering wife for dowry and no evidence was available except this that the accused projected the theory of intruders killing her (which the Court did not believe) and did not immediately made police report or to get medical help for his injured wife, this was held to be not sufficient to convict him for murder. The harassment for dowry was established from his own conduct in deserting her and also through the mouth of the witnesses. That was held to be sufficient to convict him under section 498A.[10.]

Where after a spell of cruelty, the husband and wife reconciled and resumed joint life and it was found that the husband left the wife back with her parents for a short spell and then took her back and within two days informed her parents of her death, the wife made no complaint of cruelty, etc., during her short stay with parents, the section could not come into play because there was no complaint after reconciliation.[11.] The Court also added that sections 498A and 304B create distinct offences. "Cruelty" is common element to both. A person charged under section 304B can be convicted under section 498A without any charge under that section.

A married woman committed suicide by burning herself after pouring kerosene. In her dying declaration she said that her husband used to beat her after taking liquor and he used to borrow money from the villagers for the purpose. The Court said that this amounted to cruelty within the meaning of the section making the accused liable to be punished.[12.] When the accused mother-in-law, the husband and his brother harassed the married woman and did not permit her to go to her parents. The husband and his brother disposed her of by fire after pouring kerosene. They were punished under section 302. Their mother was punished under this section (section 498A).[13.]

Consequences of cruelty which was likely to drive a woman to commit suicide or to cause grave injury danger to life or limb or health, whether mental or physical, have to be shown for attracting the section.[14.]

[s 498A.2] ***Mens rea***.—

The requirement of proving that soon before her death the woman was subjected to cruelty or harassment by her husband or any relation of her husband for or in connection with any demand of dowry clearly shows that the legislation has imbibed the necessary *mens rea* for the offence of dowry death.[15.]

[s 498A.3] ***Actus reus***.—

The Supreme Court has observed that in-laws of a deceased cannot be roped in only on the ground of being the close relatives of the husband of the deceased. Some *overt act* must be attributed to them in the incident and the same should also be proved beyond reasonable doubt.[16.]

[s 498A.4] **Suicide note.—**

The suicide note of the deceased wife made serious castigation against her husband for being an addict to some kind of narcotic drug. Serious allegations were also made against the mother-in-law. Allegations against the accused sister-in-law were not grave. But in no case there was reference to any concrete instance which could be termed to be cruelty. Hence, no case was made out against the accused persons.[17.]

[s 498A.5] **Constitutional validity of section 498A.—**

The husband and relatives of the husband of a married woman form a class apart by themselves and it amounts to reasonable classification especially when a married woman is treated with cruelty within the four walls of the house of her husband and there is no likelihood of any evidence available. Consequently, this section cannot be said to be violative of Article 14 of the Constitution.[18.]

The mere possibility of abuse of a provision of law does not *per se* invalidate a legislation. The plea that section 498-A has no legal or constitutional foundation was held to be not tenable.[19.] Mere possibility of abuse of power in a given case would not make it objectionable, *ultra vires* or unconstitutional. In such case, 'action' and not the 'section' may be vulnerable.[20.]

Where the wife coming from respectable orthodox family was subjected by her husband, who was of highly suspicious nature, to humiliation by demeaning and insulting her, calling her a prostitute, denying her family life and comfort and not permitting anybody to meet her, all this was held to be sufficient to justify the husband's conviction under the section.[21.] The Court said:[22.]

> The expression cruelty postulates such a treatment as to cause reasonable apprehension in the mind of the wife that her living with the husband will be harmful and injurious to her life. To decide the question of cruelty the relevant factors are the matrimonial relationship between the husband and wife, their cultural and temperamental state of life, state of health and their inter-action in daily life.

[s 498A.6] **Cruelty by vexatious litigation.—**

Where out of a sense of vindictiveness, the husband instituted vexatious litigation against his wife and she was feeling humiliated and tortured by reason of execution of search warrants and seizure of personal property, it was held that the section was wide enough to encompass a cruelty committed through an abuse of the litigative process.

[s 498A.7] **Cruelty by deprivation and wasteful habits.—**

The husband disregarded his duty to provide his wife and infant child the elementary means of sustenance. He deliberately and irresponsibly squandered his earnings on

gambling and other vices and thereby starved his wife and infant child to death. This was held to be amounting to cruelty under section 498A.[23.]

[s 498A.8] **Calling wife "barren woman".—**

It was alleged that, as the deceased did not beget children for a period of three years after the marriage, accused harassed the deceased by calling her "barren woman". It was held that mere commenting that deceased was not begetting children, dose not amount to subjecting the deceased to cruelty within the meaning of section 498A IPC, 1860.[24.]

[s 498A.9] **Cruelty by persistent demand.—**

Cruelty or harassment need not be physical. Mental torture may amount to cruelty in a given situation. The bride, in this case, was repeatedly taunted, maltreated and mentally tortured right from the next day of marriage. There was a quarrel between her and the husband only a day before her death. This led the bride to commit suicide. Presumption as to dowry death under section 113B, Indian Evidence Act, 1872 became applicable. There was no rebuttal from the side of the accused husband.[25.]

[s 498A.10] **Cognizance on Police Report.—**

Section 198A of Code of Criminal procedure (Cr PC), 1973 permits a Court to take cognizance of offence punishable under section 498A upon a police report of facts which constitute offence. Explanation to section 2(d) makes it clear that a report made by a police officer after investigation of a non-cognizable offence is to be treated as a complaint and the officer by whom such a report is made is to be deemed to be the complainant. Thus, if a complaint contains allegations about commission of offence under section 498A of the IPC, 1860 which is a cognizable offence, apart from allegations about the commission of offence under section 494 of the IPC, 1860 the Court can take cognizance thereof even on a police report. No fetters can be put on the police preventing them from investigating the complaint which alleges offence under section 498A of the IPC, 1860 and also offence under section 494 of the IPC, 1860.[26.]

[s 498A.11] **Cruelty by extra-marital relations.—**

To the question whether 'extra-marital relationship' could be considered as 'cruelty' under section 498A IPC, 1860 had arisen, the Supreme Court has answered the question in negative. Mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to section 498A IPC, 1860.[27.] Courts should carefully assess the facts of each case before deciding whether the cruelty meted out to the victim which induces her to commit suicide. The accused continued his relation with another woman and his illicit relation with another woman would have definitely created the psychological imbalance to the deceased which led her to take the extreme step of committing suicide. The conviction of accused under sections 498-A and 306, IPC was held proper.[28.] In *Laxman Ram Mane v State of Maharashtra*,[29.] it was held that an illicit relationship of a married man with another woman would clearly amount to cruelty within the meaning of section 498A. Even assuming for a moment that this did not amount to cruelty within the meaning of section 498A, it could still be used as a piece of evidence of harassment and misbehaviour of the appellant towards the deceased. The act of the husband in bringing a concubine to his house, living with her as husband and wife, and having sexual relations in the presence of his wife, amounts to 'cruelty' within the meaning of section 498A of IPC, 1860.[30.] Permitting the first wife to enter the house of deceased with new born child does not amount to a cruel act to the second wife as such act

cannot amount to cruelty within the meaning of second limb of clause (a) of the Explanation under section 498A, IPC, 1860.[31.]

[s 498A.12] **Harassment and bigamy.—**

The wife filed an FIR alleging harassment and bigamy by the accused husband. The fact was that the second marriage was performed by the accused husband after the first marriage was dissolved. The affidavit filed by the wife did not state that the divorce decree had been either stayed or set aside. Thus, ingredients of the offence of bigamy were not made out. The affidavit was also silent about harassment for dowry demand. It was held that the FIR was frivolous, vexatious, unwarranted and abuse of process.[32.]

[s 498A.13] **Harassment for non-dowry demand.—**

Four years after the marriage, the wife was called upon to bring some money from her parents for sending her husband's younger brother abroad. It could not be termed as a dowry demand, but because she was harassed for it and on account of this she became compelled to end her life, it was held that an offence under section 498A was made out.[33.] Section 498A does not specifically speak of a dowry demand. It speaks only of unlawful demand for property and valuable articles.[34.]

[s 498A.14] **Cruelty by non-acceptance of baby girl.—**

The conduct of the accused husband and his father in not accepting the birth of the baby girl was held as amounting to cruelty.[35.]

[s 498A.15] **Demand of son in adoption.—**

The Supreme Court has held that the demand of a son in adoption did not amount to a dowry demand so as to attract the provisions of section 498A.[36.]

[s 498A.16] **Act of remaining silent.—**

The allegation was that accused Nos. 2 and 4 did not come forward to participate in the settlement of the dowry on the ground that they belonged to the groom's family and remained silent. The act of remaining silent with regard to the settlement of the dowry demand will not amount to cruelty within the meaning of either clause (a) or clause (b) of the Explanation of section 498A IPC, 1860.[37.]

[s 498A.17] **Cruelty by false attacks on chastity.—**

The father-in-law and the husband were shown to demand dowry though their demand was met by stepfather of the girl at the time of marriage. They also attacked her chastity when there was no reasonable ground for it. Homicidal death of the wife took place within five months of marriage. The Court said that all this amounted to cruelty within the meaning of section 498A.[38.]

[s 498A.18] **Taking away children.—**

The act of the husband in taking away the minor child without the consent of the wife was held as not amounting to cruelty for the purposes of section 498A.[39.]

[s 498A.19] **Outraging of modesty by father-in-law.—**

Trying to outrage the modesty of a married woman in her matrimonial house, by her father-in-law also amounts cruelty as defined under section 498A IPC, 1860.[40.]

[s 498A.20] **Demand for looking after aged in-laws.—**

A difference of opinion within family on everyday mundane matters would not fall within the category of cruelty. Merely because the appellants were of the opinion that the deceased, as a good daughter-in-law, should look after them in old age could not be said to be an abetment of suicide.[41.]

[s 498A.21] **Mere demand of dowry an offence.—**

Mere demand of dowry will not attract an offence under section 498-A IPC, 1860.[42.] From a single instance of the accused stating that he had received meagre dowry, it could not be inferred that he demanded dowry and maltreated his deceased wife on that count.[43.] In the absence of any agreement or settlement for dowry at the time of marriage, a demand constitutes no offence. The demand must come within the definition of dowry.[44.]

Mere harassment or mere demand for property, etc., is not cruelty. It is only where harassment is shown to have been caused for the purpose of coercing a woman to meet demands that it amounts to a cruelty which has been made punishable under the section.

[s 498A.22] **Presumption of cruel treatment.—**

The wife of the accused committed suicide by jumping into a well. Her father testified that the neighbours told him of the sounds of a quarrel going on in the family on the fateful night. He testified that she was ill-treated for dowry and for being issueless. She attempted to jump into the same well earlier also. The ill-treatment did not stop even after she bore two sons. The Court said that a presumption could be raised that the ill-treatment continued unabated till the last moment of her decision to put an end to her life.[45.]

The presumption of cruelty within the meaning of section 113A, Indian Evidence Act, 1872 also arose making the husband guilty of abetment of suicide within the meaning of section 306 where the husband had illicit relationship with another woman and used to beat his wife making it a persistent cruelty within the meaning of Explanation (a) of section 498A.[46.]

[s 498A.23] **Harassment.—**

There should be sufficient nexus between incidents to constitute harassment. The accused was convicted of harassment under the Protection from Harassment Act, 1997 [English] section 2 following two incidents separated by a period of four months in which he first slapped his former girlfriend and later on threatened her companion. He appealed by way of case stated on the basis that there had to exist a sufficient nexus between the incidents complained of so as to give rise to a "course of conduct" for the purposes of section 7(3). His appeal was allowed. The Court said that whilst no more than two incidents were needed to constitute harassment, the fewer the number of incidents and the wider the time lapse, the less likely such a finding would be justified. On the facts of the instant case there was insufficient evidence upon which the finding of harassment could be proved.[47.]

[s 498A.24] **Every kind of harassment not covered.—**

It is not every harassment or every type of cruelty that would attract section 498A. The complainant has conclusively to establish that the beating and harassment in question was with a view to force her to commit suicide or to fulfil the illegal demand of dowry. In this case, though there might have been a previous history of harassment for those purposes, at the moment of the complaint those urges were not proved to be figuring in the harassment.[48.] Where the deceased was asked to part with her jewellery and

valuables for the marriage of her sister-in-law but the matter was not pressed further on her refusal and there was no harassment or coercion by her in-laws, it was held that it did not amount to cruelty.[49.]

A husband who does not call his wife back to the matrimonial home does not thereby cause any harassment.[50.] Where the deceased wife was told not to attend kitchen as a measure for prevention of wastage, this was held to be no cruelty.[51.]

The remarks passed by the mother-in-law that the daughter-in-law was not beautiful were held to be not sufficient to drive anybody to suicide. There was no evidence of cruelty or deprivation.[52.] The mere statements in the dying declaration that she wanted to live separately, her husband gave her a beating the previous day and her grandmother disliked her were held to be not sufficient to substantiate the prosecution case that cruel treatment was meted out to her so as to constitute an offence under section 498A.[53.]

Where the deceased wife's annoyance was due to the fact that the children of a relative were being looked after in her husband's home, the Court said that it did not amount to cruelty or harassment because of dowry demand.[54.]

[s 498A.25] **Kicking daughter-in-law.—**

A three-judge Bench of the Supreme Court by order dated 14 March 2013 set aside its own judgment in *Bhaskar Lal Sharma v Monica*,[55.] which held that the action of a woman merely kicking her daughter-in-law or threatening her with divorce would not come within the meaning of "cruelty" under section 498A of the IPC, 1860. The Supreme Court allowed the curative petition filed by the National Commission directed restoration of the special leave petition (SLP) filed by Bhaskar Lal Sharma and his wife for a fresh hearing.

[s 498A.26] **Wife's desire to stay separately.—**

Howsoever strong the desire of wife might be of staying separately, and howsoever genuine her grief would be for having been required to stay in a joint family, the same cannot constitute as "wilful conduct" of the appellants which was likely to drive wife to commit suicide.[56.]

[s 498A.27] **Make section 498A compoundable.—**

Offence under section 498A is not compoundable except in the State of Andhra Pradesh where by a State amendment, it has been made compoundable. In *Ramgopal v State of MP*,[57.] the Supreme Court requested the Law Commission and the Government of India to examine whether offence punishable under section 498A of the IPC, 1860 could be made compoundable. The Commission has given a comprehensive report (237th Report) under the title of "Compounding of IPC Offences" recommending that that the offence under section 498A should be made a compoundable offence with the permission of Court. But it has not been made compoundable yet.

[s 498A.28] **Complaint filed after institution of suit.—**

A complaint was lodged by the wife under the section after a divorce suit was filed by her husband. In her written statement to the suit, the wife made no allegations of cruelty or harassment. In the meantime, the divorce was decreed and her application for reconciliation was rejected by the family Court, the complainant wife had also been living with her mother for a long time. Thus, no case was made out and the husband was entitled to acquittal.[58.]

Where the marriage was already 10 years old at the time of the incident of suicide by taking poison and there was neither any record of cruelty or harassment, nor any sign of forcible administration of poison, the conviction of the accused husband was held to be not proper.[59.]

[s 498A.29] **Past cruelty.—**

The Supreme Court has given this observation that both section 498A, IPC, 1860 and section 113A, Indian Evidence Act, 1872 include in their amplitude past events of cruelty. The period of operation of section 113A, Indian Evidence Act, 1872 is seven years. The presumption of suicide by a married woman arises when it takes place within seven years from the date of marriage.

[s 498A.30] **Section 498A and 304B.—**

The two provisions are not mutually inclusive. They deal with different and distinct offences. Persons charged under section 304B but acquitted can be convicted under section 498A even in the absence of any charge.[60.] The deceased had been subjected to cruelty by her husband and mother-in-law over the demand of a Maruti Car as dowry and persistently pressed by them after about six months of the marriage and continuously till her death. Accused was convicted under sections 498A and 304 IPC, 1860.[61.]

[s 498A.31] **Sections 498A and 306.—**

Distinction between sections 306 IPC and section 498A IPC is that of intention. Under the latter, cruelty committed by the husband of his relations drag the woman concerned to commit suicide, while under the former provision suicide is abetted and intended.[62.]

Offences under sections 498A and 306 of IPC, 1860. Trial court acquitted of the offence under section 498A IPC, 1860. It was argued that the acquittal of the accused of the offence under section 498A IPC, 1860 has bearing on the offence under section 306 IPC, 1860. The Supreme Court held that having absolved the appellants of the charge of cruelty, which is the most basic ingredient for the offence made out under section 498A, the third ingredient for application of section 113A of Indian Evidence Act, 1872 is missing, namely, that the relatives, i.e., the mother-in-law and father-in-law who are charged under section 306 had subjected the victim to cruelty.[63.]

[s 498A.32] **Jurisdiction.—**

A wife, maltreated for dowry, was sent back to her father where she became ill because of shock and after effects of cruelty. The Court having jurisdiction at the place was held competent to entertain a complaint both under section 498A in respect of cruelty and also under section 181(4) of Cr PC, 1973 in respect of misappropriation of *streedhan*.[64.] In *Dukhi Ram v State of UP*,[65.] the Court observed that the scope of section 498A cannot be extended to co-villagers. Order summoning co-villagers for offence under section 498A amounts to abuse of process of Court. The order of the Magistrate was quashed.

[s 498A.33] **Territorial Jurisdiction.—**

Where the complaint by the aggrieved wife regarding ill-treatment by husband and in-laws was filed at a place where she was residing with her mother and the act subjecting her to cruelty occurred at some other place, it was held that the Magistrate at that place had no territorial jurisdiction to take cognizance of the offence under section 498A. The plea that her husband and sister-in-law visited that place and subjected her to cruelty was not substantiated.[66.] In a prosecution for criminal breach

of trust and cruelty to wife, the facts were that the marriage had taken at one place where also all the items of dowry were handed over. Breach of trust and ill-treatment were committed at the husband's place. Thus, the offence was committed beyond the territorial jurisdiction of the magistrate at the place of marriage. Still it was held that he had jurisdiction because a part of the cause of action had arisen at that place.[67.] In a case, as a consequence of ill-treatment inflicted upon the complainant from time to time and demand of dowry, she was thrown out of her matrimonial home at Delhi and as a result of that she was compelled to come and reside with her father at Bharatpur. It was held that the police station/Court situated at Bharatpur has also jurisdiction to inquire into or try the offence allegedly committed by the petitioners. Section 179 Cr PC, 1973 makes it clear that if anything happened as a consequence of the offence, the same may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.[68.] The Supreme Court in *Sunita Kumari Kashyap v State of Bihar*,[69.] with almost similar set of facts came to a conclusion that the Court situated at Gaya also has jurisdiction to proceed with the criminal proceedings initiated on behalf of the complainant although the ill treatment upon the complainant in connection with demand of dowry was mainly inflicted at her matrimonial home situated at Ranchi because as a result of continuous torture and unbearable treatment of her husband and in-laws the complainant had no other option, but to come at her parental home situated at Gaya. The Supreme Court for arriving such a conclusion relied upon the case of *Sujata Mukherjee v Prashant Kumar Mukherjee*,[70.] and *State of MP v Suresh Kaushal*,[71.] but distinguished these cases being based on different set of facts.

[s 498A.34] **Suicide by mistress.—**

If the cruelty or harassment of the kind described in the Act is meted out to a mistress which leads her to commit suicide, the section would cover her case also.[72.]

[s 498A.35] **Retrospective Effect of Section 498A.—**

A dowry harassment which had ended in March 1983 by the husband deserting his wife before the new provision came into force in 1983 was held to be not covered by it. This provision does not have retrospective effect.[73.] Where the relationship of marriage is still continuing, the events of cruelty taking place prior to the amendment can be taken into account. That does not have the effect of giving a retrospective operation to the provision.[74.]

[s 498A.36] **Compromise.—**

Where the wife had condoned the matrimonial cruelty of which she was the victim and had resumed consortium with her husband, the Court found no obstruction in the provisions of the section in permitting them to compound the complaint and, therefore, ordered accordingly.[75.] In *D Jayalakshmi v State of MP*,[76.] it was held that in a complaint under section 498A a compromise between husband and wife was permissible even though the offence is non-compoundable. It added that in exceptional circumstances only the High Court can permit compounding of a non-compoundable offence under its inherent powers. The offence under the section cannot be compounded by invoking inherent powers and by praying for quashing of proceedings on the ground of amicable settlement. The remedy of the parties is to take recourse to sections 321 or 257, Cr PC, 1973 and seek withdrawal of the case.[77.] The offence cannot be compounded on the basis of consent divorce under section 13-B of the Hindu Marriage Act, 1955. The proceedings were, however, quashed under section 482, Cr PC, 1973 to prevent abuse of judicial process.[78.] During the pendency of the prosecution, the husband and wife sorted out their differences and obtained a consent divorce as per their compromise. The Court said that in the light of facts as they

developed, the ends of justice would be served by reducing the term of imprisonment to the period already undergone.[79.]

Compromise should be accepted as a basis for withdrawal or quashing of complaint at the instance of the complainant.[80.]

[s 498A.37] ***Explanation.***—

Clause (a).—In *RP Bidlan v State of Maharashtra*,[81.] it was held that under section 498A, Explanation (a), for proof of cruelty it is necessary to show a reasonable nexus between cruelty and suicide. Mere proof of cruelty or suicide is not enough. There is no vagueness or obscurity about the meaning of the word "cruelty" as spelt out in clauses (a) and (b) of the Explanations. The definition sub-serves the object sought to be achieved.[82.]

[s 498A.38] **Meaning of the term 'relative of the husband'—whether include a 'girlfriend' or 'concubine'?.—**

An offence in terms of section 498A is committed by the persons specified therein. They have to be the 'husband' or his 'relative'. Either the husband of the woman or his relative must be subjected to her to cruelty within the aforementioned provision. In the absence of any statutory definition, the term 'relative' must be assigned a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or granddaughter of an individual or the spouse of any person. The meaning of the word 'relative' would depend upon the nature of the statute. It principally includes a person related by blood, marriage or adoption. By no stretch of imagination a girlfriend or even a concubine in an etymological sense would be a 'relative'. The word 'relative' brings within its purview a status. Such a status must be conferred by either blood or marriage or adoption. If no marriage has taken place, the question of one being relative of another would not arise.[83.] A complaint was filed against the husband and his relatives because of demand for dowry. Shia law was applicable to the parties. The husband had divorced the complaining wife by "talak". Under the Shia law there is prohibition on marrying the woman whom one had earlier divorced. Thus, even if they were living together, they could not be called husband and wife. Section 498A was not applicable. The complaint was liable to be dismissed.[84.]

[s 498A.39] **Is Section 498A applicable to cruelty against "legally wedded wife" only?.—**

A person who enters into marital arrangement cannot be allowed to take shelter behind the smoke screen of contention that since there was no valid marriage the question of dowry does not arise. The word "husband" would apply to a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any purposes enumerated in sections 304B and 498A, whatever be the legitimacy of the marriage itself. A person contracting second marriage during the subsistence of the earlier marriage can be charged under sections 304B and 498A. The Court pressed into service the *Heyden's* rule of construction which means purposive construction and mischief rule.[85.] Section 498A of the IPC refers to word 'woman' and not to 'wife' and by the said section protection was contemplated to married woman and not to the legally wedded wife only. Where accused and deceased were residing together and the evidence proved that marriage of accused and deceased took place by 'sulagna procedure', the contention of the accused that deceased was not his legally wedded wife as there was no evidence of valid marriage between them to attract the provisions of section 498A, cannot be accepted.[86.]

[s 498A.40] ***Explanation.*—Clause (b).—**

Where the deceased bride was subjected to cruelty and harassment and demand of dowry and she was burnt to death within two years of her marriage, her earlier statements about her state of affairs to her father and neighbours and her sister were held to be admissible under clause (b) of the Explanation to section 498A and conviction of the accused under section 498A was held to be proper.[87.]

The basic ingredients of section 498A are cruelty and harassment. The Supreme Court further held that in Explanation II, which relates to harassment, there is absence of the requirement of physical injury but it includes coercive harassment for demand of dowry. It deals with the patent or latent acts of the husband or his family members.[88.]

In a case the Supreme Court held that:

> unless the statement of a dead person would fall within the purview of s. 32(1) of the Indian Evidence Act there is no other provision under which the same can be admitted in evidence. In order to make the statement of a dead person admissible in law (written or verbal) the statement must be as to the cause of her death or as to any of the circumstance of the transactions which resulted in her death, in cases in which the cause of death comes into question. By no stretch of imagination can the statements of deceased contained in the two letters and those quoted by the witnesses be connected with any circumstance of the transaction which resulted in her death. Even that apart, when dealing with an offence u/s. 498A IPC disjuncted from the offence u/s. 306 IPC the question of her death is not an issue for consideration and on that premise also s. 32(1) of the Evidence Act will stand at bay so far as these materials are concerned.[89.]

[s 498A.41] **Punishment.—**

The accused contracted second marriage. He maltreated the first wife and denied her diet, thus, subjecting her to mental and physical cruelty of extreme level and leading her to suicide. He was not entitled to any sympathy. He was sentenced to undergo two years RI for offence under section 498A and five years under section 306 and also fine.[90.]

The wife of the accused died of burns. Her letters indicated anguish about various incidents and methods of harassment practised upon her. Filthiest language was used in expressing the demand for dowry. There was oral evidence of the prosecution witness to that effect. This section does not require harassment soon before death. The Court said that the offence under the section was made out. The sentence of imprisonment of three years was reduced to three months in the interest of the children and their safety in the society.[91.]

[s 498A.42] **Plea of leniency.—**

Where there was a history of the wife being continuously subjected to harassment, assault and torture to the point of leaving no option to committing suicide and the accused-husband was a police officer and an educated person, it was held that he could not be allowed to escape jail sentence.[92.] The deceased-wife within four months of her marriage took the extreme step of putting an end of her life and committed suicide. The court held that it was not a fit case for reducing the quantum of sentence of the accused as showing any leniency would be a misplaced one.[93.]

In the context of simple imprisonment of six months, it was pleaded before the Supreme Court that the appellant and the victim had since remarried and were living happily in their respective families, the Court reduced imprisonment to the period of two months already undergone.[94.]

[s 498A.43] **Misuse of section 498-A.—**

The section was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman. The expression 'cruelty' therein covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. The Supreme Court observed that it is a matter of serious concern that large number of cases continue to be filed under this section alleging harassment of married women. Most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not *bona fide*. At the time of filing of the complaint, implications and consequences are not visualised. But at times such complaints lead to uncalled for harassment not only to the accused but also to the complainant.[95.] The provision should not be allowed to be used as a device for achieving oblique motives.[96.]

[s 498A.44] **Misuse of provisions to be prevented.—**

The Supreme Court has observed that the section was introduced with the avowed object of combating the menace of dowry deaths and harassment of a woman at the hands of her in-laws. But the provision should not be allowed to be used as a device for achieving oblique motives.[97.]

[s 498A.45] **CASES.—**

Where there is ample evidence on record to suggest that the deceased had been suffering from psychosis/mental disorder, it was held not safe to convict the accused under sections 306 and 498A IPC, 1860.[98.] Where the suicide note exonerated the husband and his relatives, accused cannot be convicted under section 498A.[99.] Where mother of deceased had admitted in her evidence that there was no demand of dowry had been made by mother-in-law of the deceased, she is entitled to benefit of doubt.[100.] Where the accused mother-in-law was residing in a separate residence far away from the place where deceased with her husband was residing and the evidence of independent witness proved that parents of deceased's husband had never visited their place during their stay in the said house, accused is entitled to benefit of doubt.

Where a husband had strangulated his second wife to death within a short span of time immediately after her marriage and the cruelty and harassment on the part of the husband was proved from the evidence of the witnesses, the conviction of the husband under section 498A was confirmed.[101.]

A harassment shown to have taken place eight months before the suicide, was held to be not coming within the scope of the words "soon before". The conviction under section 304B was set aside. The evidence showed that cruelty was there. The accused persons were not able to explain why the deceased wife committed suicide. The conviction and sentence under section 306 (abetment of suicide), section 498A and section 4 of the Dowry Prohibition Act, 1961 was maintained.[102.]

[s 498A.46] **Limitation.—**

For the offence of cruelty under section 498A cognizance can be taken even after the expiry of the period of limitation by virtue of the provisions of section 473, Cr PC, 1973 since the offence is of continuing nature. There was nothing on record to show that more than three years ago prior to the filing of the complaint the accused had returned the dowry items demanded by the complainant. The complaint under section 406 IPC, 1860 was not time-barred. The offence under section 405, IPC, 1860 was committed as and when the accused refused to return the dowry items on demand and misappropriate them.[103.]

A complaint under the section was dismissed by the trial Court on the ground that it was belated by two years. On the same ground the High Court declined leave to appeal against acquittal. The Supreme Court held that this was not proper. The section was brought in to protect woman against torture. The law of limitation must not be applied with such rigidity as to non-suit an aggrieved wife.[104.]

A complaint alleged cruelty by the husband and his relatives. The question was that of limitation for filing a complaint. The Court said that cruelty is a continuing offence. With every act of cruelty a new period of limitation takes a start. The wife was harassed and sent out of the matrimonial home. A complaint, even if time-barred, could be entertained if otherwise it would give an unfair advantage to the accused person or result in miscarriage of justice.[105.]

[s 498A.47] **A re-look at the provision.—Supreme Court direction and recommendations of Law commission of India.—**

In *Preeti Gupta v State of Jharkhand*,[106.] the Supreme Court held that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately, a large number of these complaints have not only flooded the Courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. Pursuant to the direction of the Supreme Court, Law Commission of India in its 243rd Report gave *inter alia* the following suggestions:

(a) The offence under section 498A shall be made compoundable, with the permission of Court and subject to cooling off period of three months

(b) The offence should remain non-bailable. However, the safeguard against arbitrary and unwarranted arrests lies in strictly observing the letter and spirit of the conditions laid down in sections 41 and 41A of Cr PC, 1973 relating to power of arrest and sensitising the Police on the modalities to be observed in cases of this nature

(c) There should be a monitoring mechanism in the Police Dept. to keep track of section 498A cases and the observance of guidelines

(d) the need for expeditious disposal of cases under section 498A should be given special attention by the prosecution and Judiciary.[107.]

[s 498A.48] **Protection of Women from Domestic Violence Act, 2005.—**

The Protection of Women from Domestic Violence Act, 2005 was enacted with a view to provide for more effective protection of rights of women who are victims of violence of any kind occurring within the famil. Those rights are essentially of civil nature with a mix of penal provisions. Section 3 of the Act defines domestic violence in very wide terms. It encompasses the situations set out in the definition of 'cruelty' under section 498A. The Act has devised an elaborate machinery to safeguard the interests of women subjected to domestic violence. The Act enjoins the appointment of Protection Officers who will be under the control and supervision of a Judicial Magistrate of First Class. The said officer shall send a domestic incident report to the Magistrate, the police station and service providers. The Protection Officers are required to effectively

assist and guide the complainant victim and provide shelter, medical facilities, legal aid, etc., and also act on her behalf to present an application to the Magistrate for one or more reliefs under the Act. The Magistrate is required to hear the application ordinarily within three days from the date of its receipt. The Magistrate may at any stage of the proceedings direct the respondent and/or the aggrieved person to undergo counselling with a service provider. 'Service Providers' are those who conform to the requirements of section 10 of the Act. The Magistrate can also secure the services of a welfare expert preferably a woman for the purpose of assisting him. Under section 18, the Magistrate, after giving an opportunity of hearing to the Respondent and on being *prima facie* satisfied that domestic violence has taken place or is likely to take place, is empowered to pass a protection order prohibiting the Respondent from committing any act of domestic violence and/or aiding or abetting all acts of domestic violence. There are other powers vested in the Magistrate including granting residence orders and monetary reliefs. Section 23 further empowers the Magistrate to pass such interim order as he deems just and proper including an *ex parte* order. The breach of protection order by the respondent is regarded as an offence which is cognizable and non-bailable and punishable with imprisonment extending to one year (*vide* section 31). By the same section, the Magistrate is also empowered to frame charges under section 498A of IPC, 1860 and/or Dowry Prohibition Act, 1961. The provisions of the Act are supplemental to the provisions of any other law in force. The right to file a complaint under section 498A is specifically preserved under section 5 of the Act. An interplay of the provisions of this Act and the proceedings under section 498A assumes some relevance on two aspects: (1) Seeking Magistrate's expeditious intervention by way of passing a protective interim order to prevent secondary victimisation of a complainant who has lodged FIR under section 498A. (2) Paving the way for counselling process under the supervision of Magistrate at the earliest opportunity.[108.]

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1. Chapter XXA (containing section 498A) ins. by Act 46 of 1983, section 2 (w.e.f. 25 December 1983).
2. *Suvetha v State*, (2009) 6 SCC 757 [LNIND 2009 SC 1156] : 2009 Cr LJ 2974 .
3. *Reema Aggarwal v Anupam*, (2004) 3 SCC 199 [LNIND 2004 SC 1499] : AIR 2004 SC 1418 [LNIND 2004 SC 1499] .
4. *Gananath Pattnaik v State of Orissa*, (2002) 2 SCC 619 [LNIND 2002 SC 100] .
5. *Pinakin Mahipatray Rawal v State of Gujarat*, 2013 (3) Mad LJ (Crl) 700 : 2013 AIR (SCW) 5219.
6. *Rosamma Kurian v State of Kerala*, 2014 Cr LJ 2666 (Ker) : 2014 (2) KHC 64 .
7. *Vajresh Venkatray Anvekar v State of Karnataka*, AIR 2013 SC 329 [LNIND 2013 SC 4] : (2013) 3 SCC 462 [LNIND 2013 SC 4] .
8. *Wazir Chand v State of Haryana*, AIR 1989 SC 378 [LNIND 1988 SC 569] : 1989 Cr LJ 809 : (1989) 1 SCC 244 [LNIND 1988 SC 569] ; *U Suvetha v State*, (2009) 6 SCC 757 [LNIND 2009 SC 1156] : 2009 Cr LJ 2974 , ingredients re-enumerated by the Supreme Court. *Bhaskar Lal Sharma v Monica*, (2009) 10 SCC 604 [LNIND 2009 SC 1432] : (2009) 161 DLT 739 , misuse of anti-dowry law not to be allowed. A girlfriend of the husband or a concubine being in the category of relatives of the husband are not covered by section 498-A. *Narendra v State of Karnataka*, (2009) 6 SCC 61 [LNIND 2009 SC 1112] : (2009) 2 SCC (Cr) 929 : AIR 2009 SC 1881 [LNIND 2009 SC 1112] , death of wife in bed room due to compression of neck, husband's *alibi* plea found to be false, no two opinions, conviction. *Krishna Ghose v State of WB*, (2009) 12 SCC 413 [LNIND 2009

SC 724] : AIR 2009 SC 2279 [LNIND 2009 SC 724] , death due to cruelty by husband and family members in the matrimonial home, *alibi* false, conviction.

9. *Shobha Rani v Madhukar Reddi*, (1988) 1 SCC 105 [LNIND 1987 SC 757] : AIR 1988 SC 121 [LNIND 1987 SC 757] : (1988) 1 AIR 169 : 1988 BLJR 138 . See also *Akula Ravinder v State of AP*, AIR 1991 SC 1142 . For a comparative account of this section with section 304B see notes under section 304B and the decision of the Supreme Court in *Shanti v State of Haryana*, AIR 1991 SC 1226 [LNIND 1990 SC 696] . For another proceeding arising out of harassment of wife and acceptance of compromise by the Supreme Court on payment of compensation to the wife to end all proceedings, see *Mukund Martand Chitnis v Madhuri Mukund Chitnis*, 1991 Supp (2) SCC 359 . See also *Suman v State of Rajasthan*, (2010) 1 SCC (Cr) 770 : (2010) 1 SCC 250 [LNIND 2009 SC 1991] : AIR 2010 SC 518 [LNIND 2009 SC 1991] .

10. *Chanda v State of AP*, 1996 Cr LJ 2670 (AP). RI for three years and fine of Rs. 5,000. *Chandra Prakash v State*, 1996 Cr LJ 3443 (Del) a proceeding was not allowed to be quashed only on the ground that allegations in detail of dowry demand and cruelty were not made in a pending divorce proceedings between the parties. *Noorjahan v State*, (2008) 11 SCC 55 [LNIND 2008 SC 950] : AIR 2008 SC 2131 [LNIND 2008 SC 950] , object restated, crimes against women and children. There was no proof in this case of any demand for dowry.

11. *Keshab Chandra Panda v State of Orissa*, (1995) 1 Cr LJ 174 (Ori). Where the mother-in-law was convicted for the lesser offence under s 498A, it was an automatic acquittal from the serious offence under section 304-B, no appeal by State, High Court could not convict; *Prakash Chander v State*, (1995) 1 Cr LJ 368 (Del). *State of Kerala v Rajayyan*, (1995) 1 Cr LJ 989 (Ker) death by falling in well, proof of dowry-related cruelty, conviction. *Deepak v State of Maharashtra*, (1995) 2 Cr LJ 2219 (Bom) wife killed by strangulation, defence of injury by a falling object unnatural, conviction held proper. *Gondhan Ram v State of Rajasthan*, (1995) 1 Cr LJ 273 (Raj), married woman dying of spray poison which she consumed, within seven years, evidence of torture, conviction of husband alone. *Jai Ram v State of Rajasthan*, (1995) 1 Cr LJ 1020 (Raj) conviction of husband on evidence which was rejected in reference to all others was held to be not proper. *Chandrabhushan v State of Maharashtra*, (1995) 1 Cr LJ 101 (Bom) conviction of husband for leading wife to suicide by mental torture for dowry, but others not convicted because the couple was living separately. *Gajanansingh v State of Maharashtra*, 1996 Cr LJ 2921 (Bom) no proof that the husband caused death, acquittal. *Pammi Bai v State of MP*, 1996 Cr LJ 2796 (MP), death by burning, the conduct of the dying woman immediately after the incident not pointing to the husband setting her on fire, dying declaration doubtful and suspicious, acquittal.

12. *Pachipala Laxmaiah v State of AP*, 2001 Cr LJ 4063 (AP); another similar case *Hariappari v State of Karnataka*, 2001 Cr LJ 4286 (Kant), burnt by the husband, conviction. *Dasrath Sao v State of Bihar*, 2001 Cr LJ 4336 (Jhar) suicide by hanging, no proof of dowry demand or of cruelty or abetment, acquittal. *Shaik China Buda v State of AP*, 2002 Cr LJ 526 , no proof of cruelty, acquittal of husband.

13. *Kodadi Srinivasa Lingam v State of AP*, 2001 Cr LJ 602 (AP). *Bammidi Rajamallu v State of AP*, 2001 Cr LJ 1319 (AP), drinking husband, beating wife and consistently abusing her, cruelty under the section. *Vanamala Amaranadh v State of AP*, 2001 4498, dying declaration contained statements of cruelty, husband convicted. *State of Haryana v Jai Prakash*, 2000 Cr LJ 4995 (2) : (2000) 7 JT 404 (SC), no proper evidence, acquittal, appeal by State, copy of the evidence of the father and brother of the deceased not produced, acquittal not interfered with. *Mangal Ram v State of MP*, 1999 Cr LJ 4342 (MP), suicidal death of married woman within seven years, there was harassment for four *tolas* of gold and the demand being not met she was beaten up and driven out. Offence under the section made out. *Paparambaka Rosamma v State of AP*, 1989 Cr LJ 4321 : AIR 1999 SC 3455 , a mere statement in the dying declaration that she wanted to live

separately from her in-laws and that they did not like her was held to be not sufficient to sustain a charge under this section.

14. *Noorjahan v State*, (2008) 11 SCC 55 [LNIND 2008 SC 950] : AIR 2008 SC 2131 [LNIND 2008 SC 950] . *Ran Singh v State of Haryana*, (2008) 4 SCC 70 [LNIND 2008 SC 204] : AIR 2008 SC 1994 [LNIND 2008 SC 969] : 2008 Cr LJ 1941 , findings of the trial judge disapproved by the High Court on presumptive basis. The Supreme Court restored the order of the trial judge. There was no proof. *B Venkat Swamy v Vijaya Nehru*, (2008) 10 SCC 260 [LNIND 2008 SC 1682] , guilt not proved by circumstantial evidence, the deceased was found hanging in a room which was bolted from inside.

15. *Krishan Lal v UOI*, 1994 Cr LJ 2472 (P&H).

16. *Kans Raj v State of Punjab*, AIR 2000 SC 2324 [LNIND 2000 SC 735] : 2000 Cr LJ 2993 . See also *Ram Saran Varshney v State of UP*, 2016 Cr LJ 1251 : 2016 (3) SCJ 39 .

17. *Raj Rani v State (Delhi) Admn*, AIR 2000 SC 3559 : 2000 Cr LJ 4672 . See also *Satish Shetty v State of Karnataka*, 2016 Cr LJ 3147 : 2016 (6) SCJ 14 .

18. *Krishan Lal v UOI*, 1994 Cr LJ 3472 (P&H).

19. *Sushil Kumar Sharma v UOI*, 2005 Cr LJ 3439 : AIR 2005 SC 3100 [LNIND 2005 SC 1208] : (2005) 6 SCC 281 [LNIND 2005 SC 1208] . The court explained the distinction between sections 306 and 498-A, (cruelty and abetment of suicide) by saying that the difference is that of intention.

20. *Satish Kumar Batra v State of Haryana*, AIR 2009 SC 2180 [LNIND 2009 SC 754] : (2009) 12 SCC 191 .

21. *Sarojakshan v State of Maharashtra*, 1995 Cr LJ 340 (Bom).

22. At p 341. *State of Karnataka v HS Srinivasa*, 1996 Cr LJ 3103 (Kant) acquittal because of no proof. *Balkrishna Pandurang Moghe v State of Maharashtra*, 1992 Cr LJ 4496 (Bom), husband and his relatives treated as a class apart from other offenders with the object of dealing effectively with cases of cruelty by in-laws to married women. Such classification does not result in invidious discrimination violative of Article 14 of the Constitution.

23. *State of Karnataka v Moorthy*, 2002 Cr LJ 1683 (Kant); *State of Maharashtra v Ashok Narayan*, 2000 Cr LJ 4993 : (2000) 9 SCC 257 [LNIND 2000 SC 413] (SC), a letter of the deceased wife was produced in evidence by her brother but it did not show any demand nor mentioned any cruelty. The oral testimony of the brother was not considered to be sufficient.

24. *State of AP v Kalidindi Sahadevudu*, 2012 Cr LJ 2302 (AP).

25. *Pawan Kumar v State of Haryana*, AIR 1998 SC 958 [LNIND 1998 SC 176] : 1998 Cr LJ 1144 (SC); *Mangal Ram v State of MP*, 1999 Cr LJ 4342 (MP), persistent demand for dowry, death due to burn injuries within seven years, conviction. Section 304B was not attracted because the "soon before" requirement was not satisfied.

26. *Ushaben v Kishorbhai Chunilal Talpada*, (2012) 6 SCC 353 [LNINDU 2012 SC 25] : 2012 Cr LJ 2234 .

27. *Pinakin Mahipatray Rawal v State of Gujarat*, 2013 (3) Mad LJ (Crl) 700 : 2013 AIR (SCW) 5219.

28. *Siddaling v State*, AIR 2018 SC 3829 [LNIND 2018 SC 355] .

29. *Laxman Ram Mane v State of Maharashtra*, 2010 (13) SCC 125 : (2011) 1 SCC (Cr) 782.

30. *Chami v State*, 2013 Cr LJ 3441 ; *Suman v Puran Chand*, 2013 Cr LJ 3703 (Raj). See also *State of HP v Pawan Kumar*, 2000 Cr LJ 4889 (HP).

31. *Kantilal Martaji Pandor v State of Gujarat*, 2013 Cr LJ 3866 (SC).

32. *Pashaura Singh v State of Punjab*, 2010 Cr LJ 875 : AIR 2010 SC 922 [LNIND 2009 SC 1988] .

33. *State of Punjab v Dal Jit Singh*, 1999 Cr LJ 2723 (P&H).

34. *Shivanand Mallappa Koti v State of Karnataka*, (2007) 13 SCC 68 [LNIND 2007 SC 778] : AIR 2007 SC 2314 [LNIND 2007 SC 778] . See also *M Sirinivaslu v State of AP*, (2007) 12 SCC 443 [LNIND 2007 SC 1047] : AIR 2007 SC 3146 [LNIND 2007 SC 1047] ; *Vipin Jaiswal v State*, AIR 2013 SC 1567 [LNIND 2013 SC 205] : (2013) 3 SCC 684 [LNIND 2013 SC 205] ; *Modinsab Kasimsab Kanchagar v State of Karnataka*, 2013 Cr LJ 2056 : AIR 2013 SC 1504 [LNIND 2013 SC 1276] : (2013) 4 SCC 551 [LNIND 2013 SC 1276] .

35. *State of Karnataka v Balappa*, 1999 Cr LJ 3064 (Kant).

36. *Bhaskar Ramappa Madar v State of Karnataka*, (2009) 11 SCC 690 [LNIND 2009 SC 723] : 2009 Cr LJ 2422 .

37. *Bharat Bhushan v State*, 2013 (4) Scale 524 [LNIND 2013 SC 199] .

38. *State of Karnataka v KS Manjunathchary*, 1999 Cr LJ 3949 (Kant), father-in-laws' conviction reduced from three to two years. Fine money was enhanced and directed to be paid to the father of the deceased.

39. *Sumangala L Hegde v Laxminarayana Anant Hegde*, 2003 Cr LJ 1418 (Kant). The court noted the ruling in *Ravindra Pyarelal Bidlan v State of Maharashtra*, 1993 Cr LJ 3019 (Bom) to the effect that a cruelty is not mere harassment or mere demand for property, etc. There must be a reasonable nexus between cruelty and suicide for proof of cruelty and also the ruling of the Allahabad High Court in *Vijay Kumar Sharma v State of UP*, (1991) 1 crimes 298 (All), wherein also a minor child was taken away by the husband and his relatives from the custody of the mother in order to coerce her to meet their dowry demand.

40. *Manoj Kumar v State of HP*, 2016 Cr LJ 5015 (MP).

41. *Nachhatar Singh v State of Punjab*, 2011 Cr LJ 2292 : (2011) 11 SCC 542 [LNINDORD 2011 SC 269] .

42. *Amar Singh v State of Rajasthan*, AIR 2010 SC 3391 [LNIND 2010 SC 701] : (2010) 3 SCC (Cr) 1130; *Rajesh Gupta v State*, 2011 Cr LJ 3506 (AP).

43. *Prem Dass v State of HP*, 1996 Cr LJ 951 (HP). *Ashok v State*, AIR 2000 SC 3444 [LNIND 2000 SC 597] : 2000 Cr LJ 2988 , evidence to the effect that the husband and mother-in-law were regularly beating her for not getting scooter, there were marks of injuries on her body. Conviction under the section. The brother-in-law was given the benefit of doubt because there was no evidence of his role. *State of Maharashtra v Ashok Narayan*, AIR 2000 SC 3568 [LNIND 2000 SC 413] : 2000 Cr LJ 4993 there was no assertion in her letters to her brother that the husband was making any demand or assaulted her or treated her with cruelty or torture. Conviction could not be maintained on the oral testimony of her brother. *State of Karnataka v Shivaraj*, 2000 Cr LJ 2741 (Kant) second wife, death of, presumption of validity of marriage unless the contrary is shown, allegations of torture and cruelty not made out.

44. *Ramesh Chand v State of UP*, 1992 Cr LJ 1444 (All); *Pyare Lal v State of Haryana*, AIR 1999 SC 1563 .

45. *Diwan Singh v State of Uttarakhand*, 2016 Cr LJ 1258 (Utr) : 2016 (93) ALLCC 861.

46. *Anoop Kumar v State of MP*, 1999 Cr LJ 2938 (MP).

47. *Lau v DPP*, (2000) 1 FLR 799 (QBD). *State of AP v Madhusudhan Rao*, (2008) 15 SCC 582 [LNIND 2008 SC 2124] ; *Hazarilal v State of MP*, (2009) 13 SCC 783 [LNIND 2007 SC 805] , harassment not proved.

48. *Sarla Prabhakar Waghmare v State of Maharashtra*, 1990 Cr LJ 407 (Bom). *Joytilal Chakraborty v Dipak Dutta*, (1995) 1 Cr LJ 930 (Cal) no complaint by the woman about torture during her life-time, other evidence was also not reliable, complaint rejected. *State of Haryana v Rajinder Singh*, 1996 Cr LJ 1875 (SC), offence not proved, acquittal proper.

49. *Tapan Pal v State of WB*, 1992 Cr LJ 1017 (Cal).

50. *Tasrem Singh v Amrit Kaur*, 1995 Cr LJ 3560 . Where the sufferings of the married woman who committed suicide within seven years were not due to dowry demands but due to incompatibility of temperament and attitudes, no conviction.

51. *U Subba Rao v State of Karnataka*, 2003 AIR—Kant HCR 1062 : 2003 Cr LJ (NOC) 120 (Kant).

52. *Annupurnabal v State of MP*, 1999 Cr LJ 2696 (MP); *Ramesh v State of TN*, 2005 Cr LJ 1732 : AIR 2005 SC 1989 [LNIND 2005 SC 222] : (2005) 3 SCC 507 [LNIND 2005 SC 222] , allegation that the husband's married sister stayed with her parents for a few days. The allegation against her was she directed the complainant wife to wash WC and also made imputations against her. Did not amount to harassment for dowry demand.

53. *Paparambaka Rosamma v State of AP*, 1999 Cr LJ 4321 : AIR 1999 SC 3455 ; *Lawrence v State of Kerala*, 2002 Cr LJ 3455 (Ker); *Taruna v State of WB*, 2001 Cr LJ 4937 (SC); *State of HP v Kewal Kumar*, 2002 Cr LJ 3807 (HP).

54. *Lella Srinivasa Rao v State of AP*, (2004) 9 SCC 713 [LNIND 2004 SC 1273] : AIR 2004 SC 1720 [LNIND 2004 SC 1273] .

55. *Bhaskar Lal Sharma v Monica*, (2010) 1 SCC (Cr) 383 : (2009) 10 SCC 604 [LNIND 2009 SC 1432] .

56. *Ganpat Dnyanoba Garje v State of Maharashtra*, 2012 Cr LJ 1874 (Bom).

57. *Ramgopal v State of MP*, 2010 (13) SCC 540 [LNIND 2010 SC 690] : 2010 (7) Scale 711 [LNIND 2010 SC 690] .

58. *State v Dhruv Kumar Singh*, 2002 Cr LJ 1315 .

59. *Lalmani Mahto v State of Bihar*, 2003 Cr LJ (NOC) 1 (Jhar) : (2002) 3 JLJR 576 .

60. *Arun Garg v State of Punjab*, (2004) 8 SCC 251 [LNIND 2004 SC 1012] .

61. *Satya Narayan Tiwari v State of UP*, 2011 Cr LJ 445 : (2010) 13 SCC 689 [LNINDORD 2010 SC 188] A.

62. *Satish Kumar Batra v State of Haryana*, AIR 2009 SC 2180 [LNIND 2009 SC 754] : (2009) 12 SCC 191 .

63. *Heera Lal v State of Rajasthan*, 2017 (6) Scale 152 .

64. *Vijai Ratan Sharma v State of UP*, 1988 Cr LJ 1581 (All). To the same effect is the decision in *S Faisal Nabi v State of MP*, 2001 Cr LJ 1598 (MP), cruelty was committed at her in-laws' place and continued at her parents' home where she was forced to go, letters of dowry demand also received at the latter place. The Courts at the place of parental home had jurisdiction. *Mohd Haroom v State of Rajasthan*, 1999 Cr LJ 2532 (Raj), unlawful demands, held not sufficient in themselves to constitute cruelty or lead to suicide.

65. *Dukhi Ram v State of UP*, 1993 Cr LJ 2539 (All).

66. *Rajaram Venkatesh v State of AP*, 1993 Cr LJ 707 (AP).

67. *Suman Upadhyay v State of UP*, 1999 Cr LJ 4657 (All).

68. *Gulshan Kapoor v State of Rajasthan*, 2011 Cr LJ 4864 (Raj).

69. *Sunita Kumari Kashyap v State of Bihar*, AIR 2011 SC 1674 [LNIND 2011 SC 405] : 2011 Cr LJ 2667 .

70. *Sujata Mukherjee v Prashant Kumar Mukherjee*, AIR 1997 SC 2465 : 1997 Cr LJ 2985 .

71. *State of MP v Suresh Kaushal*, 2003 (11) SCC 126 : 2002 Cr LJ 217 (SC) reported in 2008 (11) SCC 103 [LNIND 2008 SC 821] : AIR 2008 SC 2666 [LNIND 2008 SC 821] .

72. *Vamgarala Yedukondala v State of AP*, 1988 Cr LJ 1538 (AP).

73. *Prasanna Kumar v Dhanalaxmi*, 1989 Cr LJ 1829 (Mad). *Amrish Kumar Agarwal v State of UP*, 2000 Cr LJ 1324 (All), offence committed before commencement of the new section, prosecution not justified.

74. *Vasanta Tulshiram Bhoyar v State of Maharashtra*, 1987 Cr LJ 901 (Bom).

75. *State of Rajasthan v Gopilal*, 1992 Cr LJ 273 . A similar approach was adopted by AP High Court in *Thathapadi Venkatalakshmi v State of AP*, 1991 Cr LJ 749 , the court pointing out that the wife cannot be permitted to withdraw the charge-sheet if it is filed by the police. *Gursharan Kaur v State of Rajasthan*, 1993 Cr LJ 2076 (Raj), the court ordered compromise to be recorded setting aside the Magistrate's order.

76. *D Jayalakshmi v State of MP*, 1993 Cr LJ 3162 (AP).

77. *Pyare Lal Gupta v State*, 2000 Cr LJ 1019 (Del).

78. *Manoj Kumar v State of Rajasthan*, 1999 Cr LJ 10 (Raj).

79. *Gopal v State of TN*, 1999 Cr LJ 3939 (Mad).

80. *BS Joshi v State of Haryana*, AIR 2003 SC 1386 [LNIND 2003 SC 335] : 2003 Cr LJ 2028 , the aggrieved wife settled the matter with her husband by going in for consent divorce and applied for quashing of her complaint. *Risal Singh v State of Punjab*, 2012 Cr LJ 2188 (SC) : 2012 AIR SCW 2249; *Jitendra v Babita*, (2013) 4 SCC 58 [LNIND 2013 SC 195] .

81. *RP Bidlan v State of Maharashtra*, 1993 Cr LJ 3019 (Bom).

82. *Balkrishna Pandurang Moghe v State of Maharashtra*, 1998 Cr LJ 4496 (Bom). The Court said that the section is not invalid on the ground of absence of nexus between the provision and the object sought to be achieved; *Rajendran v Commr of Police*, AIR 2009 SC 855 [LNIND 2008 SC 2339] : (2008) 17 SCC 501 [LNIND 2008 SC 2339] , evidence of torture leading to suicide.

83. *Suvetha v State*, (2009) 6 SCC 757 [LNIND 2009 SC 1156] : 2009 Cr LJ 2974 ; *Ranjana Gopalrao Thorat v State of Maharashtra*, 2008 Bom CR (Cr) 185 : (2007 (5) AIR Bom R 271; a person can become a relative only by blood or marriage and not otherwise. The word relative has been defined in the Chambers Dictionary 'person who is related by blood or marriage'. A second wife cannot assume a character as wife if there is no marriage in the eye of law. Since she is not a relative, she does not fall within the scope of section 498A of IPC, 1860 at all. She certainly deserves to be discharged as far as offence under section 498A of IPC, 1860 is concerned; *John Indiculla v State*, 2005 Cr LJ 2925 (Ker) - the second wife is a relative of the husband.

84. *Syed Hyder Hussain v State of AP*, (2002) Cr LJ 3602 (AP).

85. *Reema Agarwal v Anupam*, (2004) 3 SCC 199 [LNIND 2004 SC 1499] : AIR 2004 SC 1418 [LNIND 2004 SC 1499] : 2004 Cr LJ 892 ; *A Subhash Babu v State of AP*, AIR 2011 SC 3031 [LNIND 2011 SC 679] : 2011 (7) SCC 616 [LNIND 2011 SC 679] .

86. *Vasant Bhagwat Patil v State of Maharashtra*, 2012 Cr LJ 65 (Bom).

87. *Chandrawati v State*, 1996 Cr LJ 975 (Del).

88. *Undavalli Narayana Rao v State of AP*, (2009) 14 SCC 588 [LNIND 2009 SC 1515] .

89. *Inderpal v State of MP*, (2001) 10 SCC 736 : 2002 Cr LJ 926 (SC); *Gananath Pattnaik v State of Orissa*, (2002) 2 SCC 619 [LNIND 2002 SC 100] .

90. *State of Karnataka v Siddaraju*, 2000 Cr LJ 4220 (Kant); *Kishangiri Mangalgiri Goswami v State of Gujarat*, (2009) 4 SCC 52 [LNIND 2009 SC 193] : AIR 2009 SC 1808 [LNIND 2009 SC 193] : 2009 Cr LJ 1720 : (2009) 2 GLR 1074 , imprisonment for 10 years not interfered with, that under Dowry Prohibition Act, 1961, section 3, reduced from five to three years. *Balwant Singh v State of HP*, (2008) 15 SCC 497 [LNIND 2008 SC 1942] : 2008 Cr LJ 4683 , sentence for one year maintained, that of aged parents-in-law reduced to the period already undergone. *Shivcharan Lal Verma v State of MP*, (2007) 15 SCC 369 , second marriage during life-time of the first wife, second wife tortured by both, section 498-A not applicable, but because she committed suicide because of the torture, conviction under section 306 maintained, but sentence of seven years reduced to five years. *Milind Bhagwanrao Godse v State of Maharashtra*, (2009) 2 SCC (Cr) 182 : AIR 2009 AC 1828 : (2009) 3 SCC 699 [LNIND 2009 SC 338] : 2009 Cr LJ 1736 , torture leading to suicide, conviction under sections 498-A, 306, 109 read with section 34. *Kailash v State of MP*,

(2006) 12 SCC 667 [LNIND 2006 SC 803] : AIR 2007 SC 107 [LNIND 2006 SC 803] , the accused had already under gone eight years of imprisonment, the court reduced the sentence to eight years. *Anand Mohan Sen v State of WB*, (2007) 10 SCC 774 [LNIND 2007 SC 688] : 2007 Cr LJ 2770 , death by itself may not lead to an inference that cruelty was there, but in this case there were specific allegations which were proved by prosecution witnesses, ingredients were satisfied, no interference in the order of conviction by the High Court.

91. *Malyala Vishwanatha Rao v State of AP*, 2003 Cr LJ (NOC) 11 (AP) : (2002) 1 ALT (Cr) 499. *Konidela Madhusudhan v State of AP*, 2003 Cr LJ (NOC) 172 (AP) : (2003) 1 Andh LD (Cr) 823, harassment was not complained of immediately. The sentence of imprisonment was restricted to the period already undergone. *Chandra Kala Devi v State of Bihar*, 2003 Cr LJ 3146 (Pat), evidence of witnesses showed that the in-laws of the victim demanded motorcycle from parents and that she had to face hostile atmosphere for that reason. There was also an attempt to set her on fire. Finding of guilt and sentence imposed were confirmed, but looking at their age and the fact that they remained in custody for 52 days, their sentence was reduced to the period already undergone.

92. *State of Maharashtra v Vasant Shankar Mhasane*, 1993 Cr LJ 1134 (Bom). *Raghumunda Satya Narayana v State of AP*, AIR 2000 SC 3420 : 2000 Cr LJ 2779 the accused-husband was convicted under the section and sentenced to two years' imprisonment. The aggrieved wife filed affidavit saying that they had come to terms and that their peace would elude them if the husband had to undergo the whole sentence. The sentence was reduced to the period already undergone.

93. *Siddaling v State*, AIR 2018 SC 3829 [LNIND 2018 SC 355] .

94. *BT Jayaram v State of Karnataka*, (2008) 14 SCC 530 : AIR 2006 SC 1799 . *Satish Kumar Batra v State of Haryana*, (2009) 12 SCC 491 [LNIND 2009 SC 754] : AIR 2009 SC 2180 [LNIND 2009 SC 754] : 2009 Cr LJ 2447 , sentence reduced to the period already undergone 13 months.

95. *Rajesh Sharma v State of UP*, AIR 2017 SC 3869 [LNIND 2017 SC 351] .

96. *Onkar Nath Mishra v State (NCT) of Delhi*, (2008) 2 SCC 561 [LNIND 2007 SC 1511] : 2008 Cr LJ 1391 . See also *Social Action Forum for Manav Adhikar v Union of India Ministry of Law and Justice*, AIR 2018 SC 4273 .

97. *Onkar Nath Mishra v State (NCT) of Delhi*, (2008) 2 SCC 561 [LNIND 2007 SC 1511] : 2008 Cr LJ 1391 , there was not even whisper of wilful conduct of harassment.

98. *Sunil Kumar Sambhudayal Gupta v State of Maharashtra*, 2011 Cr LJ 705 : (2010) 13 SCC 657 [LNIND 2010 SC 1088] .

99. *KRJ Sarma v Surya Rao*, 2013 Cr LJ 2189 (SC); *State of HP v Manju Rani*, 2013 Cr LJ 101 (HP); *Anil Kumar Gupta v State of UP*, 2011 Cr LJ 2131 : (2011) 11 SCC 24 [LNIND 2011 SC 275] ; *Atikul Islam v State of Tripura*, 2013 Cr LJ 1374 (Gau) — allegation of cruelty is not proved beyond reasonable doubt, Accused was acquitted.

100. *Maniklal Jain v State of MP*, 2012 Cr LJ 613 (SC) : 2011 AIR SCW 6471.

101. *Anisetti Sivaprasada Rao v State of AP*, 1994 Cr LJ 1760 (AP). *Mangilal v State of Rajasthan*, AIR 2001 SC 2937 [LNIND 2001 SC 2385] , the accused administered poison to his wife, acquittal set aside; *Girdhar Shankar Tawade v State of Maharashtra*, AIR 2002 SC 2078 [LNIND 2002 SC 325] : 2002 Cr LJ 2814 (SC), charges under sections 306 and 498A are independent of each other. Acquittal under section 306 does not necessarily entail acquittal under section 498A. But there was no evidence to bring home the charge even under section 498A.

102. *Savalram v State of Maharashtra*, 2003 Cr LJ 2831 (Bom).

103. *Hussan Lal v State of Punjab*, 2002 Cr LJ 2436 (P&H).

104. *Vijaya v Laxmanan*, 1999 Cr LJ 5012 : (1998) 8 SCC 415 .

105. *Arun Vyas v Anita Vyas*, AIR 1999 SC 2071 [LNIND 1999 SC 1377] : 1999 Cr LJ 3479 .

106. *Preeti Gupta v State of Jharkhand*, (2010) 7 SCC 667 [LNIND 2010 SC 752] : AIR 2010 SC 3363 [LNIND 2010 SC 752] .

107. Law Commission of India—243rd Report, Para-9.1; Available at : http://lawcommissionofindia.nic.in/reports/report243.pdf (last accessed in July 2019).

108. Law Commission of India- 243rd Report- Para-9.1; Available at : http://lawcommissionofindia.nic.in/reports/report243.pdf (last accessed in July 2019).

THE INDIAN PENAL CODE

CHAPTER XXI OF DEFAMATION

[s 499] Defamation.

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

***Explanation 1.*—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.**

***Explanation 2.*—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.**

***Explanation 3.*—An imputation in the form of an alternative or expressed ironically, may amount to defamation.**

***Explanation 4.*—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.**

ILLUSTRATIONS

(a) A says—"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation unless it falls within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

Imputation of truth which public good requires to be made or published.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Public conduct of public servants.

Second Exception.—It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public

functions, or respecting his character, so far as his character appears in that conduct, and no further.

Conduct of any person touching any public question.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

ILLUSTRATION

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending a such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharges of the duties of which the public is interested.

Publication of reports of proceedings of Courts.

Fourth Exception.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Merits of a case decided in Court or conduct of witnesses and others concerned.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

ILLUSTRATIONS

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this is in good faith, in as much as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, in as much as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Merits of public performance.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be substituted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

ILLUSTRATIONS

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within the exception, if he says this in good faith, in as much as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine". A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Censure passed in good faith by person having lawful authority over another.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

ILLUSTRATION

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Accusation preferred in good faith to authorised person.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

ILLUSTRATION

If A in good faith accuse Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Imputation made in good faith by person for protection of his or other's interests.

Ninth Exception.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

ILLUSTRATIONS

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report of his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Caution intended for good of person to whom conveyed or for public good.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

COMMENT.—

Section 499 Indian Penal Code (IPC, 1860) brings under the criminal law, the person who publishes as well as the person who makes the defamatory imputation. Section 499, IPC, 1860 emphasises the words "makes or publishes". The gist of the offence of defamation lies in the dissemination of the harmful imputation. When a defamatory statement is published, it is not only the publisher, but also the maker who becomes responsible and it is in that context that the word "makes" is used in section 499 IPC, 1860. It is of essence that in order to constitute the offence of defamation, it must be communicated to a third person because what is intended by the imputation is to arouse hostility of others. Therefore, in brief, the essentials of defamation are, first, the words must be defamatory; second, they must refer to the aggrieved party; third, they must be maliciously published.[1.]

[s 499.1] Reputation.—

Right to reputation is a facet of right to life of a citizen under Article 21 of the Constitution.[2.] The right to enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property.[3.] The term 'person' includes not only the physical body and members but also every bodily sense and personal attribute among which is the reputation a man has acquired. Reputation can also be defined to be good name, the credit, honour or character which is derived from a favourable public opinion or esteem, and character by report. The right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society. 'Reputation' is an element of personal security and is protected by Constitution equally with the right to enjoyment of life, liberty and property. Although, 'character' and 'reputation' are often used synonymously, these terms are distinguishable. 'Character' is what a man is and

'reputation' is what he is supposed to be in what people say he is. 'Character' depends on attributes possessed and 'reputation' on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present.[4.]

[s 499.2] Constitutional validity.—

The Constitutional validity of sections 499 and 500 of IPC, 1860 and section 199 of Code of Criminal Procedure, (Cr PC, 1973) was assailed in *Subramanian Swamy v UOI, Ministry of Law*,[5.] and the Supreme Court upheld it. The Court observed thus:

> One cannot be unmindful that right to freedom of speech and expression is a highly valued and cherished right but the Constitution conceives of reasonable restriction. In that context criminal defamation which is in existence in the form of ss. 499 and 500 Indian Penal Code is not a restriction on free speech that can be characterized as disproportionate. Right to free speech cannot mean that a citizen can defame the other. Protection of reputation is a fundamental right. It is also a human right. Cumulatively it serves the social interest.

The Apex Court did not accept that the provisions relating to criminal defamation are not saved by the doctrine of proportionality, because it determines a limit which is not impermissible within the criterion of reasonable restriction. The Court also held that the criminal prosecution on defamation will not negate and violate the right to speech and expression of opinion.

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1. *BRK Murthy v State*, 2013 Cr LJ 1602 (AP).
2. *Mehmood Azam v State*, AIR 2012 SC 2573 [LNIND 2012 SC 456] : (2012) 8 SCC 1 [LNIND 2012 SC 456] ; *Vishwanath S/o Sitaram Agrawal v Sarla Vishwanath Agrawal*, AIR 2010 SC 1974 [LNINDORD 2010 SC 207] : 2010 (7) SCC 263 [LNIND 2010 SC 438] .
3. *Smt. Kiran Bedi v Committee of Inquiry*, AIR 1995 SC 117 [LNIND 1994 SC 929] : 1994 (6) SCC 565 [LNIND 1994 SC 952] : 1995 SCC (Cr) 29, **quoted** from *D F Marion v Davis*, 1989 (1) SCC 494 [LNIND 1989 SC 10] : AIR 1989 SC 714 [LNIND 1989 SC 833] .
4. *Kishore Samrite v State of UP*, (2013) 2 SCC 398 [LNIND 2012 SC 657] .
5. *Subramanian Swamy v UOI, Ministry of Law*, 2016 Cr LJ 3214 : 2016 (5) SCJ 643 .

THE INDIAN PENAL CODE

CHAPTER XXI OF DEFAMATION

[s 500] Punishment for defamation.

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

COMMENT.—

The essence of the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed.[6.]

[s 500.1] Ingredients.—

The section requires three essentials:—

1. Making or publishing any imputation concerning any person.

2. Such imputation must have been made by

(a) words, either spoken or intended to be read; or

(b) signs; or

(c) visible representations.

3. Such imputation must have been made with the intention of harming or with knowledge or reason to believe that it will harm the reputation of the person concerning whom it is made.[7.] It is clear that intention to cause harm is the most essential sine qua non for an offence under section 499, IPC, 1860. An offence punishable under section 500, IPC, 1860 requires blameworthy mind and is not a statutory offence requiring any *mens rea*.[8.]

1. 'Makes or publishes any imputation concerning any person'.—Everyone who composes, dictates, writes or in any way contributes to the making of a libel, is the maker of the libel. If one dictates, and another writes, both are guilty of making it, for he shows his approbation of what he writes. So, if one repeats, another writes a libel, and a third approved what is written they are all makers of it, as all who concur and assent to the doing of an unlawful act are guilty; and murdering a man's reputation by a libel may be compared to murdering a man's person, in which all who are present and encourage the act are guilty, though the wound was given by one only.[9.] The mechanic or the compositor of the Press does neither 'make nor publish' the matter that may be impugned as defamatory.[10.] Intention on the part of the accused to harm the reputation or the knowledge or reasonable belief that an imputation will harm the reputation of the person concerned being an essential ingredient of the offence of defamation, the Chairman of a Company owning the newspaper in which the offending news item is published cannot be held liable unless it is shown that he was somehow

concerned with the publication of the defamatory news item. Under section 7 of the Press and Registration of Books Act, 1867 a presumption regarding awareness of the contents of a newspaper can be raised only against the Editor whose name appears on the copy of the newspaper and no other Editors like the News Editor or Resident Editor whose names do not appear in the declaration printed on the copy of the newspaper.[11.]

[s 500.2] 'Publishes'.—

The defamatory matter must be published, that is, communicated to some person other than the person about whom it is addressed, e.g., dictating a letter to a clerk is publication.[12.] Imputations in a charge sheet which is sent to the employee himself does not amount to a publication.[13.] But where there is a duty which forms the ground of privileged occasion, the person exercising the privilege may communicate matters to a third person in the ordinary course of business. A solicitor who dictates to his clerk a letter containing defamatory statements regarding a person is not liable for defamation.[14.] Where the complainant's Advocate sent a notice to a party whose Advocate dictated a reply to his steno containing defamatory remarks and the same was sent to the complainant's Advocate, the Kerala High Court held that this did not amount to any publication.[15.]

Communicating defamatory matter only to the person defamed is not publication.[16.] The action of a person who sent to a public officer by post, in a closed cover, a notice containing imputations on the character of the recipient but which was not communicated by the accused to any third person was held to be not such a 'making' or 'publishing' of the matter complained of as to constitute this offence.[17.] A notice under a Municipal Act was issued by the President of the Municipal Committee to a certain person, who sent a reply containing defamatory allegations against the President. This reply was put on the official file by the President and it was read by the members of the Committee. It was held that there was publication of the defamation. The placing of the reply on the official file was not a gratuitous or voluntary act on the part of the President but it was his duty to do so, and the accused knew or must have known that the contents of his reply would be necessarily communicated to the members of the Committee.[18.]

Where the alleged defamatory words were sent to the complainant by registered post, it was held that there was no publication. There was absence of one of the necessary ingredients of the offence, namely publication. The complaint was liable to be quashed.[19.]

Defamatory matter written on a postcard[20.] or printed on papers distributed or broadcast,[21.] constitutes publication. So is the filing in a Court of a petition containing defamatory matter concerning a person with the intention that it should be read by other persons.[22.] When a person presents a defamatory petition to a superior public officer, who, in the ordinary course of official routine, sends it to some subordinate officer for inquiry, there is a publication of the letter at the place where he may receive it, and publication for which the original writer may *prima facie* be held responsible, whether or not he expressly asks for an inquiry.[23.] Communication to a husband or wife of a charge against the wife or husband is publication,[24.] but uttering of a libel by a husband to his wife is not, as in England they are one in the eye of the law.[25.]

Where a libel is printed, the sale of each copy is a distinct publication and a fresh offence; and conviction or acquittal on an indictment for publishing one copy will be no bar to an indictment for publishing another copy.[26.]

The person who publishes the imputation need not necessarily be the author of the imputation. The person who publishes and the person who makes an imputation are alike guilty.[27.]

[s 500.3] General Statement.—

In order to constitute offence of defamation the words, signs, imputation made by accused must either be intended to harm the reputation of a particular person or the accused must reasonably know that his/her conduct could cause such harm. Where the appellant's statement published in news magazine was a rather general endorsement of pre-marital sex and her remarks were not directed at any individual or even at a 'company or an association or collection of persons', it was held that it cannot be construed as an attack on the reputation of anyone in particular.[28.] Where a complaint was filed with regard to a statement made by the Gujarat Chief Minister published in media or newspaper or over television or through internet that ex-Prime Minister late Hon'ble Shri Jawahar Lal Nehru did nothing for children. The High Court upheld the rejection of complaint holding that it was only a general statement and cannot be construed as an attack on reputation of anyone in particular.[29.]

[s 500.4] Repetition.—

The Code makes no exception in favour of a second or third publication as compared with the first. If a complaint is properly laid in respect of a publication which is *prima facie* defamatory, the Magistrate is bound to take cognizance of the complaint, and deal with it according to law.[30.] The publisher of a libel is strictly responsible, irrespective of the fact whether he is the originator of the libel or is merely repeating it.[31.]

[s 500.5] Publication of defamatory matter in newspaper.—

In a case of defamation, only the source of information on which the person accused has acted and the justification for his so acting, are to be considered. If he has not taken proper care and acted on gossip against the complainant hereby defamed, he ought not to escape the consequence on the ground that he has contracted the incorrect report. The culpability in such cases does not depend upon the circumstances where he has tried to undo the wrong which he has committed or not put up on fact he has acted with care or attention or has done so rashly or negligently, it is no defence in the matter of defamation for the accused to say that he has acted on the information given to him by another. It is for him to establish that the source on which he acted is a proper source on which he is entitled and he did with care and circumspection. Therefore, the editor and publisher are liable for the baseless and false matter which was published in the journal. Such an irresponsible conduct and attitude on the part of the editor and publisher cannot be said to be done in good faith.[32.] In the matter of defamation the position of newspaper is not in any way different from that of member of the public in general. The responsibility in either case is the same.[33.] The publisher of a newspaper is responsible for defamatory matter published in such paper whether he knows the contents of such paper or not.[34.] But it would be a sufficient answer to a charge of defamation against the editor of a newspaper if he proved that the libel was published in his absence and without his knowledge and he had in good faith entrusted the temporary management of the newspaper during his absence to a

competent person.[35.] The owner of a journal in order to be liable under section 499 has to have direct responsibility for the publication of the defamatory statement and he must also have the intention to harm, or knowledge or reason to believe that the imputation will harm the reputation of person concerned. The owner of a journal *qua* has no responsibility under the section.[36.] The prosecution of the chairman and managing director of a company owning the newspaper for the publication of defamatory article in the newspaper by reason of their holding those posts would be invalid unless their personal involvement in the publication of the article is established.[37.]

Where a newspaper carried extracts from a book written on one of the former Prime Ministers of India containing imputations of corruption, the editor of the newspaper was liable to be prosecuted. His plea that he was only a publisher and not the author of the extracts was held to be not tenable. It was alleged that there was a criminal conspiracy in the matter between the managing editor, resident editor and executing editor. All of them were liable to be prosecuted.[38.] A chief editor of a newspaper cannot say that he is not responsible for selection and publication of matters in the newspaper. A complaint against the chief editor is maintainable.[39.]

The sending of a newspaper, containing defamatory matter by post from Calcutta, where it is published, addressed to a subscriber at Allahabad, is publication of such defamatory matter at Allahabad.[40.]

[s 500.6] Liability of Editor.—

From the scheme of the Press and Registration of Books (PRB) Act, it is evident that it is the Editor who controls the selection of matter that is published. A news item has the potentiality of bringing doom's day for an individual. The Editor controls the selection of the matter that is published. Therefore, he has to keep a careful eye on the selection. Blue-penciling of news articles by anyone other than the Editor is not welcome in a democratic polity. Editors have to take responsibility of everything they publish and to maintain the integrity of published record.[41.]

[s 500.7] Prosecution against CEO of TV Channel.—

In order to constitute offence of defamation under criminal law, section 499, IPC, 1860 contemplates "intending to harm, or knowing or having reason to believe that such imputation will harm reputation of such person" on the part of the accused. In the entire complaint, the complainant/1st respondent did not allege that the accused, who is Chief Executive Officer of TV-9 channel, telecast the news item or permitted to re-telecast the news item with such state of mind (*Mens rea*). Except as Chief Executive Officer of the TV news channel, the complainant did not allege any other connection for the accused with telecasting of the news item. In the absence of any such connection for the accused with this news item and in the absence of any such *mens rea* or state of mind for the accused in relation to this news item, simply because the accused happened to be Chief Executive Officer or proprietor or partner or managing director of the TV news channel, no criminal case can lie against him for offence punishable under section 500, IPC, 1860.[42.]

[s 500.8] Jurisdiction.—

Where a newspaper containing a defamatory article is printed and published at one place and is circulated or sold at other places by or on behalf of the accused responsible for printing and publishing the newspaper, then there would be publication of the defamatory article in all such places and jurisdictional Magistrate can entertain the complaint for defamation. It cannot be said that the act of publication comes to an end as soon as the issue of the newspaper is released at one place. If that newspaper is despatched by the printer and publisher to other places for being sold or circulated, the defamatory article gets published at each such place. The mere fact that the headquarter of a newspaper is based at a particular place or that it is printed and published at one place, does not necessarily mean that there cannot be publication of the defamatory article contained in the newspaper at another place. If the defamatory imputation is made available to public at several places, then the offence is committed at each such place. Though the first offence may be committed at the place where it is printed and first published, it gets repeated wherever the newspaper is circulated at other places.[43.]

[s 500.9] Apology.—

Where the incriminating news was not published in the newspaper by the editor knowing or having good reason to believe that such matter was defamatory of the complainant, the editor had no ill will against him and had expressed regret for such publication, it was held that the editor could not be held responsible in connection with the defamation.[44.]

[s 500.10] 'Imputation'.—

It is immaterial whether the imputation is conveyed obliquely or indirectly, or by way of question, conjecture, or exclamation, or by irony.[45.]

The words "coward, dishonest man, and something worse than either"[46.] and words to the effect that the complainant and others were preparing to bring a false charge against the accused,[47.] were held to be defamatory. Calling a counsel "badmash" in the open Court was held to be not an offence within the meaning of section 499. The Court said that it might come under section 504. The acquittal of the accused under section 500 was held to be proper.[48.] The accused married the complainant by exchange of garlands in a temple. He lived with her for a few days and then started demanding money and described her as unchaste woman and not decent looking. The Court said that the ingredients of section 500 were *prima facie* made out and, therefore, the accused was liable to be prosecuted.[49.]

[s 500.11] 'Concerning any person'.—

The words must contain an imputation concerning some particular person or persons whose identity can be established. That person need not necessarily be a single individual. Where the accused published in a paper an account of an outrage on a woman alleged to have been perpetrated by two constables out of four constables stationed at a police station, it was held that, in the absence of proof that it was intended to charge any particular and identifiable constables with the alleged offence, the accused could not be convicted.[50.] Where a film which was alleged to be defamatory of lawyers as a class formed the basis of a defamation case against the

producers including artists and Chairman of the Central Board of Censors, it was held that though the offence of defamation can be committed in regard to a company or collection of persons in view of Explanation 2 to section 499, IPC, 1860, yet it is necessary to show that this collection of persons is a small determinate body whose identity can be fixed. Advocates as a class are incapable of being defamed.[51.] In this connection see comments under head "Explanation-2" *infra*.

A newspaper is not a person and therefore, it is not an offence to defame a newspaper. Defamation of a newspaper may, in certain cases, involve defamation of those responsible for its publication.[52.]

[s 500.12] *Innuendo*.—

Where the statement does not refer to the complainant directly, the doctrine of *innuendo* may be pressed into service for the purpose of showing that the complainant was the real target of the attack. He must bring forward additional facts showing how the words are related to him in a manner which is defamatory. "A true *innuendo* is an *innuendo* by which the plaintiff alleges a special defamatory meaning of the words distinct from their ordinary meaning and arising by virtue of extrinsic facts or matters known to the recipients."[53.] Applying this principle to the facts of a case before it, the Supreme Court laid down that an *innuendo* cannot be established by an evidence showing inferences of two kinds. The evidence of additional facts must be capable of showing that the words were applicable to the complainant and the complainant alone.[54.]

2. 'Such imputation should have been made by words either spoken or intended to be read, or by signs or by visible representation'.—IPC, 1860 makes no distinction between written and spoken defamation.[55.]

[s 500.13] 'By signs or by visible representations'.—

The words 'visible representation' will include every possible form of defamation which ingenuity can devise. For instance, a statue, a caricature, and effigy, chalk marks on a wall, signs, or pictures may constitute a libel.[56.] The publication of a group photograph with a false caption depicting the persons in the photograph as soldiers of a "goonda war" was held to be defamatory.[57.] In another case, Complainant alleged that four photographs of an incident were published in a newspaper, in which, one photograph showed the complainant more or less nude and that has caused defamation and harm to him. The photographs during a protest demonstration a protest demonstration and depicted the sequence of events when the complainant was being pulled out of a police jeep. It can never be stated that the publication of the photographs in the newspaper was with the intention or with knowledge or having reason to believe that it will harm the reputation of the complainant. Proceedings are liable to be quashed.[58.]

3. 'Intending to harm, or knowing or having reason to believe that such imputation will harm'.—In this section the expression "harm" means harm to the reputation of the aggrieved party.[59.] It is not necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation alleged; it is sufficient to show that the accused intended to harm, or knew, or had reason to believe that the imputation made by him would harm the reputation of the complainant.[60.] A statement made primarily with the object that the person making it should escape from a difficulty

cannot be made the subject of a criminal charge merely because it contains matter which may be harmful to the reputation of other people or hurtful to their feelings.[61.]

The meaning to be attached to the word 'harm' is not the ordinary sense in which it is used. By 'harm' is meant imputation on a man's character made and expressed *to others* so as to lower him in their estimation. Anything which lowers him merely in *his own* estimation does not constitute defamation.[62.] Accusing a person in front of the public, of having illicit relations with accuser's sister cannot be considered to have been uttered merely as scurrilous abuse in the situation in which they were used against the accused. The accusation took place in an open gathering when not only the members of the Gram Panchayat were present but also the members of the general public. Conviction of the accused under section 500 IPC, 1860 was upheld.[63.]

[s 500.14] 'Reputation'.—

A man's opinion of himself cannot be called his reputation.[64.] A man has no 'reputation' to himself and therefore, communication of defamatory matter to the person defamed is no publication.

[s 500.15] *Explanation 1.*—

A prosecution may be maintained for defamation of a deceased person, but it has been ruled that no suit for damages will lie in such a case. Where, therefore, a suit was brought by the heir and nearest relation of a deceased person for defamatory words spoken of such deceased person, but alleged to have caused damage to the plaintiff as a member of the same family, it was held that the suit was not maintainable.[65.]

[s 500.16] *Explanation 2.*—

Imputation concerning company, association or collection of persons.—An action for libel will lie at the suit of an incorporated trading company in respect of a libel calculated to injure its reputation in the way of its business.[66.] The words complained of must attack the corporation or company in the method of conducting its affairs, must accuse it of fraud or mismanagement or must attack its financial position.[67.] A corporation has no reputation apart from its property or trade. It cannot maintain an action for a libel merely affecting personal reputation. The words complained of, to support a prosecution, must reflect on the management of its business and must injuriously affect the corporation, as distinct from the individuals who compose it. They must attack the corporation in its method of conducting its affairs, must accuse it of fraud or mismanagement or must attack its financial position. A corporation cannot bring a prosecution for words which merely affect its honour or dignity.[68.]

A prosecution lies for libelling Hindu widows as a class.[69.] Where the defamatory articles, published in a newspaper, related to the habitual immoral conduct of the girls of a particular college, but no particular girl or girls were named in or identifiable from the articles, and the complaint was filed by a number of girls of the college, it was held that the author of the articles was guilty of defamation, in as much as the inevitable effect of the articles on the mind of the reader must be to make him believe that it was habitual with the girls of the college to misbehave in the ways mentioned so that all the girls in the college collectively and each girl individually must suffer in reputation.[70.]

This Explanation covers any collection of persons but such collection of persons must be identifiable in the sense that one could with certainty say that this group of particular people has been defamed as distinguished from the rest of the community. Public Prosecutors and Assistant Public Prosecutors at Aligarh in Uttar Pradesh were held to be an identifiable group and hence, could be the subject of defamation according to the Supreme Court.[71.] In this connection see para captioned "Concerning any Person" and the cases mentioned therein.

The offending article must carry an imputation against a definite and ascertainable body of people. A complaint was not allowed to be continued where the article published in a magazine carried imputations against a certain community in general and not against any particular group, nor the community was found to be a definite and identifiable body of people and the imputations also did not relate to the complainant.[72.] Where a news in a local daily about insufficiency of sandal wood pieces at the cremation of the President of a National Political Party was published, but no defamatory words or imputation against the said political party was used in the news item and it did not refer to any definite or determinate person or persons, it was held that offence of defamation was not constituted.[73.]

[s 500.17] *Explanation 4.*—

This Explanation would not apply when the words used and forming the subject-matter of the charge are *per se* defamatory.[74.] Describing a woman that she has paramours wherever she goes is *per se* defamatory.[75.] Wanton allegations by the accused against the complainant who was his wife that she was not virgin at the time of marriage, that she had a living husband at that time and had a child from him and that she had gone to the extent of committing theft, were held to be defamatory. The burden was upon him to show that the publication in question was necessary in good faith for the protection of his interest. He could not do this and, therefore, the Court showed no mercy and sentenced him to simple imprisonment for two months and a fine of Rs. 3,000.[76.]

[s 500.18] Exceptions.—

The defamatory statement does not fall within any of the Exceptions by reason merely of the fact that it is punishable as an offence under section 182 or any other section of the Code.[77.]

[s 500.19] Members of Legislature and Parliament.—

In the absence of legislation by the Indian Parliament on the subject, the privileges, powers and immunities of a House of State Legislature or Parliament or of its members are the same as those of the House of Commons in England. A member of the House of Commons has an absolute privilege in respect of what he has spoken within the four walls of the House but there is only a qualified privilege in his favour even in respect of what he has himself said in the House, if he causes the same to be published in the public press. Where a member of a State Legislature got published in the press a question which the member had sought to put in the House but which the Speaker had disallowed and the question contained defamatory imputations regarding

the character of a person, it was held that the publication was not accepted by any of the exceptions to section 499.[78.]

A minister was questioned about misappropriation of Government funds. He replied by saying that the preliminary enquiry made by the government showed that some misappropriation had taken place. He also disclosed the names of the persons involved including that of the complainant as indicated in the report. This part of the proceedings was published in the newspaper of the accused. Since the newspaper exercised its qualified privilege in good faith, it was held that there was no intention to cause harm to the reputation of the complainant.[79.]

[s 500.20] Exception 1.—

This Exception and Exception 4 require that the imputation should be true. The remaining Exceptions do not require it to be so. They only require that it should be made in good faith. When truth is set up as a defence, it must extend to the entire libel and it is not sufficient that only a part of the libel is proved to be true.[80.]

The truth of the imputation complained of shall amount to defence if it was for the public benefit that the imputation should be published, but not otherwise. A Court may find that an imputation is true, and made for the public good, but on considering the manner of the publication (e.g., in a newspaper) it may hold that the particular publication is not for the public good, and is, therefore, not privileged.[81.] To get the benefit of this exception the accused must prove that the statement made by him is true in its substance and effect and not in part. Whether or not the statement was made for public good, an enquiry must be directed to the benefit that the publication has rendered or sought to render to the public or to a section of the public and whether the matter did concern the public.[82.]

[s 500.21] CASE.—

C was put out of caste by a committee of his caste-fellows on the ground that there was an improper intimacy between him and a woman of his caste. Certain persons, members of the committee, circulated a letter to the members of their caste stating that C and such woman had been put out of caste and requesting the members of the caste not to receive them into their houses or to eat with them and also made defamatory statements about them. It was held that, had such persons contented themselves with announcing the determination of the committee and the grounds upon which such determination was based, they would have been protected, but in as much as they went further and made false and uncalled for statements regarding C; they had not acted in good faith.[83.] If a person really was outcasted, a statement to the members of the brotherhood that he was outcasted is the kind of statement contemplated by the expression "public good".[84.] Where there exists a civil dispute between the parties as to the property where school is situated and run by complainant, which is admittedly pending in civil Court, mere alerting by accused to parents to take admission of their children at their own risk in school or in summer camp cannot be considered as defamatory or affecting the reputation or character of complainant. The above caution notice by no stretch of imagination can be considered as imputations actionable within the meaning of section 499 of the IPC, 1860.[85.]

[s 500.22] Exception 2.—

Every citizen has a right to comment on those acts of public men which concern him as a citizen of the country, if he does not make his commentary a cloak for malice and slander. A writer in a public paper has the same right as any other person, and it is his privilege, if indeed it is not his duty, to comment on the act of public men which concern not himself only but which concern the public, and the discussion of which is for the public good. And where a person makes the public conduct of a public man the subject of comment and it is for the public good, he is not liable to an action if the comments are made honestly, and he honestly believes the facts to be as he states them, and there is no wilful misrepresentation of fact or any misstatement which he must have known to be a misstatement, if he had exercised ordinary care.[86.] In order that a comment may be fair (a) it must be based on facts truly stated, (b) it must not impute corrupt or dishonourable motives to the person whose conduct or work is criticised except in so far as such imputations are warranted by the facts, (c) it must be the honest expression of the writer's real opinion made in good faith, and (d) it must be for the public good. The question to be considered in such cases is, would any fair man, however prejudiced he might be, or however exaggerated or obstinate his views may be, have made the criticism.[87.]

Any opinion expressed in good faith made by a public servant would not amount to offence of defamation when public servant was acting in discharge of public functions. According to section 21 of the IPC, 1860, clause fifth, a member of Panchayat assisting a Court of justice is within the scope of definition of "public servant". Hence, opinion expressed by member of Panchayat in good faith to assist Court of Justice does not amount to defamation.[88.]

Those who fill a public position must not be too thin skinned in reference to comments made upon them. Whoever fills a public position renders himself open to attack. He must accept an attack as a necessary, though unpleasant, appendage to his office.[89.]

The law of defamation under the IPC, 1860 cannot be equated with that of contempt of Court in general terms.[90.] The Court did not accept the proposition that a reply submitted to a contempt notice can in no case amount to contempt of Court in the light of the second exception to section 499.[91.]

[s 500.23] Exception 3.—

The conduct of publicists who take part in politics or other matters concerning the public can be commented on in good faith. M, a medical man and the editor of a medical journal, said in such journal of an advertisement published by H, another medical man, in which H solicited the public to subscribe to a hospital of which he was surgeon in charge stating the number of successful operations which had been performed, that it was unprofessional. It was held that in as much as such advertisement had the effect of making such hospital a "public question", M was within the third, sixth and ninth Exceptions.[92.] A newspaper carried a letter to the editor stating certain facts about a co-operative hospital to the effect that there were embezzlements; female nurses were harassed if they refused to attend night duty and that the President signed only convenient vouchers. It was held that this was an assertion of facts and not an expression of opinion. The mere fact that the letter demanded an inquiry would not convert the factual assertion into an opinion. The third Exception was not applicable.[93.]

Where the published statement was that the *Marwari* community had no faith and love towards India, their mother land, it was held that this was not sufficient to constitute the offence of defamation. The process issued by the magistrate was liable to be quashed.[94.]

[s 500.24] Comparative Advertisement.—

A commercial advertisement is a form of speech and "Commercial speech" is a part of the freedom of speech and expression guarantee under Article 19(1)(a) of the Constitution.[95.] Comparative advertising is advertisement where a party advertises his goods or services by comparing them with goods and services of another party. This is generally done by either projecting that the advertiser's product is of same or superior quality to that of the compared product or by denigrating the quality of the compared product. The advertiser has right to boast of its technological superiority in comparison with product of the competitor. He can declare that his goods are better than that of his competitor. However, while doing so, he cannot disparage the goods of the competitor. Therefore, if the advertising is an insinuating campaign against the competitor's product such a negative campaigning is not permissible.[96.] The allegation was that advertisement published by petitioner along with Associated Traders at instance of petitioner disparaging respondents business. The Associated Traders had admitted that alleged advertisement was taken out by them on their own and Petitioner Company had nothing to do with that. Offence under section 500 IPC, 1860 is not made out against the petitioner.[97.]

[s 500.25] Exception 4.—

Where there are judicial proceedings before a properly constituted judicial tribunal exercising its jurisdiction in open Court, then the publication, without malice, of a fair and accurate report of what takes place before that tribunal is privileged.[98.] Though the publication of such proceedings may be to the disadvantage of the particular individual concerned, yet it is of vast importance to the public that the proceedings of Courts of Justice should be universally known. The general advantage to the country in having these proceedings made public more than counterbalances the inconvenience to the private persons whose conduct may be the subject of such proceedings.[99.] It is immaterial whether the proceedings were *ex parte* or not,[100.] or whether the Court had jurisdiction or not.[101.] But a report of judicial proceedings cannot be published if the Court has prohibited the publication of any such proceedings,[102.] or where the subject-matter of the trial is obscene[103.] or blasphemous.[104.]

[s 500.26] CASE.—

A trustee of a temple was charged with defamation, the alleged defamatory statement being that the complainant, who performed the worship in the temple, had been convicted and sent to jail for the theft of idols belonging to the temple. At the time when the statement was made, an appointment in connection with the temple was in question. It was held that the trustee was justified in making the statement either in the interest of the temple or because the statement was no more than a publication of the result of proceedings in a Court of Justice.[105.]

[s 500.27] Exception 5.—

The administration of justice is a matter of universal interest to the whole public. The judgment of the Court, the verdict of jury, the conduct of parties and of witnesses, may all be made subjects of free comment. But the criticism should be made in good faith and should be fair. It must not wantonly assail the character of others or impute criminality to them. But in commenting on such matters, a public writer, as much as a private writer, is bound to attend to the truth, and to put forward the truth honestly and in good faith and to the best of his knowledge and ability. It is not to be expected that in discharging his duty of a public journalist he will always be infallible. His judgment may be biased, one way or the other, without the slightest reflection upon his good faith; and, therefore, if his comments are fair, no one has a right to complain.[106.]

[s 500.28] Exception 6.—

The object of this Exception is that the public should be aided by comment in its judgment of the public performance submitted to its judgment. All kinds of performances in public may be truly criticised provided the comments are made in good faith and are fair. Liberty of criticism is allowed; otherwise we should neither have purity of taste nor of morals. Good faith under this Exception requires not logical infallibility but due care and attention.[107.]

[s 500.29] Exception 7.—

This Exception allows a person under whose authority others have been placed, either by their own consent or by the law, to censure, in good faith, those who are so placed under his authority, so far as regards the matter to which that authority relates.[108.] But if this privilege is exceeded in any way the offence will be established. A man may in good faith complain of the conduct of a servant to the master of the servant even though the complaint amounts to defamation, but he is not protected if he publishes the complaint in a newspaper. A spiritual superior, in pronouncing and publishing a sentence of excommunication, may be protected by privilege so long as the publication is not more extensive than is required to effectuate the purpose for which the privilege is conceded to him for the censure of a member of the sect in matters appertaining to religion or the communication of a sentence he is authorized to pronounce to those who are to guide themselves by it.[109.] Where the complainant was dismissed from service on the allegation of theft of his master's property after a full domestic enquiry in which the complainant was given an opportunity to defend himself, the finding of such a domestic enquiry saying that the allegation was true could not form the basis of defamation case as it is fully protected by Exceptions 7 and 8 of section 499, IPC, 1860. To hold otherwise would amount to paralysing the administration of justice.[110.]

[s 500.30] CASE.—Imputation made by person in authority.—

The allegation was that accused, principal of a medical college made compliant against complainant, doctor that she was not taking interest in teaching or attending hospital, etc., and that she was more worried about her income from nursing home. It was held that words mentioned in complaint were not with intention to defame the complaint or harm her reputation. Compliant was made within idea to bring about

betterment in college. Proceedings under section 500 IPC, 1860 is liable to be set aside.[111.]

[s 500.31] Exception 8.—

Eighth Exception to section 499 provides that it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation. In the present case, the accused No. 1 and other members of Society approached the police because admittedly, the letter received by them contained some obscene material and defamatory statement against the daughter of the accused No. 1 and they expected guidance, which could include appropriate action against the culprit. It is clear that the case is clearly covered by Exception 8 and no case under section 500 IPC, 1860 could be made out.[112.] In order to establish a defence under this exception the accused would have to prove that the person to whom the complaint was made had lawful authority over the person complained against, in respect of the subject-matter of the accusation.[113.] To obtain the protection given by this Exception (1) the accusation must be made to a person in authority over the party accused, and (2) the accusation must be preferred in good faith.[114.] Defamatory averments made in a plaint are not absolutely protected in a criminal proceeding for defamation.[115.]

[s 500.32] CASES.—

The accused had lodged a report with the police contending that the complainant had poured acid on the coconut trees and had damaged the same and he had asked the police to take action against the said complaint. According to the complainant the said complaint damaged his reputation. It was contended that the case would be covered by Exceptions 8 and 9 of section 499 and the accused sought to quash the proceedings under section 500 IPC, 1860. The High Court found the petition meritless and had dismissed it. The Supreme Court held that:

> for the purpose of bringing his case within the purview of the Exceptions 8 and 9 appended to section 499 of the Penal Code, it would be necessary for the appellant to prove good faith for the protection of the interests of the person making it or of any other person or for the public good. It is now a well-settled principle of law that those who plead exception must prove it. The burden of proof that his action was bona fide would, thus, be on the appellant alone. At this stage, in our opinion, it would have been premature for the High Court to consider the materials placed by the, appellant before it so as to arrive at a definite conclusion that there was no element of bad faith on the part of the appellant in making the said complaint before the police authorities.[116.]

[s 500.33] Exception 9.—Good faith, individual interest or public good.—

This Exception posits that the person to whom the communication is made has an interest in protecting the person making the accusation. Besides the *bona fides* of the person making the imputation, the person to whom the imputation is conveyed must have a common interest with the person making it which is served by the communication.[117.] The interest of the person referred to in this Exception has to be real and legitimate when communication is made in protection of the interest of the person making it. The privilege extends only to a communication upon the subject with respect to which the privilege extends and the privilege can be claimed in exercise of the right or safeguarding of the interest which creates the privilege.[118.] The regional

manager of a bank issued confidential circular to branch managers of his region advising them to be vigilant while dealing with persons included in the list including the complainant. The circular was issued in his official capacity in public interest and under instructions of the Central office. The Court said that the circular was covered by Exception 9. Therefore, even if the allegations made in the complaint were true, no offence would be made out under section 500.[119.]

This exception relates to private communication which a person makes in good faith for the protection of his own interest. This exception covers not only such allegations of facts as can be proved true but also expression of opinions and personal inferences. It has been incorporated to protect the interests of the parties in their business transaction which are generally done *bona fide* and, therefore, the rule of public good on which this principle is based is, that honest transaction of business and social intercourse would otherwise be deprived of the protection which they should enjoy. Whether any imputation made is with a motive or *mala fide* intention to lower the reputation or is made in good faith is to be determined from the facts and circumstances of the case. Undisputedly, the requirement of good faith and public good, both, are to be satisfied and the failure to prove good faith would exclude the application of Exception 9 in favour of the accused even if the requirement of public good is satisfied. The words 'good faith' as appearing in exception 9th not only require logical infallibility but also due care and attention.[120.]

This Exception refers to any imputation made in good faith, whereas the first Exception applies only to true imputation made for the public good. That he acted in good faith must be proved by the accused.[121.] Question of good faith is a question of fact and has to be decided in course of the trial and at the initial stage. The journalists do not enjoy any special privilege.[122.]

In determining the question of good faith, regard should be to the intellectual capacity of the accused, his predilections and the surrounding facts.[123.]

Where a rustic villager objected to the appointment of the complainant as a village *munsiff* in the *bona fide* belief that he was a rowdy and as such undesirable for a public post like this, it was held that he acted in good faith and was protected by this Exception.[124.]

In order to establish good faith and *bona fides* it has to be seen first the circumstances under which the defamatory matter was written or uttered; secondly, whether there was any malice; thirdly, whether the accused made any inquiry before he made the allegations; fourthly, whether there are reasons to accept the version that he acted with care and caution and finally whether there is preponderance of probability that the accused acted in good faith.[125.]

The burden lies on the person accused to prove the *bona fide* aspect of his publication. Cross-examination of the complainant can be used as a device for establishing good-faith. An imputation was made in a newspaper item that the complainant lady doctor had duped the Government by presenting false transfer allowance bills. The lady doctor's sole testimony that the publication harmed her reputation was held to be not sufficient to sustain her complaint. The accused showed that the publication was in good faith and in public interest.[126.]

Where the agreement for selling their properties for settling their dues was signed by the accused persons and registered before the Sub-Registrar in the presence of the accused but subsequently a publication in the newspaper was made by the accused after about two and a half months that the agreement was executed under compulsion, it was held that the publication was not made in 'good faith' and could not be brought under Exception 9 of section 499.[127.]

The ninth Exception to section 499 provides that it is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good. Even if it is assumed that the accused No. 1 and other accused made the imputation against the respondent No. 1 that he had written the letters and thus, that imputation was made against his character, still that was made in good faith because they wanted protection of the interest of the members of the family of accused No. 1 and particularly his daughter. They did not approach any unconnected person, but police who could protect the interest of the accused No. 1 and his family members. In view of the legal position and the facts, which are clear from the complaint and the documents submitted with the complaint, it is clear that the case is clearly covered by Exceptions 8 and 9 and no case under section 500 IPC, 1860 could be made out.[128.]

[s 500.34] Club committee.—

The committee members of a social club, even if wrong, are given protection under this Exception, without which it would be impossible for such a body to function. Where the respondent, who was the wife of a member of a social club and was privileged to use the club, preferred a complaint against the members of the committee for defaming her in a letter addressed by them to her husband, it was held that as the committee had acted in good faith, even if they were mistaken they were protected by this Exception.[129.]

[s 500.35] Communication by member of caste.—

There is a dividing line between the passing of a resolution at a caste meeting and its communication by the authorities of the caste to its members in the discharge of their social duty. If any member of a caste publishes to all its members a caste resolution in such discharge of duty the law will hold the occasion of the publication to be privileged. But there must be good faith on the part of the member who publishes, that is, it must be proved that the publication was made with due care and attention.[130.] There must not be excessive publication, e.g., publication in a newspaper.[131.] Where a libellous communication is made regarding a member of a caste, the mere fact that the person making such communication is a member of a caste will not of itself suffice to make the communication privileged.[132.] A person making defamatory expressions for the protection of his son's interest is not privileged, unless the imputation is made in good faith.[133.]

[s 500.36] Privileges of Judges, etc.—

The privileges of parties, counsel, attorney, pleader and witnesses come under this Exception. So also, statements made in pleadings and reports to superior officers are protected by it. (As to civil actions, see the author's *Law of Torts*, 19th Edn; Chapter XIII).

In India the law regarding defamatory statements, made in the course of judicial proceeding, by judges, counsel or pleaders, witnesses and parties is lacking in uniformity. The High Court of Madras in earlier cases adopted the English rule of absolute immunity in all cases. The Bombay High Court has not followed the English

rule in cases of criminal prosecution on the ground that English law could not be resorted to where it went beyond the terms of section 499: but in civil actions it has followed the dictum of the Privy Council in *Baboo Gunnesh Dutt Singh v Mugneeram Chowdhry*.[134.] The Allahabad High Court has gone a step further and held that cases of defamation under the Code as well as civil suits for damages must be decided in accordance with the provisions embodied in the IPC, 1860 and the Indian Evidence Act. The Calcutta High Court has held that the liability of a person prosecuted for defamation must be determined by the application of the provisions of the IPC, 1860 and not otherwise.[135.] The Patna High Court has adopted the view of the Calcutta High Court.[136.]

[s 500.37] Counsel, pleader, etc.—

Where the accused, father of the complainant, denied through a lawyer's notice that the complainant was his son imputing unchastity to his mother and as such was not entitled to any family property, it was held that the communication was protected under the 9th Exception to section 499, IPC, 1860, and the typing of that notice by the lawyer's clerk also did not constitute publicity.[137.]

The Kerala High Court has held that counsel who has signed the pleading of his client can rely on this Exception.[138.]

[s 500.38] Witness.—

The Bombay High Court has in a Full Bench case laid down that relevant statements made by a witness on oath or solemn affirmation in a judicial proceeding are not absolutely privileged on a prosecution for defamation, but are governed by the provisions of section 499.[139.]

The Allahabad High Court in a Full Bench case held that a witness could be prosecuted for defamatory statements concerning a person unless he showed that the statements fell under one of the Exceptions to this section.[140.]

The Nagpur High Court had followed the Bombay, the Calcutta and the Allahabad High Courts and held that a person giving evidence in a Court of law is not entitled to an absolute privilege in respect of statements which he makes and is consequently not immune from a complaint of defamation by reason of words uttered on oath in the witness-box.[141.]

The Madhya Pradesh High Court followed the Bombay, the Calcutta and the Nagpur High Courts.[142.]

[s 500.39] Pleadings.—

Authority is strongly against the absolute immunity from prosecution for defamatory statements contained in applications, pleadings and affidavits. The Bombay High Court has held that statements made in a written statement filed by the accused are not absolutely privileged but are governed by the provisions of this section.[143.] The allegation was that the averments contained in the pleadings and oral evidence in a suit filed by the accused constituted defamatory statements. The Court held that on

reading of Exception 9 to section 499 of the IPC, 1860 the alleged imputations contained in pleadings and evidence in civil suit OS No. 966 of 1998 and AS No. 155 of 2004 are covered by Exception 9 of section 499 of the IPC, 1860, even assuming that the imputations are *prima facie* defamatory in nature.[144.]

The Madras High Court has held in a Full Bench case that a defamatory statement in a complaint to a Magistrate is not absolutely privileged.[145.]

The Patna High Court had held, that a defamatory statement, whether on oath or otherwise, falls within section 499 and is not absolutely privileged. Where in a plaint the accused described the complainant (defendant No. 3) as the "kept woman" of defendant No. 1 without any foundation, it was held that he was guilty of defamation.[146.]

[s 500.40] Vicarious liability.—

A defamatory letter was issued on the pad of a partnership firm. The letter was signed by one of the partners. The complainant in his examination before the Court did not say on oath anything against the rest of the partners who had not signed the letter. The Court said that such other partners who had not signed could not be vicariously held liable with the signing partner.[147.]

[s 500.41] Communications with counsel.—

Communication with one's counsel for legal advice is not a publication. The Court distinguished the case from the Supreme Court decision in *MC Vergheese v TJ Poonan*.[148.] In this case, a husband's letters to his wife contained defamatory remarks about her father. The father's proceedings against the husband were allowed because those letters amounted to a publication. But a communication between a client and his counsel is not a publication because of the intimate relationship between them. The counsel has no separate existence from the client in matters relating to legal duties. Communication to the council is communication to the client.[149.]

[s 500.42] Reports.—

The report of an officer, in the execution of his duty, under his superior's orders, which contains defamatory imputations against others, but which does not appear to have been made recklessly or unjustifiably is covered by this Exception. But a totally false report will not be protected.[150.]

[s 500.43] Complaint through power of attorney.—

The aggrieved person was employed in a foreign country. A complaint filed through a power of attorney was held as not offending the provisions of section 199(1), Cr PC, 1973 as the complainant suffered from the infirmity of being away in a foreign country.[151.]

[s 500.44] Exception 10.—

This Exception protects a person giving caution in good faith to another for the good of that other, or of some person in whom that other is interested or for the public good.

[s 500.45] Complaint by aggrieved person necessary.—

No Court shall take cognizance of this offence except upon a complaint made by the person aggrieved (section 199 Cr PC, 1973). The words "person aggrieved" does not mean "person defamed". The words "person aggrieved" has a wider connotation than the words "person defamed".[152.]

A complaint for defamation by the person aggrieved by it can be entertained by a Court notwithstanding that the accused could have been prosecuted on the same facts under section 182 on the complaint of a public servant. The two offences are fundamentally distinct in nature, although they may arise out of one and the same statement of the accused. The defamatory statement does not fall within any of the Exception to section 499 by reason merely of the fact that it is punishable as an offence under section 182, or any other section of the Code; nor is this section included in the list of sections contained in section 195(1)(b) of the Cr PC, 1973.[153.] Where the imputations were against the managing director of a society, the society was held to be not an aggrieved person and, therefore, had no *locus standi* to file a complaint.[154.]

A newspaper published extracts from books written on a former Prime Minister, imputing charges of corruption against him and also his family members including his sons, daughter and wife. It was held that his sons could be said to be aggrieved persons. A complaint filed by one of the sons was not to be quashed.[155.]

The continuation of the proceedings even after the death of the complainant has been held to be not proper.[156.] Where the allegation in the complaint was that the Kerala Police had been defamed, the Court said that Kerala Police was not a definite and determinable body and, therefore, a member of the Kerala Police was not a person affected by the defamatory statement and his complaint was not maintainable.[157.]

When the statements in question are not directed against any person or against an identifiable group of individuals, the complainants cannot be said to be an aggrieved persons. The complainants have alleged defamation in respect of imputations against the character of Tamil-speaking women, which could be viewed as a class of persons. However, the appellant's remarks did not suggest that all women in Tamil Nadu have engaged in pre-marital sex. In fact her statement in News Magazine did not refer to any specific individual or group at all.[158.]

[s 500.46] Complaint by director of company.—

Locus standi.—The words "some person aggrieved" do not make it necessary that the complaint should be made by the very person who has been defamed. In the case of an imputation against a company, a director of the company would fall within the words "some person aggrieved". He can file a complaint.[159.]

[s 500.47] Complaint by advocate.—

False allegations were made in a newspaper against the Commissioner of Endowments. A complaint filed by an Advocate was held to be non-maintainable being not an aggrieved person.[160.]

[s 500.48] Employer—

Labour.—Defamatory statements were made against retrenched workmen in the counter filed by the management. Some of the statements were repeated on different dates before the labour Court and labour officer. The Court said that the question of limitation could not be decided until the starting point of the offence was known and that had to be decided at the trial.[161.] The Court further said that aspects of good faith in the utterances could also be decided only after evidence.[162.]

[s 500.49] President of Municipality.—

The President of a Municipality is not a 'person aggrieved', within the meaning of section 199 of the Cr PC, 1973, by the defamations of his subordinate officers.[163.]

[s 500.50] Complaint against Juristic person.—

Simply because the accused is a corporate body, it cannot be said that it cannot commit an offence of defamation as defined under section 499 IPC, 1860.[164.]

Section 499, IPC, 1860, is an offence involving personal malicious intent, which is evident from the fact that one of the essential ingredients is either intention to harm or knowledge or reasons to believe that such imputation will harm the reputation of the other. An artificial/juristic person cannot be prosecuted for offence under section 500, IPC, 1860, for such an artificial/juristic person cannot be attributed with any malicious intention which can be attributed only to a living person. Chief Educational Officer being an artificial/ juristic person prosecution against him for offence under section 500, IPC, 1860 would not be maintainable.[165.]

[s 500.51] Punishment.—

The accused, an editor of a weekly, published an article in his paper making defamatory allegation against the petitioner, who was a Class I Officer and belonged to a respectable business family. The editor made no amends till conviction. Sentence of simple fine was enhanced to RI of two months and fine of Rs. 2,000.[166.]

In a case of defamation, the revision petition for enhancement of the sentence was filed seven years after the commission of the offence. It was held that delay in filing the revision cannot be a ground for not to enhance the sentence when the accused had not made any amends for his criminal act.[167.] Where the utterances of the accused in a meeting were proved to harm the reputation of the complainant, his conviction under section 500 was held to be proper.[168.]

For the publication of defamatory matter in a newspaper the sentence awarded was that of imprisonment till the rising of the Court and fine of Rs. 500. It was held to be too

low and inadequate considering the damage caused to the reputation of the complainant. The fine amount was accordingly enhanced to Rs. 10,000.

[s 500.52] Quashing of complaint.—

There were allegations in a private complaint that the respondents made imputations against the complainant in applications made under section 436, Cr PC, 1973. The sworn statements and documents produced showed that the imputations were made with the intention or knowledge or having reason to believe that they will harm reputation. Thus, a *prima facie* was made out. The High Court could not at that stage say that there was no reasonable prospect of conviction at the trial. Questions of good faith and of intention could be examined on the basis of evidence at the trial. The trial must go on. The quashing of the complaint was not proper.[169.]

[s 500.53] Application of exceptions in pre-trial stage.—

The Supreme Court in *Rajendra Kumar Sitaram Pande, v Uttam*,[170.] held that issuing of process against the accused for the offence punishable under section 499 punishable under section 500 of the IPC, 1860 can be questioned in higher Courts. Ultimately, the Supreme Court quashed proceedings relating to prosecution of such a case in that reported decision by applying Exception 8 to section 499 of the IPC, 1860. Therefore, it cannot be said that application of exception cannot be considered at pre-trial stage and by invoking section 482 of the Cr PC, 1973.[171.] In *Vedurumudi Rama Rao v Chennuri Venkat Rao*,[172.] Court considered applicability of Exception 9 to section 499 of the IPC, 1860 and held that truth of imputation need not be probed by such accused while claiming privilege under Exception 9; and finally quashed proceedings in criminal case relating to the offence punishable under section 500 of the IPC, 1860. The Gujarat High Court in *Darusing Durgasing v State of Gujarat*,[173.] followed the above said reported decision of the Supreme Court and quashed criminal proceedings for the offence punishable under section 500 of the IPC, 1860 in view of Exceptions 7, 8 and 9 to section 499 of the IPC, 1860. In an examination fact situation, the Bombay High Court in *Valmiki Faleiro v Mrs. Lauriana Fernandes*,[174.] went to the extent of holding a paper publication containing certain imputations as one saved by Exception 9 because intention of the accused was predominantly to protect his rights in the property and not to harm reputation of the complainant. In *Jeffrey J Diermeier v State of WB*,[175.] it was pleaded that in the light of Explanation 4 as well as Tenth Exception to section 499 IPC, 1860, the allegations in the complaint did not constitute an offence of defamation punishable under section 500 IPC, 1860. But the Supreme Court held that the mere plea that the accused believed that what he had stated was in "good faith" is not sufficient to accept his defence and he must justify the same by adducing evidence. Court found it difficult to hold that a case for quashing of the complaint under section 482 of the Code has been made out.

[s 500.54] Jurisdiction.—

The Courts at the place of printing and publication of a newspaper as well as those at the place of distribution have jurisdiction to entertain a complaint.[176.] The respondent is said to have given an interview to the Newspaper "Economic Times" intending it to be published and to be read by public. Therefore, though the act of making the defamatory statement during the interview was done at a place outside the jurisdiction of the

Court, prosecution can be launched in Courts exercising jurisdiction over any one of the places wherein circulation of the paper is made.[177.]

[s 500.55] Cognizance on Police report.—

In *Shiv Kumar Agarwal v State of Meghalaya*,[178.] Gauhati High Court examined the question whether a Magistrate can take cognizance of a non-cognizable offence punishable under section 500, IPC, 1860 on the basis of the police report submitted by the police under section 173(2), Cr PC, 1973 while investigating both a cognizable offence and a non-cognizable offence under section 155(4), Cr PC, 1973 even after the accused is discharged from the cognizable case. It is held that as one of the offences alleged against the petitioner was a cognizable offence, namely, section 505(2), IPC, 1860, by virtue of the legal fiction introduced in section 155(4), Cr PC, 1973, the case was deemed to be a cognizable offence. Once the case was deemed to be a cognizable offence, there was no legal impediment in investigating the case by the police. After the case was investigated by the police, the charge-sheet was submitted by them to the learned Magistrate under section 173, Cr PC, 1973 for trying the petitioner under section 505 (2)/500, IPC, 1860. However, the charge made against the petitioner under section 505(2), IPC, 1860 was quashed by this Court on the ground that no prosecution sanction under section 196 (1A), Cr PC, 1973 was obtained by the police. The net result is that the trial Court had to proceed with consideration of the charge under section 500, IPC, 1860 and, after hearing the parties, framed the charge accordingly by rejecting the prayer of the petitioner for dropping the charge against him.[179.]

In the defamation matter, issuance of process after having examination of defamatory material with reaction of the public, would certainly be sufficient to satisfy the test of holding the enquiry under Section 202, Cr PC, 1973.[180.]

[s 500.56] Section 211 and Section 500.—

Section 211 imposes a punishment in case of a false charge or offence made with the intent to injure someone before any Court of law, whereas section 500 provides for punishment in case of a defamation of a person by any one. Defamation has been defined under section 499 which provides inter alia whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. Making a false complaint before a Court of law would amount to committing fraud on Court. It is for the Court to proceed against the erring person. The provision has been made to preserve the sanctity of the Court. Section 500 gives right to sue to a person who is defamed within the meaning of section 499 by the conduct of the accused. These two provisions are totally distinct and can be tried in absence of each other.[181.]

6. Note R, p 175.

7. It is not necessary to incorporate the whole of the published matter in a complaint. A complaint was not dismissed only on the ground that the matter under complaint was presented not in the body of the complaint, but in an attached document. *T Kunhambu v A Sojath*, 1989 Cr LJ 1022 (Ker), **following** *Balraj Khanna v Motiram*, 1971 Cr LJ 1110 (SC). The complaint must be made by the party aggrieved. His wife is not an aggrieved person and, therefore, her complaint is not maintainable. *Nazeem Bavakunju v State of Kerala*, 1988 Cr LJ 487 (Ker). *MN Meera v AC Mathew*, 2002 Cr LJ 3845 (Ker), the name of the complainant was not mentioned by the accused while making the alleged defamatory statement. The complaint should not have been thrown overboard on that ground alone. *KM Selvaraj v A Amarlal*, 2002 Cr LJ 3811 (Mad), defamatory statements in a circular against members and president of an association regarding manipulation of accounts and misappropriation of funds. One of the signatories was a chartered accountant who had checked the accounts. The CA applied for dropping of his name because he was only a signatory. His request was accepted. It was held that the order discharging him was not proper. All accused persons had to face the consequences of the defamatory statement in the circular.

8. *Standard Chartered Bank v Vinay Kumar Sood*, 2010 Cr LJ 1277 (Del).

9. *Bacon's Abrid*, vol IV, p 457.

10. *Sunilakhya v HM Jadwet*, AIR 1968 Cal 266 [LNIND 1967 CAL 167] .

11. *S Nihal Singh v Arjan Das*, 1983 Cr LJ 777 (Del); see also *DN Rao v RD Bhagvandas*, 1986 Cr LJ 888 (AP). *M Chandran v F Fanthome*, 2003 Cr LJ 2173 (Sik), complainant had full knowledge of the document which was quite old, no witness cited, failure to make out defamatory nature of the remarks, the accused discharged. Period of limitation had also expired and no condonation was sought.

12. *Varnakote Illath v Kotalmana Keshavan*, (1900) 1 Weir 579.

13. *SS Sanyal v KVR Nair*, 1987 Cr LJ 2074 (Cal), **relying** on *TJ Ponnel v MU Verghese*, AIR 1967 Ker 228 [LNIND 1966 KER 242] : 1968 Cr LJ 1511 . It is different if the employee himself goes round showing the notice to others. Such notice comes under 9th exception being necessary to protect the employer's interest.

14. *Boxsius v Goblet Freres*, (1894) 1 QB 842 . Other matters of the same kind, *Pullman v Walter Hill*, (1891) 1 QB 524 , dictation by the managing director of a company to his short-hand steno, and after being transcribed, sent to the plaintiff, held to be a publication, but **not followed** in subsequent cases. See *Edmondson v Birch*, (1907) 1 KB 371 and *Sukhdeo Vithal v Prabhakar Sukhdeo*, 1974 Cr LJ 1435 (Bom).

15. *PR Ramakrishnan v Subbaramma*, AIR 1988 Ker 18 [LNIND 1986 KER 395] : 1988 Cr LJ 124 . But see *Rev Fr Bernad Thaltil v Ramchandran Pillai*, 1987 Cr LJ 739 (Ker), notice containing libellous imputations of misappropriation.

16. *Sadashiv Atmaram*, (1893) 18 Bom 205. In *BP Bhaskar v BP Shiva*, 1993 Cr LJ 2685 (Mad), it was held that scurrilous allegations or imputations contained in notices exchanged between parties do not amount to 'publication' under section 499. The court also held that a reply to the notice sent to the party's advocate containing defamatory statements of the party is not publication. It is a communication to the party himself.

17. *Taki Husain*, (1884) 7 All 205 (FB).

18. *Sukhdeo v State*, (1932) 55 All 253 .

19. *Nagrathimam (Dr.) v M Kalirajan*, 2001 Cr LJ 3007 (Mad).

20. *Sankara v State*, (1883) 6 Mad 381.

21. *Thiagaraya v Krishnasami*, (1892) 15 Mad 214.

22. *Greene v Delanney*, (1870) 14 WR (Cr) 27; *Abdul Hakim v Tej Chandar*, (1881) 3 All 815 .

23. *Raja Shah*, (1889) PR No. 14 of 1889.

24. *Wenman v Ash*, (1853) 13 CD 836.

25. *Wennhak v Morgan*, (1888) 20 QBD 635 ; *Dr. Jaikishen Das v Sher Singh*, (1910) PR No. 10 of 1910.

26. *Pundit Mokand Ram*, (1883) PR No. 12 of 1883.

27. *Janardhan Damodhar Dikshit*, (1894) 19 Bom 703. *PM Abubacker v PJ Alexander*, 2000 Cr LJ 1168 (Ker) the source of information regarding published defamatory statement is not a consideration for prosecution for defamation. *M Malle Reddy v T Venkatarama*, 2000 Cr LJ 1086 (AP), a complaint against an alleged defamatory statement published in a newspaper was not allowed to be quashed in the exercise of writ jurisdiction.

28. *S Khushboo v Kanniammal*, 2010 Cr LJ 2828 (SC) : AIR 2010 SC 3196 [LNIND 2010 SC 411] : 2010 (5) SCC 600 [LNIND 2010 SC 411] .

29. *Charmesh Sharma v State Of Rajasthan*, 2012 Cr LJ 2115 (Raj).

30. *Howard*, (1887) 12 Bom 167.

31. *Harbhajan Singh*, AIR 1961 Punj 215 .

32. *BRK Murthy v State*, 2013 Cr LJ 1602 (AP); *Tankasala Ashok v State of AP*, 2010 Cr LJ 2074 (AP) where there was nothing to show that editor had control over selection of publication, proceedings against accused editor is liable to be quashed.

33. *Dongar Singh v Krishna Kant*, AIR 1958 MP 216 [LNIND 1958 MP 58] .

34. *McLeod*, (1880) 3 All 342 .

35. *Ramasami v Lokanada*, (1886) 9 Mad 387.

36. *Bhagat Singh v Lachman Singh*, AIR 1968 Cal 296 [LNIND 1967 CAL 189] . The chairman of a company which is publishing a newspaper is not liable merely by virtue of his position as such. *Udayam Telugu Daily v State of AP*, 1987 Cr LJ 143 (AP).

37. *AK Jain v State of Sikkim*, 1992 Cr LJ 843 (Sikkim).

38. *KV Ramesh v HC Ramesh*, 2001 Cr LJ 3556 .

39. *KM Mathew v KA Abraham*, 1998 Cr LJ 327 (Ker). *CB Solanki v Srikanta Parashar*, 1997 Cr LJ 3050 (Kant), "editor" for the purposes of the section does not include a person described as chief editor or managing director, particularly when there were no specific allegations against them in the complaint. The Court also explained the scope of first and ninth exception and the burden of proof as to publication.

40. *McLeod, supra*; *Girjashankar Kashiram*, (1890) 15 Bom 286. The fact that the accused did not know the person defamed through his newspaper is no defence. *Sumatibai Vinayak Deo v Nandkumar Deshpande*, 1990 Cr LJ 2136 (Bom). Defamation in 1977. Appeal against acquittal allowed in 1990. No further prosecution allowed. Fine of Rs. 2,000 with a direction that Rs. 1,800 should be handed over to the aggrieved person imposed.

41. *Gambhirsinh R Dekare v Falgunbhai Chimanbhai Patel*, (2013) 3 SCC 697 [LNIND 2013 SC 175] : 2013 Cr LJ 1757 : AIR 2013 SC 1590 [LNIND 2013 SC 175] .

42. *Ravi Prakash v J C Diwakar Reddy*, 2010 Cr LJ 2558 (AP).

43. *P Lankesh v H Shivappa*, 1994 Cr LJ 3510 (Kant).

44. *Radhanath Rath v Birja Prasad Ray*, 1992 Cr LJ 938 (Ori).

45. *Archbold*, 35th Edn, p 3633.

46. *McCarthy*, (1887) 9 All 420 .

47. *Shibo Prosad Pandah*, (1878) 4 Cal 124 .

48. *Sirajuddin Ali v Mujtaba Ali*, 2001 Cr LJ NOC 125 (AP).

49. *Gautam Sahu v State of Orissa*, 1999 Cr LJ 838 .

50. *Government Advocate, B & O v Gopabandhu Das*, (1922) 1 Pat 414. *CL Sagar v Mayawati*, 2003 Cr LJ 690 (All), the complaint was that the vice president of a political party defamed the complainant by stating in a public meeting that the person with long moustache in the party was a corrupt person. The complainant could not show that he was the only member of the party with long moustache. The newspaper report of the meeting did not carry any such remark. No offence made out.

51. *Asha Parekh v State of Bihar*, 1977 Cr LJ 21 (Pat); see also *Narottamdas v Maganbhai*, 1984 Cr LJ 1790 (Guj); *Aruna Asafali v Purna Narayan*, 1984 Cr LJ 1121 (Gau).

52. *Maung Sein*, (1926) 4 Ran 462.

53. Clerk & Lindsell on *TORTS*, 1701 (14th Edn 1975).

54. *Manmohan Kalia v Yash*, (1984) 3 SCC 499 [LNIND 1984 SC 101] : AIR 1984 SC 1161 [LNIND 1984 SC 101] . See also *Sumatibai Vinayak Deo v Nandkumar Deshpande*, 1990 Cr LJ 2136 (Bom), where the veiled expression that only "S" knew what happened to the bowls brought by children to the school was held to be not defamatory; *Lalliani v R L Rina*, 1987 Cr LJ 1295 (Gau), a biographical account of the life of a poet mentioning a named girl as his source of inspiration and depicting their love affairs, a woman by that name was not able to convince the court that she was the object of the attack. But see *V Subair v PK Sudhakaran (Dr)*, 1987 Cr LJ 736 (Ker), where a medical practitioner was described as a "professional debauch" and of "low moral character", the accused was held liable because the complainant was able to prove that he was meant to be attacked.

55. *Parvathi v Mannar*, (1884) 8 Mad 175.

56. *Monson v Tussauds Ltd*, (1894) 1 QB 671 , 692.

57. *Chellappan Pillai v Karanjia*, (1962) 2 Cr LJ 142 .

58. *Jacob Mathew v Manikantan*, 2013 Cr LJ (NOC) 62 : 2012 (3) KLT 824 .

59. *Veeda Menezes v Yusuf Khan*, (1966) 68 Bom LR 629 (SC).

60. *Gobinda Pershad Pandey v Garth*, (1900) 28 Cal 63 ; *Pimento*, (1920) 22 Bom LR 1224 [LNIND 1920 BOM 117] ; *U Aung Pe*, (1938) Ran 404 (FB).

61. *Parwari*, (1919) 41 All 311 .

62. *Taki Husain*, (1884) 7 All 205 , 220 (FB); *J Jayalalitha v Arcot N Veerasamy*, 1997 Cr LJ 4585 (Mad), absence of averment in the complaint that because of the imputation the complainant's reputation had been lowered in the estimation of others, dismissal of the complaint was proper.

63. *Mohan Lal v State of HP*, 2011 Cr LJ 2413 (HP).

64. *Ibid*.

65. *Luckumsey Rowji v Hurban Nursey*, (1881) 5 Bom 580.

66. *South Hetton Coal Co v NE News Association*, (1894) 1 QB 133 .

67. *Ibid*, p 141.

68. *Maung Chit Tay v Maung Tun Nyun*, (1935) 13 Ran 297.

69. *Mahim Chandra Roy v Watson*, (1928) 55 Cal 1280 .

70. *Wahid Ullah Ahrari*, (1935) 57 All 1012 .

71. *Sahib Singh*, AIR 1965 SC 1451 [LNIND 1965 SC 15] .

72. *Vishwa Nath v Shambhu Nath*, (1995) 1 Cr LJ 277 (All). The complainant had died and the proceedings were not allowed to be continued by others. The court **distinguished** *Ashwin Nanubhai Vyas v State of Maharashtra*, 1967 Cr LJ 943 : AIR 1967 SC 963 where the mother of the deceased complainant was allowed to continue the proceedings. The court **cited** *Raj Kapoor v Narendra Noranbhai Nagardas*, (1974) 15 Guj LJ 125 where the contemptuous remarks against Bhangi community uttered by caste Hindus were held to be not defamatory. The court said that if a person were to say that all lawyers were thieves, no particular lawyer could sue him unless

there is something to point out to a particular individual, *Eastwood v Holmes*, (1858) 1 F&F 347. The court also relied upon *Narottamdas L Shah v Maganibhai*, 1984 Cr LJ 1790 (Guj) where the agitating lawyers were described as "Kazia dalals" (dispute brokers) and it was held that the use of such words in reference to the lawyers as a class could not be taken to refer to a determinate or identifiable class of lawyers, namely, the lawyers who were participating in the agitation. *MP Narayana Pillai v MP Chacko*, 1986 Cr LJ 2002 (Ker) remarks in general about Christian girls being used for prostitution to enable them to earn livelihood because their parents were not able to support them were held to be too general to be defamatory of any body. The court said that identity of the collection of the people will have to be established in relation to the defamatory imputation. *KM Mathew v TU Balan*, 1985 Cr LJ 1039 (Ker) imputation against some leaders of teachers who were on strike was held to be not actionable.

73. *P Karunakaran v C Jayasooryan*, 1992 Cr LJ 3540 (Ker).

74. *Amar Singh v KS Badalia*, (1965) 2 Cr LJ 693 ; *Shamsher Singh v State*, 1982 Cr LJ NOC 167 (Del).

75. *J Chelliah v Rajeswari*, 1969 Cr LJ 571 .

76. *Madhuri Mukund Chitnis v Mukund Martand Chitnis*, 1990 Cr LJ 2084 . The court **referred** to *Sukhdeo v State of Maharashtra*, 1974 (Bom) LJ 777 : 1974 Cr LJ 1435 and *Baburao Shankarrao v Shaikh Biban Pahelwan*, 1984 Cr LJ 350 , burden as to good faith.

77. *U Aung Pe*, (1938) Ran 404 (FB).

78. *Jatish Chandra v Hari Sadhan*, AIR 1961 SC 613 [LNIND 1961 SC 19] .

79. *Jawaharlal Darda v Manoharao Ganpatrao*, AIR 1998 SC 2117 [LNIND 1998 SC 361] : 1998 Cr LJ 2928

80. *Chandrasekhara v Karthikeyan*, AIR 1964 Ker 277 [LNIND 1964 KER 90] . *Neelakantan Kamalasanan v Achutan*, 1988 Cr LJ 1212 (Ker).

81. *Janardhan Damodhar Dikshit*, (1894) 19 Bom 703.

82. *Deivasigamani*, 1977 Cr LJ NOC 110 (Mad).

83. *Ramanand v State*, (1881) 3 All 664 .

84. *Umed Singh*, (1923) 46 All 64 . **Dissented** in *Sukhdayal v Saraswati*, (936) Nag 217.

85. *Rajendra Vishwanath Chaudhary v Nayantara Durgadas Vasudeo*, 2012 Cr LJ 1363 (Bom).

86. *E I Howard v M Mull*, (1866) 1 BHC (Appx) 1xxxv, xci. Thus, the truth of the matter has not to be proved literally. It is sufficient if the imputation is proved to be substantially true. 1989 Cr LJ 1022 . **Following** *Murlidhar v Narayandas*, AIR 1914 Sind 85 : 1915-16 Cr LJ 141 ; *Surajmal Mehta v Horniman*, AIR 1917 Bom 62 . Where it is stressed that even an exaggeration will not by itself defeat this defence; *Purushottam Vijay v State of MP*, AIR 1961 MP 205 [LNIND 1960 MP 59] DB : 1961 (2) Cr LJ 114 where it is observed :

> The statement of fact need only be substantially correct and need not be microscopically or photographically true : nor can the prosecutor fasten himself on to an inaccuracy in the detail unless the detail itself is such as to make substantial difference to the case.

87. *Khare v Massani*, (1943) Nag 347.

88. *Radhelal Mangalal Jaiswal v Sheshrao Anandrao Lad*, 2011 Cr LJ 2233 (Bom).

89. *Kartar Singh*, (1956) SCR 476 [LNIND 1956 SC 39] . **Relying** upon and **citing** the observations of Lord Cockburn in *Saymour v Butterworth*, (1862) 3 F&F 372 and dicta of judges in *R. v Sir R Garden*, (1879) 5 QBD 1 . **Followed** in *Radhanath Rath (Dr) v Biraja Prasad Rai*, 1992 Cr LJ 938 (Ori), where the editor and publisher of a newspaper were held not liable as they happened to include a defamatory matter **relying** upon their reporter who had been a trustworthy journalist.

90. *Arundhati Roy Re*, 2002 Cr LJ 1792 : AIR 2002 SC 1375 [LNIND 2002 SC 174] (para 24).

91. *Ibid.*

92. *McLeod*, (1880) 3 All 342 .

93. *T Kunhambu v A Sojath*, 1989 Cr LJ 1022 (Ker). See also *Dagar Singh v Shobha Gupta*, 1998 Cr LJ 1541 (P&H).

94. *Shatrughna Pd Sinha v Rajbhan Surajmal Rathi*, 1997 Cr LJ 212 : (1996) 6 SCC 263 (SC).

95. *Tata Press Ltd v Mahanagar Telephone Nigam Ltd*, (1995) 5 SCC 139) [LNIND 1995 SC 755] : AIR 1995 SC 2438 [LNIND 1995 SC 755] .

96. *Godrej Sara Lee Ltd v Reckitt Benckiser (I) Ltd*, (2006 (32) PTC 307) : (2006 CLC 1105).

97. *Nippon Sheet Glass Co Ltd v Raman Fibre Sciences Pvt Ltd*, 2011 Cr LJ 2702 (Kar).

98. *Kimber v The Press Association*, (1893) 1 QB 65 , 68.

99. *J Wright*, (1799) 8 TR 293, 298.

100. *Kimber v The Press Association, supra*.

101. *Usill v Hales*, (1878) 3 CPD 319 .

102. *Clement*, (1821) 4 B & Ald. 218.

103. *Hicklin*, (1868) LR 3 QB 360.

104. *Carlile*, (1819) 3 B & Ald. 167.

105. *Singaraju Nagabhushanam*, (1902) 26 Mad 464; *Maksud Saiyed v State of Gujarat*, (2005) 5 SCC 668 : (2007) 140 COMP CASES 590.

106. *Woodgate v Ridout*, (1865) 4 F&F 202, 216. See also *Harbans Singh v State of Rajasthan*, 1998 Cr LJ 433 (Raj), the word "shatir" might be of offending nature and objectionable but not necessarily defamatory. The order dropping the proceedings was not interfered with.

107. *Abdool Wadood*, (1907) 9 Bom LR 230 [LNIND 1907 BOM 6] , 31 Bom 293. See *Ranganayakamma v K Venugopala Rao*, 1987 Cr LJ 2000 (AP), the complainant's foreword to a book was criticised by imputing words to the complainant himself which lacked good faith and showed malice.

108. Note R, p 183.

109. *Sankara v State*, (1883) 6 Mad 381, 395, 396.

110. *ADM Stubbings v Shella Muthu*, 1972 Cr LJ 968 (Ker).

111. *Dr. Vishnu Dutt Agarwal v State of UP*, 2012 Cr LJ 3595 (All).

112. *Yadav Motiram Patil v Rajiv G Ghodankar*, 2011 Cr LJ 528 (Bom).

113. *Kanwal Lal*, AIR 1963 SC 1317 [LNIND 1962 SC 322] .

114. See *Damodra Shenoi v PP Ernakulam*, 1989 Cr LJ 2398 where it is stressed that the accused must prove by preponderance of probability that he laboured under good faith as defined in section 52, IPC.

115. *J Sudershan v R Sankaran*, 1992 Cr LJ 2427 (Mad). The court **referred** to *MC Verugheese v TJ Ponnan*, AIR 1970 SC 1876 [LNIND 1968 SC 339] .

116. *MA Rumugam v Kittu alias Krishnamoorthy*, (2009) 1 SCC (Cr) 245 : AIR 2009 SC 341 [LNIND 2008 SC 2186] ; *Rallis India Ltd v K T Vijay Kumar*, 2010 Cr LJ 2485 (AP); *Nayana Jaikisan Tekwani v State of Maharashtra*, 2010 Cr LJ 4094 (Bom).

117. *Kanwal Lal*, AIR 1963 SC 1317 [LNIND 1962 SC 322] .

118. *Chamanlal*, (1970) 3 SCR 913 [LNIND 1970 SC 106] .

119. *Vedurumudi Rama Rao v Chennuri Venkat Rao*, 1997 Cr LJ 3851 (AP).

120. *Standard Chartered Bank v Vinay Kumar Sood*, 2010 Cr LJ 1277 (Del).

121. *Mrs. Jinnat Ara Borbora*, 1980 Cr LJ NOC (Gau).

122. *Sewakram v RK Karanjia*, 1981 Cr LJ 894 (SC) : AIR 1981 SC 514 : 1514 : (1981) 3 SCC 208 [LNIND 1981 SC 265] .

123. *Muhammad Gul v Haji Fazley Karim*, (1929) 56 Cal 1013 .

124. *Karuppusamy*, 1974 Cr LJ 33 (Mad).

125. *Chamanlal, supra*; see also *Sukra Mahato v Basudeo Kumar*, 1971 Cr LJ 1168 (SC); *Prayagdutt*, 1977 Cr LJ 1258 (MP).

126. *Pratibha (Dr.) v State of Maharashtra*, (1995) 1 Cr LJ 997 (Bom).

127. *P Swaminathan v Lakshmanan*, 1992 Cr LJ 990 (Mad).

128. *Yadav Motiram Patil v Rajiv G Ghodankar*, 2011 Cr LJ 528 (Bom).

129. *Beckett v Norris*, (1945) Mad 749.

130. *Virji Bhagwan*, (1909) 11 Bom LR 638 .

131. *Vinayak Atmaram v Shantaram Janardan*, (1941) 43 Bom LR 737 .

132. *Cooppoosami Chetty v Duraisami Chetty*, (1909) 33 Mad 67.

133. *Abdul Hakim v Tej Chandar Mukarji*, (1881) 3 All 815 .

134. *Baboo Gunnesh Dutt Singh v Mugneeram Chowdhry*, (1872) 11 Beng LR 321 (PC).

135. *Satish Chandra Chakravarti v Ram Doyal De*, (1920) 48 Cal 388 (SB).

136. *Karu Singh*, (1926) 7 PLT 587 .

137. *Sukhdeo Vithal Pansare*, 1974 Cr LJ 1435 (Bom); see also *Jiban Krishna Das*, 1983 Cr LJ NOC 39 (Cal).

138. *Parameswara v Krishna Pillai*, AIR 1966 Ker 264 [LNIND 1966 KER 11] .

139. *Bai Shanta v Umrao Amir*, (1925) 50 Bom 162 : 28 Bom LR 1 (FB), **overruling** *Babaji*, (1892) 17 Bom 127, and *Balkrishna Vithal*, (1893) 17 Bom 573.

140. *Ganga Prasad*, (1907) 29 All 685 (FB); *Isuri Prasad Singh v Umrao Singh*, (1900) 22 All 234 .

141. *Chotelal v Phulchand*, (1937) Nag 425.

142. *Hemraj v Babulal*, AIR 1962 MP 241 [LNIND 1961 MP 92] .

143. *Bai Shanta v Umrao Amir*, (1925) 50 Bom 162 : 28 Bom LR 1 (FB). Denial of the relationship of husband and wife in an eviction proceeding between the tenant and complainant was held to be not defamatory, *Girish Kakkar v Dr. (Mrs.) Dhanwantri*, 1991 Cr LJ 5 (Del). If the words are defamatory, the proceedings cannot be stayed because it is for the court to decide whether a privilege is available or not. *Pravinchand v Ibrahim Md*, 1987 Cr LJ 1795 (Bom).

144. *G Janardhana Reddy v A Narayana Reddy*, 2010 Cr LJ 2660 (AP).

145. *Tiruvengada Mudali v Tripurasundari Ammal*, (1926) 49 Mad 728, FB **overruling** *Venkata Reddy*, (1912) 36 Mad 216 (FB).

146. *Karu Singh*, (1926) 7 PLT 587 : 27 Cr LJ 1320, **following** *Kari Singh*, (1912) 40 Cal 433 .

147. *Narendra Kapoor v Ramesh C Bansal*, 1998 Cr LJ 1863 (Del).

148. *MC Vergheese v TJ Poonan*, AIR 1970 SC 1876 [LNIND 1968 SC 339] : 1970 Cr LJ 1651 .

149. The court also **distinguished** the present case from its earlier decision in *Rev Fr Bernard v Ramachandran Pillai*, 1986 Ker LT 1240 : 1987 Cr LJ 739 where in addition to the reply to the complainant's counsel, the accused spread the rumour in the locality about his alleged pilferage as an employee.

150. *Rajnarain Sein*, (1870) 6 Beng LR (Appx) 42 : 14 WR (Cr) 22.

151. *Fr. Thomas Maniankerikalam v Thomas J Padiyath*, 2003 Cr LJ 945 .

152. *Pat Sharpe Mrs. v Dwijendra Nath*, (1964) 1 Cr LJ 367 . *M S Jayaraj v Commissioner of Excise, Kerala*, (2000) 7 SCC 552 [LNIND 2000 SC 2302] : AIR 2000 SC 3266 [LNIND 2000 KER 461] - 'person aggrieved'- meaning

153. *U Aung Pe*, (1938) Ran 404 (FB).

154. *Homen Boroghain v Brahmaputra Valley Regional Handloom Weavers' Co-op Society*, (1995) 2 Cr LJ 2357 (Gau). *Viswanath v Shambhu Nath*, 1995 Cr LJ 277 (All) a complaint by a member of the community which was defamed in general, not maintainable. The complainant was not personally hurt. *MP Narayna Pillai v MP Chacko*, 1986 Cr LJ 2002 (Ker) a member of the

Christian community could not complain of a general remark against the community *KM Mathew v TU Balan*, 1985 Cr LJ 1039 (Ker), remarks about teachers on strike, a leader could not complain.

155. *KV Ramesh v HC Ramesh*, 2001 Cr LJ 3556 (Kant).

156. *Ratan Singh v Chain Singh*, 2000 Cr LJ 2736 (Raj).

157. *Sasikurnar B Menon v S Vijayan*, 1998 Cr LJ 3973 (Ker).

158. *S Khushboo v Kanniammal*, 2010 Cr LJ 2828 (SC) : AIR 2010 SC 3196 [LNIND 2010 SC 411] : 2010 (5) SCC 600 [LNIND 2010 SC 411] ; *Charmesh Sharma v State Of Rajasthan*, 2012 Cr LJ 2115 (Raj).

159. *John Thomas v Dr. K Jagdeesan*, AIR 2001 SC 2651 [LNIND 2001 SC 1323] .

160. *Swamy Anoopananda v Bagmisri*, 2000 Cr LJ 4296 (Ori).

161. *Beem Singh v S Ramayajam*, 2003 Cr LJ NOC 61 (Mad) : 2002 Mad LJ (Ori) 351.

162. *Ibid.*

163. *Beauchamp v Moore*, (1902) 26 Mad 43.

164. *Rallis India Ltd v K T Vijay Kumar*, 2010 Cr LJ 2485 (AP).

165. *Chief Education Officer, Salem v K S Palanichamy*, 2012 Cr LJ 2543 (Mad). *See* other view in *Rallis India Ltd v K T Vijay Kumar*, 2010 Cr LJ 2485 (AP) discussed above.

166. *Subhash K Shah v K Shankar Bhat*, 1993 Cr LJ 1296 (Kant).

167. *Subhash K Shah v K Shankar Bhat*, 1993 Cr LJ 1296 .

168. *Pyarelal Maganlal Jaiswal v State of Maharashtra*, 1996 Cr LJ 989 (Bom).

169. *MN Damani v SK Sinha*, AIR 2001 SC 2037 [LNIND 2001 SC 1149] . *Rajesh Rangarajan v Crop Care Fed. of India*, 2010 (9) Scale 23 [LNIND 2010 SC 626] -Proceedings quashed.

170. *Rajendra Kumar Sitaram Pande, v Uttam*, 1999 Cr LJ 1620 : AIR 1999 SC 1028 [LNIND 1999 SC 136] .

171. *G Janardhana Reddy v A Narayana Reddy*, 2010 Cr LJ 2660 ; *AP Ramoji Rao, Chairman Ramoji Group of Companies v State of AP*, AIR 2006 SC 3384 [LNIND 2006 SC 820] : (2006) 8 SCC 321) [LNIND 2006 SC 820] - proceedings quashed since the accused agreed to give a clarification in the TV channel as the news item was not the intended in any manner to defame or harm the reputation of the Chief Minister or his entourage of ministers and officials.

172. *Vedurumudi Rama Rao v Chennuri Venkat Rao*, 1997 Cr LJ 3851 .

173. *Darusing Durgasing v State of Gujarat*, 1999 Cr LJ 1620 : AIR 1999 SC 1028 [LNIND 1999 SC 136] .

174. *Valmiki Faleiro v Mrs. Lauriana Fernandes*, 2005 Cr LJ 2498 .

175. *Jeffrey J Diermeier v State of WB*, (2010) 6 SCC 243 [LNIND 2010 SC 512] : (2010) 3 SCC(Cr) 138.

176. *KM Mathew v KA Abraham*, 1998 Cr LJ 327 (Ker).

177. *Subhiksha Trading Services Ltd v Azim H Premji*, 2011 Cr LJ 2769 (Mad).

178. *Shiv Kumar Agarwal v State of Meghalaya*, 2013 Cr LJ 421 .

179. *Shiv Kumar Agarwal v State of Meghalaya*, 2013 Cr LJ 421 .

180. *Abhijit Pawar v Hemant Madhukar Nimbalkar*, AIR 2017 SC 299 [LNIND 2016 SC 614] : (2017)3 SCC 528 [LNIND 2016 SC 614] .

181. *Bir Chandra Das v Anil Kumar Sarkar*, 2011 Cr LJ 3422 (Cal).

THE INDIAN PENAL CODE

CHAPTER XXI OF DEFAMATION

[s 501] Printing or engraving matter known to be defamatory.

Whoever prints [1] or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

COMMENT.—

The offence under this section is a distinct offence from the one under section 500. The person printing or engraving defamatory matter abets the offence. This section makes such abetment a distinct offence. Where the content of any news item carried in a newspaper is defamatory as defined under section 499 IPC, 1860, the mere printing of such material ' knowing or having good reason to believe that such matter is defamatory' itself constitutes a distinct offence under section 501 IPC, 1860.[182.]

[s 501.1] Ingredients.—

This section requires two things:—

1. Printing or engraving any matter.

2. Knowledge or reason to believe that such matter is defamatory.

1. 'Prints'.—The publisher of a newspaper in which defamatory matter is printed is liable under section 500. If he is also the printer of the newspaper, the case would be covered by this section. But his liability under section 500 would in no way be affected.[183.] In a case, where the Editor/owner of magazine published defamatory statements containing imputations without due care and attention and without making any attempt of verification before publication and the same was not published in good faith. The court held that the charges framed against the accused under section 500, 501 and 502 read with section 34 IPC, 1860, stand proved.[184.]

182. *Mohammed Abdulla Khan v Prakash K*, AIR 2017 SC 5608 .

183. *Ramesh Chander*, AIR 1966 Punj 93 .

184. *B R K Murthy v State Of AP*, 2013 Cr LJ 1602 (AP). See also *Editor, Deccan Herald v M S Ramaraju*, 2005 Cr LJ 2672 (Kar).

THE INDIAN PENAL CODE

CHAPTER XXI OF DEFAMATION

[s 502] Sale of printed or engraved substance containing defamatory matter.

Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

COMMENT.—

This section supplements the provisions of the previous section by making the seller of defamatory matter punishable under it.

[s 502.1] Ingredients.—

This section requires two essentials:—

1. Selling or offering for sale any printed or engraved substance.

2. Knowledge that such substance contains defamatory matter.

THE INDIAN PENAL CODE

CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

[s 503] Criminal intimidation.

Whoever threatens another with any injury[1.] to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

***Explanation.*—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.**

ILLUSTRATION

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

COMMENT.—

The offence of criminal intimidation requires either a person or another in whom he is specially interested to be threatened. There must be an intent to cause alarm to the former by a threat to him of injury to himself or to the latter. The intent itself might be complete, though it could not be effected. But the existence of the interest seems essential to the offence, as also and equally to the attempt to commit the offence, since otherwise the attempt would be to do something not constituting the offence.[1]

[s 503.1] Ingredients.—

(1) Threatening a person with any injury.

  (a) to his person, reputation or property or;

  (b) to the person or reputation of any one in whom that person is interested.

(2) The threat must be with intent;

  (a) to cause alarm to that person, or

  (b) to cause that person to do any Act which he is not legally bound to do as means of avoiding execution of such threat; or

  (c) to cause that person to omit to do any act which that person is legally entitled to do as means of avoiding execution of such threat.

Therefore, intention must be to cause alarm to the victim and whether he is alarmed or not is really of no consequence. But material has to be brought on record to show that intention was to cause alarm to that person.[2.]

1. 'Threatens another with any injury'.—The gist of the offence is the effect which the threat is intended to have upon the mind of the person threatened, and it is clear that

before it can have any effect upon his mind it must be either made to him by the person threatening or communicated to him in some way. The threat referred to in this section must be a threat communicated or uttered with the intention of its being communicated to the person threatened for the purpose of influencing his mind.[3.] The threat must be one which can be put into execution by the person threatening. It is not necessary that the injury should be one to be inflicted by the offender; it is sufficient if he can cause it to be inflicted by another; and the infliction of it could be avoided by some act or omission that the person threatening desires. Punishment by God is not one which a person could cause to be inflicted or the execution of which he could avoid.[4.]

A threat, in order to be indictable, must be made with intent to cause alarm to the complainant. Mere vague allegation by the accused that he is going to take revenge by false complaints cannot amount to criminal intimidation.[5.]

[s 503.2] Criminal intimidation and Extortion.—

Criminal intimidation is analogous to extortion. In extortion the immediate purpose is obtaining money or money's worth; in criminal intimidation, the immediate purpose is to induce the person threatened to do, or abstain from doing, something which he was not legally bound to do or omit.

[s 503.3] Threat of injury to reputation.—

The accused took indecent photographs of a girl and threatened her father, in letters written to him with publication of the photographs unless "hush money" was paid to him. The Supreme Court held that the accused was guilty of criminal intimidation and not of attempt to commit extortion.[6.] Where the head master of a school threatened a lady-teacher that until she signed certain papers in blank he would spoil her modesty, the Supreme Court held that this offence as well as that of extortion were made out.[7.] Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section.[8.]

[s 503.4] Person informed about threatened injury to another must be interested in him.—

A threat to commit suicide is not within the section unless the other person be interested in the person giving the threat.[9.]

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1. *Mangesh Jivaji*, (1887) 11 Bom 376, 379, 380.
2. *Amulya Kumar Behera v Nabaghana Behera*, 1995 Cr LJ 355 (Ori).

3. *Gunga Chunder sen v Gour Chunder Banikya*, (1888) 15 Cal 671 , 673. See *SS Sanyal v KVR. Nair*, 1987 Cr LJ 2074 , when the charge-sheeted employee met the chairman of the company, the latter remarked to him : "your days are numbered," it was not an intimidation in the context because the purpose must have been to tell him that his service was not going to last beyond numbered days.
4. *Doraiswamy Ayyar*, (1924) 48 Mad 774.
5. *Govind*, (1900) 2 Bom LR 55 .
6. *Romesh Chandra Arora*, (1960) 1 SCR 924 [LNIND 1959 SC 177] .
7. *Chander Kala v Ram Kishan*, AIR 1985 SC 1268 [LNIND 1985 SC 166] : 1985 Cr LJ 1490 : (1985) 4 SCC 212 [LNIND 1985 SC 166] . See also *Anuradha v State of Maharashtra*, 1991 Cr LJ 410 .
8. *Manik Taneja v State of Karnataka*, (2015) 7 SCC 423 [LNIND 2015 SC 35] .
9. *Nubi Buksh v Must. Oomra*, (1866) PR No. 109 of 1866. See also *Kolla Srinivas v State of AP*, 2005 Cr LJ 2440 (AP).

THE INDIAN PENAL CODE

CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

[s 504] Intentional insult with intent to provoke breach of the peace.

Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

This section provides a remedy for using abusive and insulting language. Abusive language which may lead to a breach of the public peace is not an offence. There must be an intentional insult. Insult may be offered by words or conduct. If it is by words, the words must amount to something more than mere vulgar abuse.[10.] Mere breach of good manners does not constitute an offence under this section.[11.] If the insult is of such a nature that it may give provocation which might rouse a man to act either to break the public peace or to commit any other offence, the offence is committed.[12.]

In judging whether a particular abusive language comes within the mischief of section 504, Indian Penal Code, 1860 (IPC, 1860), the Court has to see what would be the effect of the language used in ordinary course of events and not how the complainant actually behaved on being abused. Merely because a man of cool temperament did not react violently or break the peace it does not follow that no offence was committed by the accused.[13.] In the absence of actual words used by the accused or even a gist of it in the complaint it is not possible to say if the case falls within the ambit of section 504 (IPC, 1960), and as such the charge has to be quashed.[14.] Thus where the only allegation in the complaint was that when the complainant resisted the attempts by the accused to evict her forcibly from the land in her tenancy, the accused persons abused her in filthy words, the complainant not disclosing the actual words used by the accused or that she was provoked by the insulting abuse, the accused were not summoned.[15.]

[s 504.1] Ingredients.—

This section requires two essentials:—

1. Intentionally insulting a person and thereby giving provocation to him.

2. The person insulting must intend or know it to be likely that such provocation will cause him to break the public peace or to commit any other offence.[16.]

Mere hurling of abuses in absence of any allegation that such abuses were given intending or knowingly that such an action would provoke the aggrieved person to break public peace or to commit an offence does not fall within the definition of the offence as prescribed under section 504, (IPC, 1860). A bare reading of the section does not leave any room for doubt that the intentional insult which is given by the accused should be clothed with the intention or knowledge that such an insult would provoke the aggrieved person to commit breach of public peace or to commit an

offence.[17.] Section 504 refers to intentional insult with intent to provoke breach of peace.

In order to attract the ingredients of an offence under section 504 of the (IPC, 1860), it would be necessary that actual words used or supposed to have been used should be mentioned in the complaint/written report, otherwise it would be extremely difficult for the Court to decide whether or not the words used amounted to an intentional insult.[18.]

[s 504.2] Sections 499 and 504.—

The difference between an offence under this section and defamation lies in the fact that in defamation, publication to the prosecutor alone is not sufficient, as such an imputation could not be said to harm the reputation of the person; but under this section this would complete the offence.

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10. *Pukh Raj v State*, (1953) 3 Raj 983 .
11. *Abraham v State*, AIR 1960 Ker 236 [LNIND 1960 KER 34] .
12. *Mohammed Sabad Ali v Thuleswar Borah*, (1954) 6 Ass 274.
13. *K Veerangaiah*, 1976 Cr LJ 1690 (AP).
14. *Prem Pal Singh*, 1981 Cr LJ 1208 (HP).
15. *Jodh Singh v State of UP*, 1991 Cr LJ 3226 (All).
16. Restated in *Jodh Singh v State of UP*, 1991 Cr LJ 3226 (All). Sanction to prosecute a public servant under this section would be needed only when his act in question is a part of his official duty, and not when he abuses or insults a person who is in police lock-up. *Abani Ch Biswal v State of Orissa*, 1988 Cr LJ 1038 (Ori).
17. *Abdul Majid v State of Rajasthan*, 2012 Cr LJ 4392 (Raj); *Prakash Chandra Bafna v Oba Ram*, 2011 Cr LJ 416 (Raj)-using vulgar and filthy language against complainant when he went to his office to ask reason for not permitting him to mark his presence in register- held, not part of official duty and sanction is not necessary to prosecute him.
18. *Shiv Sundar Bharti v State of Bihar*, 2017(1) Crimes 351 (Pat) : 2016 Cr LJ 4761 (Pat).

THE INDIAN PENAL CODE

CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

[s 505] Statements conducing to public mischief.

[19.](1) **Whoever makes, publishes or circulates any statement, rumour or report,—**

(a) with intent to cause, or which is likely to cause, any officer, soldier, [20.] [sailor or airman] in the Army, [21.][Navy or Air Force] [22.]of India to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to [three years], or with fine, or with both.

[23.](2) **Statements creating or promoting enmity, hatred or ill-will between classess.**

Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to [24.][three years], or with fine, or with both.

[25.](3) **Offence under sub-section (2) committed in place of worship, etc.**

Whoever commits an offence specified in sub-section (2) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates [it in good faith] and without any such intent as aforesaid.

STATE AMENDMENT

Andhra Pradesh.—*In Andhra Pradesh the offence is cognizable vide G.O. Ms. No. 732, dated 5-12-1991.*

COMMENT.—

This section is aimed at reports calculated to produce mutiny or to induce one section of the population to commit offences against another and to prevent and remove communal and religious tensions. The Supreme Court has held that the provisions of this section are not unconstitutional as being violative of the fundamental right of freedom of speech and expression under Article 19(1)(a) of the Constitution.[26.] Sub-sections (2) and (3) of this section have now been made cognizable offences under the Code of Criminal Procedure, 1973 (Cr PC, 1973). Of course, offences under this section and sections 506 and 507, (IPC, 1860), can be made cognizable offences in specified areas by the State Government by a notification in the official Gazette under section 10 of the Criminal Law Amendment Act, 1932.

A mere threat which causes no alarm to the complainant does not constitute an offence under the section.[27.]

[s 505.1] Sections 153A and 505.—

It is necessary under section 505 that there should be a publication of words or representation intended for promoting feelings of enmity or hatred, but this is not necessary under section 153A. Inciting of the feelings of one group merely without any reference to another group does not attract section 153A or section 505.[28.] The Court referred to the decision in *Balwant Singh v State of Punjab*,[29.] where the ruling was that *mens rea* is a necessary ingredient for the offence under section 153A. *Mens rea* is an equally necessary postulate for the offence under section 505(2) also as could be discerned from the words "with intent to create or promote or which is likely to create or promote" as used in that sub-section. The Court also referred to the decision in *Sunilakhya Chowdhury v HM Jadwet*,[30.] wherein it was held that the words "makes or publishes any imputation" should be interpreted as words supplementing each other. A maker of imputation without publication is not liable to be punished under section 499. The same interpretation is warranted in respect of the words "makes, publishes or circulates" in section 505 (IPC, 1860) also.

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19. Section 505 renumbered as sub-section (1) of that section by Act 35 of 1969, section 3 (w.e.f. 4 September 1969).
20. Subs. by Act 10 of 1927, section 2 and Sch I, for or sailor.
21. Subs. by Act 10 of 1927, section 2 and Sch I, for or Navy.
22. Subs. by A.O. 1950 for of Her Majesty or in the Imperial Service Troops. The words or in the Royal Indian Marine occurring after the words Majesty were omitted by Act 35 of 1934, section 2 and Sch.
23. Ins. by Act 35 of 1969, section 3(i) (w.e.f. 4 September 1969).
24. Subs. by Act 41 of 1961, section 4, for two years (w.e.f. 12 September 1961).
25. Ins. by Act 35 of 1969, section 3(i) (w.e.f. 4 September 1969).
26. *Kedar Nath*, AIR 1962 SC 955 [LNIND 1962 SC 21] .
27. *Amitabh Adhar v NCT of Delhi*, 2000 Cr LJ 4772 (Del).

28. *Bilal Ahmed Kaloo v State of AP*, AIR 1997 SC 3483 [LNIND 1997 SC 1060] : 1997 Cr LJ 4091 .

29. *Balwant Singh v State of Punjab*, AIR 1995 SC 1785 [LNIND 1995 SC 1420] : 1995 AIR SCW 2803 : (1995) 3 SCC 214 [LNIND 1995 SC 1420] .

30. *Sunilakhya Chowdhury v HM Jadwet*, AIR 1968 Cal 266 [LNIND 1967 CAL 167] .

THE INDIAN PENAL CODE

CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

[s 506] Punishment for criminal intimidation.

Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or [31] **[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.**

STATE AMENDMENTS

Uttar Pradesh.—*The following amendments were made by Notification No. 777/VIII 9-4(2)-87, dated 31-7-1989, published in U.P. Gazette, Extra, Part-4, Section (Kha) dated 2-8-1989.*

"Any offence punishable under section 506, (IPC, 1860), when committed in any district of Uttar Pradesh, shall be notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Cr PC, 1973) be cognizable and non-bailable."

Andhra Pradesh.—*In Andhra Pradesh the offence is non-bailable if committed in A.P. vide G.O. Ms. No. 732, dated 5-12-1991.*

COMMENT.—

Where a person entered the victim's house during midnight armed with a knife and threatened with death anyone who came between himself and the victim, the offence under this section was held to have been made out.[32] The threat must be real in the sense that the accused means what he says and the victim of the threat should feel threatened actually.[33] Where the accused made his outburst on a public servant when he was on the way to attend his office saying that he was going to kill him, it was held that it was sufficient to hold that the act will fall under section 506.[34]

[s 506.1] Mere words.—

In order to attract the ingredients of section 506, (IPC, 1860) the intention of the accused must be to cause alarm to the victim. Mere expression of words, without any intention to cause alarm, would not suffice.[35] In *Amulya Kumar Behera v Nabaghana Behera*,[36] it was held that intention of the accused must be to cause alarm to the victim and whether he is alarmed or not is of no consequence. However, mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of section 506.

In absence of basic ingredients of the section in the complaint, no case under section 506 (IPC, 1860) can be sustained.[37.] Where all the witnesses have stated in specific terms that the accused came prepared and intimidated the complainant and also other witnesses. All the respondents are liable to be convicted for the offence punishable under section 506 of the (IPC, 1860).[38.]

Where it was found that that the accused issued no threats to the complainant so as to cause death or grievous hurt, it was held that mere exhortation to his co-accused to finish him, did not amount to threat. His conviction under section 506 was set aside.[39.]

Asking a person not to work in a private garden and threatening him to go away form the garden would not satisfy the requirements of the section.[40.]

The statements said to have been made against accused six months prior to the death of the deceased with regard to the offence under section 506. (IPC, 1860) cannot be treated as admissible under section 32(1) of the Indian Evidence Act, 1872.[41.]

[s 506.2] Part-I Non-cognizable.—

Since the part 1 of section 506 is not cognizable, the permission of the Magistrate would be required to try the applicants under said section.[42.]

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31. Subs. by Act 26 of 1955, section 117 and Sch, for transportation for life (w.e.f. 1 January 1956).

32. *Ghanshyam v State of MP*, 1990 Cr LJ 1017 (MP).

33. *Noble Mohandas v State of TN*, 1989 Cr LJ 669 (Mad). Threatening and giving fist blow to a surgeon of a Government hospital, held offence under the section, *Siyasaran v State of MP*, 1995 Cr LJ 2126 (SC).

34. *Rajendra Datt v State of Haryana*, 1993 Cr LJ 1025 (P&H).

35. *Tammineedi Bhaskara Rao v State of AP*, 2007 Cr LJ 1204 (AP).

36. *Amulya Kumar Behera v Nabaghana Behera*, 1995 Cr LJ 3559 (Ori).

37. *Gorige Pentaiah v State of AP*, 2009 Cr LJ 350 : 2008 (12) SCC 531 [LNINDORD 2008 SC 247] .

38. *State of Maharashtra v Tatyaba Bajirao Jadhav*, 2011 Cr LJ 2717 (Bom); *State of HP v Vijay Kumar* 2010 Cr LJ 475 .

39. *Mohinder Singh v State of Haryana*, 1993 Cr LJ 85 (P&H). *Dimpey Gujral v Union Territory 2013*, AIR 2013 SC 518 : Cr LJ 520; *Surat Singh v State*, 2013 (1) Scale 1 [LNIND 2012 SC 837] .

40. *Saraswathi v State of TN*, 2002 Cr LJ 1420 (Mad). *Sanjay Pandey v Chhaganlal J Jain*, 2001 Cr LJ 2127 (Bom).

41. *D Vijay Kumar v State of AP*, 2010 Cr LJ 968 (AP).

42. *Narendra Bhojram Patil v State of Maharashtra*, 2010 Cr LJ 2762 (Bom). See also *Vishwajit P Rane v State of Goa*, 2011 Cr LJ 1289 (Bom), Government of Goa issued a notification declaring offence punishable under section 506 of the (IPC, 1860) committed within State of Goa, as

cognizable and non-bailable. Held, there is no power vesting in the State Government to amend the First Schedule to the Criminal Procedure Code, 1973 (2 of 1974) by issuing a notification.

THE INDIAN PENAL CODE

CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

[s 507] Criminal intimidation by an anonymous communication.

Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

STATE AMENDMENT

Andhra Pradesh.—*In Andhra Pradesh the offence is cognizable vide G.O. Ms. No. 732, dated 5-12-1991*.

COMMENT.—

For a conviction under this section it must be shown that the accused committed criminal intimidation by an anonymous communication.[43.]

43. *Doraiswamy Ayyar*, (1924) 48 Mad 774.

THE INDIAN PENAL CODE

CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

[s 508] Act caused by inducing person to believe that he will be rendered an object of Divine displeasure.

Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

ILLUSTRATIONS

(a) A sits *dharna* at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

COMMENT.—

This section is intended to prevent such practices as *dharna* and *traga*.

THE INDIAN PENAL CODE

CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

[s 509] Word, gesture or act intended to insult the modesty of a woman.

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, [44.][shall be punished with simple imprisonment for a term which may extend to three years, and also with fine].

COMMENT.—

If a man intending to outrage the modesty of a woman exposes his person indecently to her or uses obscene words intending that she should hear them or exhibits to her obscene drawing, he commits this offence.

[s 509.1] Ingredients.—

This section requires:—

1. Intention to insult the modesty of a woman.

2. The insult must be caused

   (i) by uttering any word or making any sound or gesture, or exhibiting any object intending that such word or sound shall be heard or that the gesture or object shall be seen by such woman, or

   (ii) by intruding upon the privacy of such woman.

The burden is on the prosecution to prove that the accused had uttered the words or made the sound or gesture and that such word, sound or gesture was intended by the accused to be heard or seen by some woman. Normally, it is difficult to establish this and, seldom, a woman files complaint and often the wrong doers are left unpunished even if complaint is filed since there is no effective mechanism to monitor and follow up such acts.[45.]

[s 509.2] Indecent overtures.—

Section 509 (IPC, 1860) criminalises a 'word, gesture or act intended to insult the modesty of a woman' and in order to establish this offence it is necessary to show that the modesty of a particular woman or a readily identifiable group of women has been insulted by a spoken word, gesture or physical act. Clearly, this offence cannot be made out when the complainants' grievance is with the publication of what the appellant had stated in a written form.[46.]

The modesty contemplated under section 509 is to be understood as the "womanly propriety of behaviour".[47.]

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44. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 10 (w.e.f. 3 February 2013) for the words "shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

45. *Deputy Inspector General of Police v S Samuthiram*, AIR 2013 SC 14 [LNIND 2012 SC 755] : (2013) 1 SCC 598 [LNIND 2012 SC 755] .

46. *S Khushboo v Kanniammal*, AIR 2010 SC 3196 [LNIND 2010 SC 411] : 2010 Cr LJ 2828 (SC) : 2010 (5) SCC 600 [LNIND 2010 SC 411] .

47. *Aloshia Joseph v Joseph Kollamparambil*, 2009 Cr LJ 2190 ; *Maloji Patil v State of Goa*, 2009 Cr LJ 903 (Bom); *Santha v State*, 2006 (1) Ker LT 249 - whether a lady, can be convicted for an offence under section 509 (IPC, 1860)

THE INDIAN PENAL CODE

CHAPTER XXII OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

[s 510] Misconduct in public by a drunken person.

Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

COMMENT.—

Ingredients.—This section requires two things:—

1. Appearance of a person in a state of intoxication in

   (i) any public place, or

   (ii) any place which it is a trespass in him to enter.

2. The person so appearing must have conducted himself in such a manner as to cause annoyance to any person.

THE INDIAN PENAL CODE

CHAPTER XXIII OF ATTEMPTS TO COMMIT OFFENCES

[s 511] Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.

Whoever attempts to commit an offence punishable by this Code[1.] with [1] [imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code[2.] for the punishment of such attempt, be punished with [2] [imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.

ILLUSTRATIONS

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

COMMENT.—

Before completion of crime, human mind has to pass four steps as under:—

(1) Intention to commit;

(2) Preparation to commit it;

(3) Attempt to commit it; and

(4) If the attempt is successful, then crime is complete.

Section 511 Indian Penal Code, 1860 (IPC, 1860) is a general provision dealing with the attempts to commit offences and not made punishable by other specific section. It makes punishable all attempts to commit offences punishable with imprisonment and not only those punishable for life or death.[3.]

A person commits the offence of 'attempt to commit a particular offence' when (i) he intends to commit that particular offence; and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence, but must be an act during the course of committing that offence, section 511, IPC, 1860 is attracted.[4.] An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the

act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.[5.]

In *Om Prakash's* case[6.] the Supreme Court has clearly held that like section 511, IPC, 1860 in section 307, IPC, 1860 to the act need not be the penultimate act.

[s 511.1] Essentials.—

In every crime, there is first intention to commit it; second, preparation to commit it; third, attempt to commit it. If the third stage, that is attempt is successful, then the crime is complete. If the attempt fails, the crime is not complete but the law punishes the person attempting the act. An 'attempt' is made punishable, because every attempt, although it fails of success, must create alarm, which, of itself, is an injury, and the moral guilt of the offender is the same as if he had succeeded.

A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence, if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence—the act need not be the penultimate act towards the commission of the offence but it must be an act during the course of committing that offence.[7.]

(1) Intention.—Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice.[8.] The will is not to be taken for the deed, unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and affecting it. In an attempt to commit an offence, there must be intention to commit the crime combined with doing of some act adopted to, but falling short of its actual commission.[9.]

(2) Preparation.—Preparation consists in devising or arranging the means or measures necessary for the commission of an offence.[10.]

[s 511.2] Removal of rice bags from *godown* in order to sell them.—

A Government stockist removed 80 bags of rice from a *godown* in his charge and concealed them in a room with a view to sell them and appropriate the sale proceeds. It was held that the act of the stockist amounted only to preparation and therefore, he was not guilty of any offence.[11.]

[s 511.3] Running towards well for committing suicide.—

A woman ran to a well stating she would jump into it, and she was caught before she could reach it. It was held that she could not be convicted of an attempt to commit suicide as she might have changed her mind before jumping into the well.[12.]

(3) Attempt.—Attempt is the direct movement towards the commission after the preparations are made.[13.] In *State of Maharashtra v Mohd. Yakub*,[14.] reported in the Apex Court considered the definition of 'attempt to commit crime' as the last proximate act which a person does towards the commission of an offence, the consummation of the offence being hindered by circumstances beyond his control. It was observed by the Apex Court that what constitutes an "attempt" is a mixed question of law and fact, depending largely on the circumstances of the particular case. "Attempt" defies a precise and exact definition. Broadly speaking, all crimes which consist of the commission of affirmative acts are preceded by some covert or overt conduct which may be divided into three stages. The first stage exists when the culprit first entertains the idea or intention to commit an offence. In the second stage, he makes preparations to commit it. The third stage is reached when the culprit takes deliberate overt steps to commit the offence. Such overt act or step in order to be 'criminal' need not be the penultimate act towards the commission of the offence. It is sufficient if such act or acts were deliberately done, and manifest a clear intention to commit the offence aimed, being reasonably proximate to the consummation of the offence.

The test for determining whether the acts constitute attempt or preparation is whether the overt acts already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless. But where the thing done is such as, if not prevented by any extraneous cause, would fructify into commission of an offence, it would amount to an attempt to commit that offence.[15.] An attempt to commit an offence does not cease to be an attempt merely because after the attempt is made and before the actual completion of the offence the offender may be able to prevent its completion by doing some other act in pursuance of a changed intention.[16.]

An accused is liable for attempt where his failure to commit an offence is not due to any act or omission of his own, but to the intervention of some factor independent of his own volition.[17.] Where misrepresentations had been made and money obtained from the persons sought to be cheated by misrepresentations, there is an attempt to cheat and not merely a preparation for committing that offence.[18.]

[s 511.4] Distinction between 'preparation' and 'attempt'.—

There is a distinction between 'preparation' and 'attempt'. Attempt begins where preparation ends. A person commits the offence of attempt to commit a particular offence when accused (i) intends to commit a particular offence, (ii) he having made preparation and with the intention to commit an offence, (iii) does an act towards its commission, such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence.[19.]

1. 'Offence punishable by this Code'.—No criminal liability can be incurred under the Code by an attempt to do an act, which if done will not be an offence against the Code.[20.]

The expression "whoever attempts to commit an offence" in this section can only mean "whoever intends to do a certain act with the intent or knowledge necessary for the commission of that offence".[21.]

[s 511.5] Impossible offence.—

An attempt is possible, even when the offence attempted cannot be committed; as when a person, intending to pick another person's pocket, thrusts his hand into the pocket, but finds it empty. That such an act would amount to a criminal attempt appears from the illustrations to this section. But in doing such an act, the offender's intention is to commit a complete offence, and his act only falls short of the offence by reason of an accidental circumstance which has prevented the completion of the offence. It is possible to attempt to commit an impossible theft and so offend against the Code because theft is itself an offence against the Code, and may therefore, be attempted within the meaning of the Code. At the same time it is necessary to show that the means adopted are apparently suitable for the fulfilment of the design.[22.] Thus where a man threatens the life of another with a child's pop gun using a cork as a projectile[23.] or tries to pick the pocket of a man who is well beyond the reach of his hand, no attempt either to commit murder or to steal can be said to have been committed as the means adopted are impossible of achieving the designed purpose. Similar would be the case in regard to absolutely impossible acts. Thus where the act is such that it is incapable of commission, e.g., trying to steal from an empty room or an empty pocket or trying to kill a person by shooting at a bulge in a bed thinking it to be the enemy, no criminal attempt can be said to have been committed.[24.] In the IPC, 1860, however, trying to steal from an empty pocket would still constitute an attempt as Illustration (b) to section 511, IPC, 1860 specifically says so. Though in England too this happened to be the law previously[25.] the position has materially changed after the decision of the House of Lords in *Haughtons* case.[26.] It is felt that the law in India should be changed on this score at least to bring about a uniformity of approach to this question of attempt so far sections 307 and 511, IPC, 1860 are concerned especially, after the decision of the Supreme Court in the case of *Om Prakash's* case,[27.] has held that under both these sections the act need not be the last proximate act.

[s 511.6] Attempt to cheat.—

The accused applied to the Patna University for permission to appear at the MA Examination in English as a private candidate representing that he was a graduate having obtained his BA degree three years earlier and that he had been teaching in a certain school. In support of his application, he attached certain certificates purporting to be from the Headmaster of the School and the Inspector of Schools. The University authorities gave the accused permission to appear at the examination. Later on, finding that the certificates were false and that the accused was not a graduate and was not a teacher, the University authorities withdrew the permission. The Supreme Court held that the accused was guilty of attempting to cheat and that the moment the accused dispatched his application to the University, he entered the realm of attempting to commit the offence of cheating.[28.] Where the accused made an alteration in his own affidavit under the honest belief that it was necessary for customs' clearance, the Supreme Court set aside the conviction under section 420 read with this section.[29.]

The offence of attempting to cheat may be committed even though the person attempted to be cheated does not believe in the representations made to him and is not misled by them but only feigns belief in order to trap the offender.[30.]

[s 511.7] Outraging Modesty of a Woman and attempt to Rape (sections 354 and 511 read with section 376).—

In between complete rape and attempt to commit rape there is a rare area covered by section 354 of IPC, 1860, i.e., assault or criminal force to woman with intent to outrage her modesty or indecent assault. The dividing line between attempt to commit rape and indecent assault is not only thin but also is practically invisible. For an offence of attempt to commit rape, prosecution is required to establish that the act of the accused went beyond the stage of preparation. In a given case, where the prosecutrix was made naked and her cries attracted her uncle who came to the spot and then the accused fled away, it was held that it was not a case of attempt to commit rape but was one under section 354 of IPC, 1860.[31.]

[s 511.8] 'Attempt could be a minor offence'.—

It is true that there was no charge under section 376 read with section 511, IPC, 1860. However, under section 222 of the Code of Criminal Procedure, 1973 (Cr PC, 1973) when a person is charged for an offence he may be convicted of an attempt to commit such offence although the attempt is not separately charged.[32.]

2. 'Where no express provision is made by this Code'.—The section does not apply to cases of attempts made punishable by some specific sections of the Code. The attempts specifically provided for are:—

Section 121, attempt to wage war against the Government of India. Section 124, attempt wrongfully to restrain the President and other high officials with intent to induce or compel them to exercise or refrain from exercising any of their lawful powers. Section 125, attempt to wage war against the Government of any Asiatic Power in alliance or at peace with the Government of India. Section 130, attempt to rescue State prisoners or prisoners of war. Section 196, attempt to use as the evidence known to be false. Sections 198, 200, attempt to use as true a certificate or declaration known to be false in a material point. Section 213, attempt to obtain a gratification to screen an offender from punishment. Sections 239 and 240, attempt to induce a person to receive a counterfeit coin. Section 241, attempt to induce a person to receive as genuine counterfeit coin which, when the offender took it, he did not know to be counterfeit. Sections 307 and 308, attempts to commit murder and culpable homicide. Section 309, attempt to commit suicide. Sections 385, 387 and 389, attempt to put a person in fear of injury or accusation in order to commit extortion. Section 391, conjoint attempt of five or more persons to commit dacoity. Sections 393, 394 and 398, attempts to commit robbery. Section 460, attempt by one of many joint house-breakers by night to cause death or grievous hurt.

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1. Subs. by Act 26 of 1955, section 117 and Sch, for transportation for life (w.e.f. 1 January 1956).
2. Subs. by Act 26 of 1955, section 117 and Sch, for certain words (w.e.f. 1 January 1956).
3. *Pawan Kumar v State of Haryana*, 2010 Cr LJ 2077 (P&H).
4. *I K Narayana v State of Karnataka*, 2013 Cr LJ 874 (Kant).
5. *Koppula Venkat Rao v State of AP*, AIR 2004 SC 1874 [LNIND 2004 SC 301] : 2004 Cr LJ 1804 (SC).

6. *Om Prakash*, 1961 (2) Cr LJ 848 (SC).
7. *Abhayanand*, AIR 1961 SC 1698 [LNIND 1961 SC 202] ; *Om Prakash*, 1961 (2) Cr LJ 848 (SC).
8. James Fitzjames Stephen, *General View of the Criminal Law of England*, 2nd Edn, p 69; *Koppula Venkat Rao v State of AP*, AIR 2004 SC 1874 [LNIND 2004 SC 301] : 2004 Cr LJ 1804 : (2004) 3 sCC 602, the Supreme Court explained why attempt has been characterized as crime.
9. *Damodar Behera v State of Orissa*, 1996 Cr LJ 344 (Ori).
10. Quoted with approval from Mayne's Criminal Law in *Peterson's* case, (1876) 1 All 316 , 317 and in *Padala Venkatasami*, (1881) 3 Mad 4, 5; *Ashaq Hussain*, (1948) Pak LR 155.
11. *Bhagwat v State*, (1948) 28 Pat 92.
12. *Ramakka*, (1884) 8 Mad 5.
13. Quoted with approval from Mayne's Criminal Law in *Peterson*, (1876) 1 All 316 , and in *Padala Venkatasami*, (1881) 3 Mad 4.
14. *State of Maharashtra v Mohd. Yakub*, AIR 1980 SC 1111 [LNIND 1980 SC 99] : (1980) 3 SCC 57 [LNIND 1980 SC 99] .
15. *Tustipada Mandal*, (1950) Cut 75.
16. *Haricharan v State*, AIR 1950 Ori 114 [LNIND 1949 ORI 25] (SB).
17. *Mangeram v Lal Chhatramohansingh*, (1950) Nag 908.
18. *Bashirbhai*, (1960) 3 SCR 554 [LNIND 1960 SC 126] : 62 Bom LR 908.
19. *State of Maharashtra v Mohd. Yakub*, AIR 1980 SC 1111 [LNIND 1980 SC 99] : (1980) 3 SCC 57 [LNIND 1980 SC 99] .
20. *Mangesh Jivaji*, (1887) 11 Bom 376, 381; *Ram Charit Ram Bhakat v Chairman, Rajshahi District Board*, (1938) 1 Cal 420 .
21. *Om Prakash*, AIR 1962 SC 1782 .
22. *Mohinder Singh*, 1960 Cr LJ 393 (Punj).
23. *Ibid.*
24. *Haughton v Smith*, (1975) AC 476 Per House of Lords : (1973) 3 All ER 1109 : (1974) 2 WLR 607 ; see also *Neilson* (1978) RTR 232 .
25. *Ring*, (1892) 61 LJ MC 116.
26. *Haughton, supra*.
27. *Om Prakash*, 1961 (2) Cr LJ 848 (SC).
28. *Abhayanand*, AIR 1961 SC 1698 [LNIND 1961 SC 202] ; see also *Sudhir Kumar*, 1973 Cr LJ 1798 (SC); *State of Maharashtra v Mohd. Yakub*, 1980 Cr LJ 793 (SC).
29. *Kapoor Chand Maganlal Chanderia v State (Delhi Admn)*, 1985 SCC (Cr) 441 : (1985) Supp SCC 268 .
30. *Bashirbhai*, 62 Bom LR 908 : (1960) 3 SCR 554 [LNIND 1960 SC 126] .
31. *Tukaram Govind Yadav v State of Maharashtra*, 2011 Cr LJ 1501 (Bom); *State of MP v Babulal*, AIR 1960 MP 155 [LNIND 1959 MP 49] ; *Rajesh Vishwakarma v State of Jharkhand*, 2011 Cr LJ 2753 (Jha); *Pawan Kumar v State of Haryana*, 2010 Cr LJ 2077 (P&H).
32. *Pandharinath v State of Maharashtra*, (2009) 14 SCC 537 [LNIND 2009 SC 1378] .

THE INDIAN PENAL CODE

SUMMARY

THE draft of the Indian Penal Code was prepared by the First Indian Law Commission when Macaulay was the President of that body. Its basis is the law of England freed from superfluities, technicalities and local peculiarities. Suggestions were also derived from the French Penal Code and from Livingstone's Code of Louisiana. The draft underwent a very careful revision at the hands of Sir Barnes Peacock, Chief Justice, and puisne Judges of the Calcutta Supreme Court who were members of the Legislative Council, and was passed into law in 1860. Though it is principally the work of a man who had hardly held a brief, and whose time was devoted to politics and literature, yet it is universally acknowledged to be a monument of codification and an everlasting memorial to the high juristic attainments of its distinguished author.

Objects of penal legislation.

The legitimate objects of penal legislation are the selection of those violations of right which are sufficiently dangerous to the good order of society to justify and require the infliction of punishment to repress them, and the adaptation of the degree of punishment to the purpose of repressing such violations.

Crime.

A crime is an act of commission or omission, contrary to municipal law, tending to the prejudice of the community, for which punishment can be inflicted as the result of judicial proceedings taken in the name of the State. It tends directly to the prejudice of the community, while a civil injury tends more directly and immediately to the prejudice of a private right. The true test between a crime and a civil injury is that the latter is compensated by damages, while the former is punished. The State is supposed to be injured by any wrong to the community and is, therefore, the proper prosecutor. Many crimes include a tort or civil injury; but every tort does not amount to a crime, nor does every crime include a tort. Conspiracy, conversion, private nuisance, wrongful distress, etc., are merely torts. Assault, false imprisonment, false charge, defamation, etc., are all crimes as well as torts. Forgery, perjury, bigamy, homicide, etc., are crimes but not torts.

The great difference between the legal and the popular meanings of the word crime is that whereas the only perfectly definite meaning which a lawyer can attach to the word is that of an act or omission punishable by law, the popular or moral conception adds to this the notion of moral guilt of a specially deep and degrading kind. By a criminal, people in general understand a person who is liable to be punished, because he has done something at once wicked and obviously injurious in a high degree to the common interest of society. Criminal law is, however, confined within very narrow limits and can be applied only to definite overt acts or omissions capable of being distinctly proved, which acts or omissions inflict definite evils, either on specific persons or on the community at large.[1.]

By criminal law is now understood the law as to the definition, trial and punishment of crimes, i.e., of acts or omissions forbidden by law which affect injuriously public rights, or constitute a breach of duties due to the whole community. Criminal law includes the

rules as to the prevention, investigation, prosecution and punishment of crimes. It lays down what constitutes an offence, what proof is necessary to prove it, what procedure should be followed in a court, and what punishment should be imposed.

In criminal law the general principle is that there must be some guilty condition of mind in every offence. This is designated by the expression *mens rea*. It is however in the power of the Legislature to enact that a man may be convicted of an offence although there was no guilty mind. Where a statute requires a mental state to be proved as an essential element of a crime, the burden is on the prosecution to prove it. The absence of *mens rea* really consists in an honest and reasonable belief entertained by the accused of the existence of facts, which, if true, would make the act charged against him innocent.

The authors of the Code observe:—"We cannot admit that a Penal Code is by any means to be considered as a body of ethics, that the Legislature ought to punish acts merely because those acts are immoral, or that, because an act is not punished at all, it follows that the Legislature considers that act as innocent. Many things which are not punishable are morally worse than many things which are punishable. The man who treats a generous benefactor with gross ingratitude and insolence deserves more severe reprehension than the man who aims a blow in a passion, or breaks a window in a frolic; yet we have punishments for assault and mischief, and none for ingratitude. The rich man who refuses a mouthful of rice to save a fellow-creature from death may be a far worse man than the starving wretch who snatches and devours the rice; yet we punish the latter for theft, and we do not punish the former for hard-heartedness."[2.]

Criminal law forms generally a part of the public law not variable in any one of its parts by the volition of private individuals and it is not necessarily deprived of its effect merely by the possible culpability of the individuals who may be the sufferers by the breach. The maxim *ex turpicausa non orituractio* is not a sufficient excuse for a man who acts in opposition to the provisions of a penal statute. If a man, for instance, gives a spurious sovereign to a person for losing a bet, and the latter sues the former, he cannot succeed for a breach of contract.

Presumption of innocence.

In criminal cases the presumption of law is that the accused is innocent. The burden of proving every fact essential to bring the charge home to the accused lies on the prosecution. The evidence must be such as to exclude every reasonable doubt of the guilt of the accused. The evidence of guilt must not be a mere balance of probabilities, but must satisfy the Court beyond all shadow of reasonable doubt that the accused is guilty. In matters of doubt it is safer to acquit than to condemn, since it is better that several guilty persons should escape than one innocent person suffer. Unbiased moral conviction is no sufficient foundation for a verdict of guilty, unless it is based on substantial facts leading to no other reasonable conclusion than that of guilt of the accused. No man can be convicted of an offence where the theory of his guilt is no more likely than the theory of his innocence.

Under section 105 of the Indian Evidence Act, 1872, it is incumbent on the accused to prove the existence of circumstances (if any) which bring the offence charged within any exception or proviso contained in the Indian Penal Code, 1860 (IPC, 1860), and the court shall presume the absence of such circumstances. But if it is apparent from the evidence on record whether produced by the prosecution or defence, that a general exception would apply, then the presumption is removed and it is duty of the court to consider whether the evidence proves to the satisfaction of the court that the accused comes within the exception.

Limitation.

Previously there was no limitation to prosecute a person for an offence as *"Nullum tempus occuritregi*" (lapse of time does not bar the right of the Crown) was the rule. And as a criminal trial was regarded as an action by the government, it could be brought at any time. It would be odious and fatal, says Bentham, to allow wickedness, after a certain time, to triumph over innocence. No treaty should be made with malefactors of that character. Let the avenging sword remain always hanging over their heads. The sight of a criminal in peaceful enjoyment of the fruit of his crimes, protected by the laws he has violated, is a consolation to evil-doers, an object of grief to men of virtue, a public insult to justice and to morals. The Roman law, however, laid down a prescription of 20 years for criminal offences as a rule. There is no period of limitation for offences which fall within the four corners of IPC.

An entire Chapter captioned "Limitation For Taking Cognizance of Certain Offences" (Chapter XXXVI) has been added to the Criminal Procedure Code, 1973 (Cr PC, 1973) to prevent taking of cognizance after certain periods in offences not punishable with imprisonment for a term exceeding three years. Thus, section 468 of Cr PC, 1973 lays down:

(1) Except as otherwise provided elsewhere in this Code no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

  (a) six months, if the offence is punishable with fine only;

  (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

  (c) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) ********

A Constitution Bench of the Supreme Court in Mrs. *Sarah Mathew v The Institute of Cardio Vascular Diseases*,[3.] held that the period of Limitation starts from the date of Complaint, not from date of Cognizance.

As opposed to the Benthamian concept of no limitation to criminal prosecutions, the modern concept is that the accused shall not be kept under a perpetual threat for any length of time and right to have a speedy trial should be regarded as one of his basic human rights. In keeping with this spirit the new Criminal Procedure Code has further made provisions in sub-section (5) of section 167, Cr PC, 1973, for the stoppage of investigation in Summons Cases, if the investigation is not concluded within six months from the date on which the accused was arrested.

Master's liability for servant's act.

The master is liable for the tortious acts of his servants done in the course of his employment and for the master's benefit, but in criminal law he who does the act is liable except where a person who is not the doer, abets or authorizes the act. There are, however, certain exceptions to this principle.

1. *Statutory liability.*—A statute may impose criminal liability upon the master as regards the acts or omission of his servants. Licence cases form a class by themselves in

which the master is generally held responsible.

2. *Public nuisance.*—The owner of works carried on for his profit by his agents is liable to be indicted for a public nuisance caused by acts of his agents in carrying on the works.

3. *Neglect of duty.*—If a person neglects the performance of an act which is likely to cause danger to others, and entrusts it to unskilful hands he will in certain cases be criminally liable.

1. Vicarious liability.—Indian Penal Code, 1860, save and except some matters does not contemplate any vicarious liability on the part a person. (Exceptions to this rule include section 34, 149, etc.)

2. Corporate Criminal Liability.—A company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the fact that the corporation cannot commit a crime, the generally accepted modern rule is that a corporation may be subject to indictment and other criminal process although the criminal act may be committed through its agent. The majority in the Constitution bench held that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment is mandatory imprisonment and fine. The corporations can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary *mens rea* for the commission of criminal offences.[4.]

Scheme.

The following tabular statement gives an outline of the scheme of IPC, 1860.—

General Provisions

1. Territorial operation of the Code (c. I).
2. General Explanations (c. II).
3. Punishments (c. III).
4. General Exceptions (c. IV).
5. Abetment (c. V).
6. Conspiracy (c. VA).
7. Attempts (c. XXIII).

Specific Offences

1. Affecting the State	..	State (c. VI). Army, Navy and Air Force (c. VIII). Public tranquillity (c. VIII). Public servants conduct of (c. IX). Contempt of authority of (c. X). Public Justice (c. XI).

		Public health, safety, decency, and morals (c. XIV).
2. Affecting the common wealth	..	Elections (c. IXA). Coin and Government Stamps (c. XII). Weights and Measures (c. XIII). Religion (c. XV). Contract of Service (c. XIX). Marriage (c. XX).
3. Affecting the human body	..	Homicide, murder, abetment of suicide, causing miscarriage, injuries to unborn children, exposure of infants, hurt (simple and grievous), wrongful restraint and confinement, criminal force, assault, kidnapping, abduction, slavery, selling or buying minor for prostitution, unlawful labour, rape, unnatural offence (c. XVI).
4. Affecting corporeal or incorporeal		Theft, extortion, robbery, dacoity, criminal misappropriation, criminal breach of trust, receiving stolen property, cheating, fraudulent deeds and dispositions of mischief, criminal trespass (c. XVII), documents (forgery), property property marks, currency and bank notes (c. XVIII).
5. Affecting reputation		Defamation (c. XXI). Intimidation, insult and annoyance (c. XXII).

Date and extent of operation. Chapter 1.

The IPC, 1860, came into operation on 1 January 1862. It takes effect throughout India except the State of Jammu and Kashmir. For every act or omission contrary to the provisions of the Code a person is liable to punishment under it (sections 1 and 2). Every person is made liable to punishment under the Code without distinction of nation or rank. A foreigner, who enters the Indian territories and accepts the protection of Indian laws, virtually submits himself to their operation. The Penal Code does not exempt anyone from the jurisdiction of criminal Courts, but the following are exceptions to this principle:—

(1) The Sovereign.

(2) Foreign Sovereigns.

(3) Ambassadors.

(4) Alien enemies

(5) Foreign army.

(6) Men-of-war.

The courts in India are prohibited from issuing a process against the President of India or the Governor of a State. (Article 361 of Constitution)

Territorial jurisdiction.

The territorial jurisdiction of criminal courts will extend into the sea as far as 12 nautical miles.

*Leading case:—**R v Kastya Rama***

Extra-territorial operation.

An offence committed *outside* India may, however, be tried as an offence committed *in* India under the following circumstances:—

1. By virtue of any Indian law (**section 3**).

2. When such 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 (**section 4**).

Where an offence is committed *beyond* the limits of India but the offender is found *within* its limits he may be (I) extradited; or (II) tried in India.

Extradition.

(I) Extradition is the surrender by one State to another of a person desired to be dealt with for crimes of which he has been accused or convicted and which are justiciable in the courts of the other State. Whether an offender should be handed over pursuant to a requisition is determined by the domestic law of the State on which requisition is made. In India, the procedure is to be found laid down in the Extradition Act, 1962.[5.]

Intra-territorial trial.

(II) The Courts in India are empowered to try offences committed out of India either on (A) Land or (B) High Seas or (C) Aircraft.

Land.

(A) By virtue of sections 3 and 4 of IPC, 1860, and section 188 of Cr PC, 1973, local courts can try offences committed outside India.

When the consequence of an act committed by a foreigner outside India if ensued in India, he can be tried in India.[6.]

High seas: Admiralty Jurisdiction.

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

The jurisdiction extends over—

(1) Offences committed on Indian ships. Such offences may be committed:

  (a) on the high seas or in rivers, below the bridges, where the tide ebbs and flows, and where great ships go; or

  (b) at a spot where the municipal authorities of a foreign country might exercise concurrent jurisdiction.

(2) Offences committed on foreign ships in Indian territorial waters.

(3) Pirates.

Section 18 of IPC, 1860, defines India as the territory of India excluding the state of Jammu and Kashmir. These territorial limits would include the territorial waters of India.[7.] By The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 80 of 1976, extend of India's Territorial waters was statutorily fixed at 12 nautical miles.

All the High Courts in India have inherent admiralty jurisdiction and can invoke the same for the enforcement of a maritime claim.[8.] Admiralty jurisdiction was vested in the mofussil courts by 12 & 13 Vic. c. 96, and section 686 of the Merchant Shipping Act, 1958. The investigation/enquiry under Part XII of the Merchant Shipping Act, 1958, cannot be held to be a substitute for a proper investigation into an alleged crime if the same has been committed.

Aircraft.

(C) The provisions of IPC, 1860, are made applicable to any offence committed by any person on any aircraft registered in India, wherever it may be.

Indian courts cannot try foreigners who are in India for offences committed by them outside India.

Laws not affected by the Code.

The IPC, 1860, does not affect the provisions of (1) any act for punishing mutiny and desertion by officers, soldiers, sailors or airmen, in the service of the Government of India;

(2) any special or local law (section 5).

An offence expressly made punishable by a special or local law will be punishable under the Code. But if the Legislature in framing the special or local law intended to exclude the operation of the Code, no prosecution under the Code would lie. However, a person cannot be punished both under the Code and the special law for the same offence.

General Explanations. Chapter II.

In chapter II, the leading terms used in the Code are defined and explained and the meanings, thus, announced are steadily adhered to throughout the subsequent chapters.

General exceptions are part of the definition of every offence contained in IPC, 1860, **section 6,** but the burden to prove their existence lies on the accused.

The Supreme Court has explained some of the categories of "public servants" (**section 21**).

The definition is not exhaustive. A person may be a public servant under some other statute. *Naresh Kumar Madan v State of MP,* Leader of opposition in the Assembly is not a public servant. *Sushil Modi v Mohan Guruswamy.*

*Leading cases:—**K Veeraswami v UOI Lakshmiman Singh v Naresh Ashok Marketing Ltd v PNB.***

Imitation of foreign currency is an offence within the meaning of "counterfeit" (**section 28**).

*Leading case:—**State of Kerala v Mathai Verghese***

An act includes an illegal omission save where the contrary appears from the context. Where the causing of an effect in an offence if it is caused either by an act or by an omission, the causing of that effect partly by an act and partly by an omission is the same offence (**section 36**). When an offence is committed by several persons committing different acts, each person intentionally committing one of those acts, either singly or jointly with others, commits the offence (**section 37**).

Joint offenders.

Where a criminal act is committed jointly by several persons the following principles will apply:—

1. When the act is done in *furtherance of the common intention* of all, each of such persons is liable for it in the same manner as if it were done by him alone (**section 34**).

Mere presence does not create a presumption of complicity. A person not cognizant of the intention of his companion to commit murder is not liable for murder, though he has joined his companion to do an unlawful act. There must be (i) a pre-arranged plan or a preconcert and (ii) in offences involving physical violence participation if section 34 is to apply; both these factors must be established against the accused before he can be held liable under the section. Common intention or meeting of minds to bring about a particular result may well develop on the spot itself as between a number of persons. Joint responsibility was inflicted upon the sub-inspector (SI) in charge of a

police station where two police constables beat a person to death, though the SI himself had done no beating. *Amar Singh v HP.* It is not necessary that all must come together. *State of MP v Mansingh.* The Supreme Court examined the effect of mere presence at the place of occurrence. *State of UP v Sohruntia.*

*Leading cases:—**Barendra Kumar Ghose v Mahbub Shah; Hari Om v State of UP; Suresh v State of UP.***

The Supreme Court has reiterated that there could rarely be direct evidence of common intention. *Jhinku Nai.*

2. When the act is only criminal by reason of its being done with a criminal knowledge or intention, each is liable only to the extent of his own knowledge or intention (**section 35**).

A person assisting the accused who actually performs the act must be shown to have the particular intent or knowledge. If an act which is an offence, without reference to any criminal knowledge or intention on the part of the doer, is done by several persons, each of them is liable for the offence.

3. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act (**section 38**). *Yunus v State,* 1995 Cr LJ 3205 (Del), where common intention was found only up to the stage of causing hurt, though the end result of the crime was murder.

Section 34 deals with acts done with a common intention, section 38, with acts done with different intentions.

An act done under compulsions of survival, such as putting up huts on public-footpaths, cannot be regarded as voluntary. (**section 39**)

*Leading case:—**Olga Tellis v Bombay MC***

Punishment. Chapter III.

The punishments to which offenders are liable are:—

1. Death.
2. Imprisonment for life.
3. Imprisonment :
    (i) Rigorous (i.e., with hard labour);
    (ii) Simple;
    (iii) Solitary.
4. Forfeiture of property.
5. Fine (**section 63**).

Imposition of proper and appropriate sentence is a bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused received appropriate sentence. The sentence must be accorded to the gravity of the offence (section 53) *Gurumukh Singh v State of Haryana,* AIR 2009 SC 2697 [LNIND 2009 SC

847] . The Supreme Court explained guidelines for sentencing policy in *State of MP v Babu Nath,* AIR 2009 SC 1810 [LNIND 2008 SC 2471] .

Labour taken from prisoners must not be of obnoxious nature and payment must not be less than the applicable minimum wage. *Gurdev v HP,* 1992 Cr LJ 2542 (HP).

In addition to these there is punishment of detention in reformatories or Borstal Schools in the case of juvenile offenders (Act VIII of 1897 and other local Acts).

Death.

1. Sentence of death may be commuted without the consent of the offender by the appropriate Government for any other punishment (section 54). The punishment of death *may* be awarded in the following cases:—

(1) Waging war against the Government of India (**section 121**).

(2) Abetting mutiny actually committed (**section 132**).

(3) Giving or fabricating false evidence upon which an innocent person suffers death (**section 194**).

(4) Murder (**section 302**).

Capital punishment should be confined to rarest of rare cases.

Leading cases:—***Bachan Singh. Machhi Singh. Munwar Harun Shah. Triveniben v State of Gujarat Madhu Mehta v UOI.***

Swamy Shraddananda (2) v State of Karnataka; Santosh Kumar Bariyar v State

(5) Abetment of suicide of a minor, or an insane or an intoxicated person (**section 305**).

(6) Attempt to murder by a person under sentence of imprisonment for life, if hurt is caused (**section 307**).

(7) Dacoity accompanied with murder (**section 396**).

Sentence of death *may* be awarded where a person who is under sentence of imprisonment for life commits murder (**section 302**).

Section 303 has been struck down by the Supreme Court as void and unconstitutional being violative of both Articles 14 and 21 of the Constitution. *R Rathinam v UOI.* This decision was subsequently reversed in *Gain Kaur v State of Punjab.*

Leading cases:—Mithu. Bhagwan Bax Singh.

Causing death in custody by third degree methods should merit deterrent punishment.

*Leading case:—**Gauri Shanker Sharma v State of UP.***

Imprisonment for life.

2. The appropriate Government may commute, without the consent of the offender, a sentence of imprisonment for life to imprisonment not exceeding 14 years (section 55).

In calculating fractions, imprisonment for life is reckoned as equivalent to 20 years (section 57).

Leading case:—***Gopal Vinayak Godse v State of Maharashtra.***

Imprisonment for life must be inflicted for being a 'thug' (**section 311**).

Imprisonment.

3. In every case in which sentence of imprisonment for life shall have been passed, the appropriate government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding 14 years (section 55);

The lowest term of imprisonment actually named for a given offence, viz., misconduct by a drunken person, is 24 hours (section 510); but the minimum is unlimited except in two cases:—

(1) If at the time of committing robbery or dacoity the offender uses a deadly weapon or causes grievous hurt, or

(2) If while committing this offence he is armed with a deadly weapon, he is punished with imprisonment for not less than seven years (**sections 397** and **398**).

Sentence of imprisonment may be, in certain cases, wholly or partly rigorous or simple (**section 60**). But in two cases the imprisonment must be rigorous:—

(1) Giving or fabricating false evidence with intent to procure conviction for a capital offence (**section 194**).

(2) House-trespass to commit an offence punishable with death (**section 449**).

There are 12 offences that are punishable with simple imprisonment only.

The courts are expected to properly operate the sentencing system. The court should impose such sentence for proved offences as will serve as a deterrent for their commission by others. The socio-economic status, prestige, race, caste of the accused or victim are irrelevant considerations in the policy of sentencing. *State of Karnataka v Krishnappa* (**section 53**).

Solitary confinement.

Solitary confinement may be inflicted for offences punishable with rigorous imprisonment. The offender may be kept in solitary confinement for any portion or portions of his term of imprisonment, not exceeding *three* months in the whole. But the solitary confinement must not exceed—

one month, if the term of imprisonment does not exceed six months;

two months, if the term of imprisonment exceeds six months but does not exceed one year;

three months, if the term of imprisonment exceeds one year (**section 73**).

In executing a sentence of solitary confinement, such confinement must not exceed 14 days at a time, with intervals between the periods of solitary confinement of not less duration than such period; and when the imprisonment awarded exceeds three months, the solitary confinement must not exceed seven days in any one month of the whole imprisonment awarded with intervals between the periods of solitary confinement of not less duration than such period (**section 74**).

A sentence of solitary confinement for more than three months cannot be passed even if a person is convicted at one trial of more than one offence. Such confinement is awarded for offences under the Code only. Even then it cannot be awarded where imprisonment is not part of the sentence or where the imprisonment is in lieu of fine. It may be awarded in a summary trial. Solitary confinement must be imposed at intervals. A sentence inflicting solitary confinement for the whole imprisonment is illegal, though not more than 14 days are awarded.

Forfeiture.

4. The punishment of forfeiture of the property of the offender has been abolished except in the following cases:—

(1) Where a person commits depredation on the territories of any power at peace with the Government of India, he is liable, in addition to other punishments, to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired thereby (**section 126**).

(2) Where a person receives property taken as above mentioned or in waging war against any Asiatic Power at peace with the Government of India, he is liable to forfeit such property (**section 127**).

(3) A public servant, who improperly purchases property, which, by virtue of his office, he is legally prohibited from purchasing, forfeits such property (**section 169**).

5. Fine is awarded as a sentence by itself in the following cases:—

Fine.

(1) A person, in charge of a merchant vessel, negligently allowing a deserter from the Army, Navy or Air Force to obtain concealment in such vessels is liable to a fine not exceeding Rs. 500 (**section 137**).

(2) The owner or occupier of land, on which a riot takes place or an unlawful assembly is held, and any person having or claiming any interest in such land, and not using all lawful means to prevent such riot or unlawful assembly, is punishable with fine not exceeding Rs. 1,000 (**section 154**).

(3) The person for whose benefit a riot has been committed not having duly endeavoured to prevent it (**section 155**).

(4) The agent or manager of such person under like circumstances (**section 156**).

(5) Illegal payments in connection with an election (**section 171-H**).

(6) Failure to keep election accounts (**section 171-I**).

(7) Voluntarily vitiating the atmosphere so as to render it noxious to the public health is punishable with fine of Rs. 500 (**section 278**).

(8) Obstructing a public way or line of navigation is punishable with fine not exceeding Rs. 200 (**section 283**).

(9) Committing of public nuisance not otherwise punishable is punishable with fine not exceeding Rs. 200 (**section 290**).

(10) Whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear from doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of a ticket, lot, number, or figure, in any such lottery, not being a State lottery or a lottery authorised by the State Government, is punished with fine not exceeding Rs. 1,000 (**section 294A**).

The general principal of law running through sections 63–70 is that the amount of fine should not be harsh or excessive. *Shantilal v State of MP,* (2007) 11 SCC 243 [LNIND 2007 SC 1171] .

Imprisonment in default of fine.

The following provisions regulate the character and duration of the sentence of imprisonment in default of payment of fine:—

Where an offender is sentenced to a fine, the court may direct that the offender shall in default of payment suffer a term of imprisonment, which imprisonment may be in excess of any other imprisonment to which he may have been sentenced for the offence, or to which he may be liable under a commutation of sentence (**section 64**).

If the offence be punishable with *imprisonment as well as fine* such imprisonment must not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence (**section 65**); such extra imprisonment may be of any description to which the offender might have been sentenced for the offence (**section 66**).

Leading case:—***Ramjas v State of UP.***

If such imprisonment is within the prescribed limits, it is not to be added to the substantive punishment.

Leading case:—***P Balaraman v State of TN.***

When the offence is punishable with *fine only* such imprisonment must not exceed

two months when the amount of the fine does not exceed Rs. 50;

four months when the amount does not exceed Rs. 100, and for

any term not exceeding six months in any other case (**section 67**).

The imprisonment in such cases must be simple only.

Such imprisonment terminates—

(1) upon payment of the fine (**section 68**); or

(2) before the expiration of the term of imprisonment fixed in default of payment, if such a proportion of the fine be paid, or levied, that the term of imprisonment suffered

in default of payment is not less than proportional to the part of the fine still unpaid (**section 69**).

Fine may be levied within six years, or at any time during the term of imprisonment if it be longer than six years; the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts (**section 70**). The limitation starts from the date of sentence of conviction by the trial Court: *Palakdhari Singh.*

An offender who has undergone full term of imprisonment inflicted in default of payment of fine is still liable for the amount of fine. The Bombay High Court has laid down that *movable* property of the offender can alone be distrained and sold for the recovery of fine. But the Calcutta High Court has held that a suit can be brought to recover fine by the sale of *immovable* property of the offender.

The Government may commute a sentence of

Commutation of sentence.

(1) *death,* for any other punishment;

(2) *imprisonment for life,* for imprisonment for not more than 14 years (**sections 54, 55**).

The Government may commute without the offender's consent sentence in cases of *death and imprisonment for life.*

Limit of punishment of offence made up of several offences.

(1) Where an offence is made up of parts, each of which constitutes an offence, the offender is not punished for more than one offence unless expressly provided.

(2) Where an offence falls within two or more separate definitions of offences; or where several acts of which one or more than one would, by itself or themselves, constitute an offence, constitute when combined a different offence, the offender is not punished with a more severe punishment than the court which tries him could award for any one of such offences (**section 71**).

*Leading cases:—**Roshan Lal; Puranmal.***

The results of combination of section 220, Cr PC, 1973, with this section have been enumerated at p 48.

Doubt as to nature of offence.

Where it is doubtful as to of which of the several offences a person is guilty, he is punished for the offence for which the lowest imprisonment is provided (**section 72**).

Previous conviction.

A person convicted by a Court in India of any offence

(a) relating to Coin and Government Stamps (Chapter XII), or

(b) against property (Chapter XVII)

punishable with imprisonment for a term *of three* years or upwards shall be subject to imprisonment for life, or to imprisonment for 10 years, if he is again guilty of any offence punishable under either of those Chapters with like imprisonment for the like term (**section 75**).

The offender is subject to increased punishment on the ground that the punishment undergone has had no effect in preventing a repetition of the crime. The subsequent offence must also be punishable with not less than *three* years' imprisonment. If the subsequent offence is committed by a person *previously* to his being convicted of the first offence he cannot be subjected to enhanced punishment. Attempts not specifically made offences within Chapters XII and XVII are not governed by this provision. The previous conviction of an accused for an offence under these Chapters cannot be taken into consideration at a subsequent conviction for abetment of an offence under those Chapters.

3. Overlapping provisions.—The fact of overlapping provisions about one or more offence, does not rule out trial under any one of them. The case did not fall within the Custom Act, 1962. It could not prevent trial under applicable provision of IPC, 1860. *M Natarajan v State,* (2008) 8 SCC 413 [LNIND 2008 SC 1093] .

General Exceptions. Chapter IV.

The following acts are not offence under the Code:—

1. Act of a person bound by law to do a certain thing (**section 76**).

2. Act of a Judge acting judicially (**section 77**).

3. Act done pursuant to an order or a judgment of a court (**section 78**).

4. Act of a person justified, or believing himself justified, by law (**section 79**).

5. Act caused by accident (**section 80**).

6. Act likely to cause harm done without criminal intent to prevent other harm (**section 81**).

7. Act of a child under seven years (**section 82**).

8. Act of a child above seven and under 12 years but of immature understanding (**section 83**).

9. Act of a person of unsound mind (**section 84**).

10. Act of an intoxicated person (**section 85**).

11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (**section 87**).

12. Act not intended to cause death done by consent of the sufferer (**section 88**).

13. Act done in good faith for the benefit of a child or an insane person or by the consent of the guardian (**section 89**).

14. Act done in good faith for the benefit of a person without consent (**section 92**).

15. Communication made in good faith to a person for his benefit (**section 93**).

16. Act done under threat of death (**section 94**).

17. Acts causing slight harm (**section 95**).

18. Acts done in private defence (**sections 96–106**).

1. Act done by a person bound, or by mistake of fact believing himself bound, by law (**section 76**).

The general exception contained in section. 76–106 have the effect of converting an offence into a non-offence. They are of universal nature. They apply to the definition of every offence. *Shankar Narayan Bhadolkar v State of Maharashtra,* AIR 2004 SC 1966 [LNIND 2004 SC 1370] .

The maxim *respondent superior* has no application to cases where an offence is committed by a subordinate official acting under the orders of his superior. The official is bound to exercise his own judgment and unless the actual circumstances are of such a character that he may have reasonably entertained the belief that the order was one which he was bound to obey, he will be responsible for his act.

Leading cases:—***State of WB v Shew Mangal Singh. R v Latifkhan.***

2. Act of 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 (**section 77**).

A Judge will be protected where he is acting judicially and not ministerially. If he acts without *jurisdiction* and without *good faith,* he would be responsible.

3. Act done pursuant to the judgment or order of a Court of Justice while such judgment or order remains in force, and the person doing the act in good faith believes that the Court has jurisdiction although it has not (**section 78**). This section differs from the preceding section on the question of jurisdiction. It protects officers acting under the authority of a judgment or order of a court even though the court has no jurisdiction, provided the officer believed in good faith that the Court had jurisdiction.

4. Act done by a person justified by law, or who by reason of a mistake of fact, and not by reason of a mistake of law, in good faith, believes himself to be justified by law to do it (**section 79**).

Mistake is a slip made by chance. It is not mere forgetfulness. Under sections 76 and 79 the mistake should be one of fact and not of law. An honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a prisoner is indicted an innocent act, is a good defence. An alleged offender is deemed to have acted under that state of facts which he, in good faith and on reasonable grounds, believed to exist when he did the act alleged to be an offence. *Iqnorantia facti doth excusat,* for such an ignorance many times makes the act itself morally involuntary. But if an act is clearly a wrong in itself, and a person, under a mistaken impression as to facts which render it criminal, commits the act, then he is guilty of an offence.

Mistake of law is no defence because every person of the age of discretion is bound to know the law, and presumed to do so. If a person infringes the statute law of the country through ignorance or carelessness he abides by the consequences of his error.

The maxim *ignorantiajuris non excusat* admits of no exception in its application to criminal offences. Even a foreigner who cannot reasonably be supposed in fact to know the law of the land is not exempted. Similarly, ignorance of a statute newly passed will not save a person from punishment.

*Leading cases:—**R v Prince. R v Tolson. R v Esop. Bhawoo v Mulji. Mayer Hans George. Rajkapoor v Laxman.***

Mayne deduces the following five rules, showing the extent to which ignorance of an essential fact may be pleaded as a defence, from the judgments in *Prince's* case.

(a) Where an act is in itself plainly criminal, and is more severely punishable if certain circumstances co-exist, ignorance of the existence of such circumstances is no answer to a charge for the aggravated offence.

(b) Where an act is *prima facie* innocent and proper, unless certain circumstances coexist, then ignorance of such circumstances is an answer to the charge.

(c) Even in the last named case, the state of the defendant's mind must amount to absolute ignorance of the existence of the circumstance which alters the character of the act, or to a belief in its non-existence.

(d) Where an act which is itself wrong is, under certain circumstances, criminal, a person who does the wrong act cannot set up as a defence that he was ignorant of the facts which turned the wrong into a crime.

(e) Where a statute makes it penal to do an act under certain circumstances, it is a question upon the wording and object of the particular statute whether the responsibility of ascertaining that the circumstances exist is thrown upon the person who does the act or not. In the former case his knowledge is immaterial.

5. Accident. This must have been caused—

(1) without criminal knowledge or intention,

(2) in the doing of a lawful act,

  (i) in a lawful manner,

  (ii) by lawful means, and

  (iii) with proper care and caution (**section 80**).

An 'accident' is something that happens out of the ordinary course of things.

6. Act done with the knowledge that it is likely to cause harm but done in good faith and without any criminal intention to cause harm, for the purpose of preventing, or avoiding, other harm to person or property (**section 81**).

Mens rea

It is a maxim of English law that *actus non facitreum, nisi mens sit rea* (the intent and act must both concur to constitute a crime). A crime is not committed if the mind of the person doing the act in question be innocent. The above maxim has undergone a modification owing to the greater precision of modern statutes. Crimes are now more accurately defined by statutes than before. It has become necessary to look at the object of each Act that is under consideration to see whether and how far knowledge is

of the essence of the offences created. In three cases *mens rea* is not an essential ingredient in an offence:

(1) cases not criminal in real sense, but which, in the public interest, are prohibited under a penalty;

(2) public nuisances; and

(3) cases criminal in form but which are only a summary mode of enforcing a civil right.

The above maxim has little application to offences under IPC, 1860, in its purely technical sense because the definitions of various offences expressly contain an ingredient as to the state of mind of the accused. Under the Code, therefore, *mens rea* will mean one thing or another according to a particular offence. The guilty mind may be a dishonest mind, or a fraudulent mind, or a rash or negligent mind, and so forth.

It may be observed that criminal law has nothing to do with motives of offenders. Intention is quite different from motive. A person may do an act with a very high and laudable motive but if his act amounts to a crime he will be guilty. Where some Hindus removed cows from the possession of some Mohammedans to prevent the cows from being slaughtered, they were held guilty of theft.

Whether a person can for self-preservation inflict harm on others is discussed at p 64. Such acts will not exempt the offender from the full severity of law. It is murder to kill another to save one's own life.

*Leading cases:—**R v Dudley (or Mignonette case). South Wark London Borough Council v Williams.***

7. Act done by a child under seven years (**section 82**); or by a child above *seven* and under 12 years, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct (**section 83**).

*Leading case:—**Hiralal.***

8. Act done by a person who, at the time of doing it, by reason of *unsoundness* of *mind,* is

(1) incapable of knowing the nature of the act, or

(2) that he is doing what is either wrong or contrary to law (**section 84**).

The 'unsoundness of mind' may be temporary or permanent, natural or supervening. But it must affect the cognitive faculties of the mind. If the offender is conscious that the act was contrary to law and one which he ought not to do, he is punishable. The act to be not punishable must be such as would have been excused by law, if the facts had been as the person of unsound mind supposed. Distinction has to be made between legal insanity and medical insanity. *Bapu v State of Rajasthan,* (2007) 8 SCC 66 [LNIND 2007 SC 774] .

*Leading cases:—**R v M'Naughton. R v Lakshman. R v Sakharam. Dahyabhai. S W Mohammad. Ahamadulla.***

The doctrine of irresistible criminal impulse was not accepted by the Calcutta High Court.

9. Act done by a person who, at the time of doing it, by reason of intoxication, is

(1) incapable of knowing the nature of the act; or

(2) that he is doing what is either wrong or contrary to law:

provided that the thing which intoxicated him was administered to him without his knowledge or against his will (**section 85**).

If an intoxicated person commits an offence requiring a particular intent or knowledge, he is dealt with as if he had that intent or knowledge, unless the thing which intoxicated him was administered to him without his knowledge or against his will (**section 86**).

Drunkenness is one thing and the disease to which it may lead is a different thing. If a man by drunkenness, brings on a state of disease which causes such a degree of madness, even for a time, which would relieve him of responsibility if it had been caused in any other way, then he would not be criminally responsible.

Leading cases:—***Basdev. Director of Public Prosecutions v Beard. Davis***.

10. Act not intended, and not known, to be likely to cause death or grievous hurt, done by consent of the person, above 18 years to whom harm is caused (**section 87**).

Ordinary games, such as fencing, boxing, football and the like are protected by this section.

11. Act not intended, and not known to be likely to cause death, done in good faith by consent of the person to whom harm is caused for his benefit (**section 88**).

Surgical operations are protected under this section.

12. Act done in good faith for the benefit of a person under 12 years, or of an insane person, by or by the consent of his guardian. This exception does not extend to:—

(1) Intentional causing, or attempting to cause, death.

(2) The doing of anything which the doer knows to be likely to cause death, except to prevent death or grievous hurt, or to cure any grievous disease or infirmity.

(3) Voluntary causing, or attempting to cause, grievous hurt (except as above).

(4) The abetment of any offence, to the committing of which it would not extend (**section 89**).

A consent to be a true one must not have been given—

(1) by a person under fear of injury;

(2) by a person under a misconception of fact;

(3) by a person of unsound mind, and the person obtaining the consent knows or has reason to believe this;

(4) by a person who is intoxicated, and who is unable to understand the nature and consequence of that to which he gives his consent;

(5) by a person under 12 years of age (**section 90**).

An honest misconception by both the parties, however, does not invalidate the consent.

Leading case:—***Williams.***

Sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause to the person giving the consent (**section 91**), e.g., causing

miscarriage, public nuisance, offences against public safety, etc.

13. Act done in good faith for the benefit of a person, even without consent, if it is impossible for him to give consent, or is incapable of giving it, and there is no guardian from whom it is possible to obtain it in time for the thing to be done with benefit (**section 92**). This exception is subject to the same provisos as section 89, with the difference that it will not extend to causing hurt except to prevent death or hurt.

14. A communication made in good faith, although causing harm to the person to whom it is made, if it is for his benefit (**section 94**), e.g., communication in good faith by a surgeon to a patient that in his opinion he cannot live.

15. Act [except (a) murder, and (b) offence against the State punishable with death] done under threats which, at the time of doing it, reasonably cause the apprehension of *instant death*; provided the doer did not of his own accord, or from an apprehension of harm short of death, place himself in the situation by which he became subject to such constraint (**section 94**). Fear of grievous hurt is not a sufficient justification. Mere menace of future death will not be sufficient.

No one can plead the excuse of necessity or compulsion as a defence to an act otherwise penal except as provided by this section.

*Leading cases:—**R v Deoji. R v Latifkhan. R v Maganlal.***

16. Act causing such a slight harm that no person of ordinary sense and temper would complain of it (**section 95**).

This section deals with those cases which come within the letter of the penal law but not within its spirit. It is based on the maxim *de minimis non curatlex* (the law does not take account of trifles).

Private defence.

17. Act done in exercise of the right of private defence (section 96). Every person has a right, subject to certain restrictions, to defend,

(1) his own body and the body of any other person against any offence affecting the human body;

(2) the property, whether movable or immovable, of himself or of any other person, against any act, which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit any of such offences (**section 97**).

(3) against an act, which would otherwise be a certain offence, but is not that offence, by reason of the doer being of unsound mind, a minor, an intoxicated person, or a person acting under a misconception of fact (**section 98**).

The right of private defence is a defence right. It is neither a right of aggression nor of reprisal. *Thankachan v State of Kerala,* (2008) 17 SCC 760 . The right is available not only to the person put in danger but also to any member of the society who rises to the occasion with a spirit of rescue. Such a samaritan gets no legal right against the person rescued. *Kashi Ram v State of Rajasthan,* (2008) 3 SCC 55 [LNIND 2008 SC 187] .

Exceptions to the right of private defence.

There is no right of private defence against the following acts:—

(1) An act which does not reasonably cause apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

(2) Same as above if done by the direction of a public servant.

(3) Cases in which there is time to have recourse to the protection of public authorities (**section 99**).

*Leading Cases:—**Amjadkhan. Jaidev.***

The right of private defence does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence *(ibid).*

Defence of body.

The right of private defence of the *body* extends to the causing of death or any other harm to the assailant under the following circumstances:—

(1) An assault causing reasonable apprehension of death.

In this case if the defender be so situated that he cannot exercise the right without risk of harm to an innocent person, he may even run that risk (**section 106**).

(2) An assault causing reasonable apprehension of grievous hurt.

(3) An assault with the intention of committing rape.

(4) An assault with intention of gratifying unnatural lust.

(5) An assault with intention of kidnapping or abducting.

(6) An assault with the intention of wrongfully confining a person under circumstances which may cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

(7) "Seventhly.—An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act" (**section 100**).

Leading case:—***Vishwanath***.

Subject to the above restrictions, the right of private defence of body extends to the causing of any harm short of death (**section 101**).

It 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; and it continues as long as such apprehension of danger to the body continues (**section 102**).

Defence of property.

The right of private defence of *property* extends to the causing of death or any other harm to the assailant under the following circumstances:—

(1) Robbery.

(2) House-breaking by night.

(3) Mischief by fire to building, tent, or vessel, used as human dwelling or for custody of property.

(4) Theft, mischief, or house-trespass, reasonably causing the apprehension of death or grievous hurt (**section 103**).

Subject to the above restrictions, the right of private defence of property extends to the causing of any harm short of death (**section 104**). It commences when a reasonable apprehension of danger to the property commences and continues against—

(1) Theft, till

  (a) the offender has affected his retreat with the property, or

  (b) the assistance of the public authorities is obtained, or

  (c) the property has been recovered.

(2) Robbery, as long as

  (a) the offender causes or attempts to cause to any person death, or hurt, or wrongful restraint, or

  (b) the fear of instant death, or of instant hurt, or of instant personal restraint continues.

(3) Criminal trespass or mischief as long as the offender continues in the commission of criminal trespass, or mischief.

(4) House-breaking by night, as long as the house-trespass, which has been begun by such house-breaking, continues (**section 105**).

All the provisions relating to private defence from section 96 to section 106 have to be read together in order to have a proper grasp of the scope and limitations of this right.

*Leading case:—**Munney Khan v State.***

Excessive use of the right of private defence is a matter which can be determined only on the facts of each case. It necessitates a combined view of subjective and objective factors.

*Leading case:—**Yogendra Morarji.***

Mere verbal exchanges, however hot or abusive, do not create the right of private defence.

*Leading case:—**Jai Chand v State.***

There is no right of private defence in a free fight.

*Leading case:—**Sikhar Bahera v State of Orissa**.*

An aggressor has no right of private defence.

*Leading case:—**Dhananjai v State of UP,*** AIR 1996 SC 556 **.**

Abetment, Chapter V.

There are three kinds of abetment dealt with in the Code. A person abets the doing of a thing, who

(1) instigates any person to do that thing; or

(2) engages with one or more other person or persons, in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of the conspiracy and in order to the doing of that thing; or

(3) intentionally aids, by any act or illegal omission, the doing of that thing.

An abettor can be convicted, except in some cases, even where the principal culprit stands acquitted.

*Leading cases:—**Hardhan Chakrabarty v UOI Faguna Kedar Nath v State of Bihar Jamuna Singh v State of Bihar.***

Abetment is separate and independent offence. *Kishori Lal v State of MP,* (2007) 10 SCC 297 .

The law of abetment is adapting itself to the social malaise of dowry which leads to suicides by married women.

*Leading cases:—**Gurbachan Singh v Satpal Singh. Brij Lal v Prem Chand***.

A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing (**section 107**).

*Leading Cases:—**Pratima Datta. Shri Ram***.

It is not necessary that the person incited should have a *mens rea* corresponding to that of the inciter *DPP v Armstrong.*

An abettor is a person who abets

(a) the commission of an offence, or

(b) the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor (**section 108**).

It should be noted that—

(1) Abetment of an illegal omission may amount to an offence *(ib.,***Explanation 1**).

(2) It is not necessary that the act abetted should be committed *(ib.,***Explanation 2**).

(3) The person abetted need not be capable of committing an offence, nor have any guilty intention or knowledge *(ib.,***Explanation 3**).

(4) The abetment of an abetment is an offence *(ib.,***Explanation 4**).

(5) It is not necessary in abetment by conspiracy that the abettor should concert the offence with the person abetted *(ib.*, **Explanation 5**).

(6) A person will be guilty of abetment who abets the commission of any act *without* and *beyond* India which would constitute an offence if committed in India (**section 108A**).

If the act abetted is committed but no express provision is made for its punishment, then it shall be punished with the punishment provided for the offence abetted (**section 109**).

If a person abetted does the act with a different intention or knowledge from that of the abettor, the latter will be punished as if the act had been done with his intention or knowledge (**section 110**). The liability of the person abetted is not affected by this section.

If the act done is different from the one abetted, the abettor is still liable for it, if it is a probable consequence of the abetment, and committed under the influence of the abetment (**section 111**). The liability is the same where the effect produced is different from that intended by the abettor (**section 113**).

The abettor is liable to cumulative punishment for the act abetted and for the act done if the latter is a distinct offence (**section 112**).

If the abettor is present when the offence abetted is committed, he is deemed to have committed such act or offence (**section 114**).

Mere presence will not render a person liable. He must be sufficiently near to give assistance, and he must participate in the act, no matter whether he is an eye-witness to the transaction or not. Presence during the whole transaction is not necessary *(ibid).* Lending encouragement and assistance would amount to abetment even if the abettor was not present at the place where the killing took place. *R v Cook.* A constable who kept watch while the head constable was committing rape inside their police station, was held liable as an abettor. *Ram Kumar v State of HP.*

If an offence punishable with death or imprisonment for life is abetted and no express provision is made for the punishment of such abetment, then the offender will be punished with imprisonment extending to seven years if the offence is not committed; but if an act causing harm is done in consequence, the imprisonment shall be extended to 14 years (**section 115**). If in such a case the offence is punishable with imprisonment, then the offender is punishable with imprisonment which may extend to one-fourth part of the longest term provided for that offence (**section 116**). If in the above case the abettor or person abetted be a public servant whose duty it is to prevent such offence, the imprisonment may extend to one-half of the longest term provided for the offence (*ibid*).

Abetting commission of an offence by the public or by more than ten persons is punishable with imprisonment extending to three years (**section 117**).

There are three sections which punish concealment of a design to commit offences by persons other than the accused, viz., sections 118, 119 and 120.

Criminal conspiracy. Chapter VA.

Criminal conspiracy is now a substantive offence under the Code. It was formerly punishable only as a species of abetment. It arises when two or more persons agree to do or cause to be done—

(a) an illegal act; or

(b) an act which is not illegal, by illegal means.

Such an agreement may be to commit an offence. But if it is not so, it is necessary that some *overt act* besides the agreement is done by one or more parties to such agreement in pursuance thereof (**section 120A**) *SC Bahri v State of Bihar,* (Supreme Court). It is difficult to prove conspiracy by direct evidence, *Hina Lal Harilal.* If the offence conspired to is punishable with death, imprisonment for life or rigorous imprisonment for two years or upwards, the offender is punishable in the same manner as an abettor: but in any other case, he is liable to be punished with rigorous imprisonment for six months, or fine, or both (**section 120B**). Conspiracy has to be treated as a continuing offence.

A single person can be tried and convicted for the offence. It is not necessary that conspirators must be known to each other or that every one of them should have taken part in each and every act done in pursuance of the conspiracy. A wife joining her husband with knowledge that he was involved in a conspiracy with others was held to be equally guilty. *R v Charstny.*

*Leading cases:—**Mirza Akbar. Bhagat Ram. Bhagwandas. V C Shukla. Kehar Singh Krishan Lal Pradhan Vinayak***

Offences against the State. Chapter VI.

Offences against the State may be classified as follows:—

I. Waging war against the Government of India.

II. Assaulting high officers.

III. Sedition.

IV. Waging war against a Power at peace with the Government of India.

V. Permitting or aiding the escape of a State prisoner.

I. Waging war against the Government of India.

1. Waging or attempting to wage war, or abetting waging of war (**section 121**).

2. Conspiring to commit, within or without India, offences punishable by section 121 (**section 121A**).

3. Collecting men, arms, or ammunition, or making any other preparation with a view to waging such war (**section 122**).

4. Concealing a design to wage war with intent to facilitate waging of such war by any act or illegal omission (**section 123**).

II. Assaulting the President, or the Governor of any State, with intent to compel or restrain the exercise of any lawful power (**section 124**).

Sedition.

III. A person commits sedition who,

(1) by words (spoken or written), or by visible representation,

(2) brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards,

(3) the Government established by law in India (**section 124A**).

It should be noted that—

(1) 'Disaffection' includes disloyalty and feeling of enmity *(ibid.,***Explanation 1**).

(2) Comments expressing disapprobation of the measures of Government to obtain their alteration, without exciting hatred, contempt, or disaffection, do not constitute this offence (*ibid*., **Explanation 2**).

(3) Comments expressing disapprobation of the administrative actions of Government, without exciting hatred, contempt, or disaffection, do not constitute this offence (*ibid*., **Explanation 3**).

Under the Constitution, criticism of the Government exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press unless it is such as to undermine the security of or tend to overthrow the Government. This section is not *ultra vires* the Constitution.

Anyone who uses in any way words or printed matter for the purpose of exciting disaffection, be he the writer of those words or not, is liable. Publication of some kind is necessary. The successful exciting of feelings of disaffection is placed on the same footing as the unsuccessful attempt to excite them.

The law does not excuse the publication in newspapers of seditious writing copied from other papers. The editor of a paper is liable for seditious letters appearing in the paper.

*Leading cases:—**R v Bal Gangadhar Tilak. R v Jogendra Chandra Bose (or Bangobasi case). Romesh Thappar. Kedar Nath.***

IV. Waging war against a Power at peace with the Government of India.

1. Waging, attempting to wage, or abetting the waging of such war against the Government of any Asiatic Power at peace with the Government of India (**section 125**).

2. Committing, or preparing to commit, depredation on the territories of any Power at peace with the Government of India (**section 126**).

3. Receiving any property, knowing the same to have been taken in the commission of any of the offences mentioned in the two last preceding sections (**section 127**).

V. Permitting or aiding the escape of a State prisoner.

1. Public servant voluntarily allowing a prisoner of State or war, in his custody, to escape (**section 128**).

2. Public servant negligently suffering a prisoner of State or war in his custody, to escape (**section 129**).

3. Aiding the escape, or rescuing, or attempting to rescue or harbouring, or concealing or resisting the recapture, of such prisoner (**section 130**).

Army, Navy & Air Force offences. Chapter VII.

No person, subject to Articles of War, is subject to punishment under this Code for any offence relating to the Army, Navy and Air Force defined in this Chapter (**section 139**).

This Chapter is framed in order that persons, not military, who abet a breach of military discipline, should not be liable under the military penal law but under the Code.

The following offences relating to the Army, Navy and Air Force find place in the Code: —

1. Abetting mutiny, or attempting to seduce any officer, soldier, sailor, or airman, from his allegiance or duty (**section 131**).

2. Abetment of mutiny, if mutiny is committed in consequence (**section 132**).

3. Abetment of an assault by an officer, soldier, sailor or airman, on his superior officer, when in the execution of his office (**section 133**).

4. Abetment of such an assault if the assault is committed (**section 134**).

5. Abetment of the desertion of an officer, soldier, sailor, or airman (**section 135**).

6. Knowingly harbouring deserter (**section 136**).

7. Concealment of deserter from Army, Navy or Air Force of the Government of India concealed on board a merchant vessel through negligence of master or person in charge of the vessel though he is ignorant of such concealment (**section 137**).

8. Abetment of act of insubordination by an officer, soldier, sailor, or airman, the act abetted being actually committed in consequence of the abetment (**section 138**).

9. Wearing the garb, or carrying any token resembling any garb or token used by a soldier, sailor or airman with the intention that it may be believed that the wearer is a soldier, sailor or airman (**section 140**). The gist of the offence is the intention of the accused. Merely wearing a soldier's dress without the specific intention is no offence, e.g., actors put on soldier's garb while acting on the stage.

There are six sections in the Code dealing with false personation—

1. Personation of a soldier (**section 140**).

2. Personation of a public servant (**section 170**).

3. Wearing the garb or carrying the token used by a public servant (**section 171**).

4. Personation of a voter at an election (**section 171D**).

5. Personation for the purpose of an act or proceeding in a suit or prosecution (**section 205**).

6. Personation of a juror or assessor (**section 229**).

Public tranquillity. Chapter VIII.

Offences against public tranquillity hold a middle place between the State offences on the one hand and crimes against person and property on the other. They are four:

I. Unlawful Assembly. different

II. Rioting.

III. Promoting enmity between classes.

IV. Affray.

Unlawful assembly.

I. An 'unlawful assembly' is an assembly of five or more persons, if their common object is

1. To overawe by criminal force—
    (a) the Central or any State Government, or
    (b) the Parliament, or
    (c) the Legislature of any State, or
    (d) any public servant in the exercise of his lawful power.
2. To resist the execution of law or legal process.
3. To commit mischief, criminal trespass, or other offences.
4. By criminal force—
    (a) to take or obtain possession of any property, or
    (b) to deprive any person of any incorporeal right, or
    (c) to enforce any right or supposed right.
5. By criminal force to compel any person—
    (a) to do what he is not legally bound to do, or
    (b) to omit what he is legally entitled to do (**section 141**).

[Six months, or fine, or both. If armed with a deadly weapon, two years, or fine, or both (**sections 143, 144**).]

The assembly must consist of five or more persons. It is immaterial whether the common object is in their minds when they come together, or whether it occurs to them afterwards. There must be some present and immediate purpose of carrying into effect the common object. A meeting for deliberation only is not an unlawful assembly. Persons maintaining their own right or supposed right against the aggression of other people do not commit this offence. Common object means same or similar object; it is not necessary to have a preconcert or prior meeting of minds.

An assembly not unlawful when it assembled may subsequently become an unlawful one (**section 143, Explanation**). Illegal acts of one or two members do not change the lawful character of an assembly. Similarly, a lawful assembly does not become unlawful merely because the members know that their assembly would be opposed and a breach of the peace would be committed.

Whoever, being aware of facts which render an assembly an unlawful one, intentionally joins it, or continues in it, is a member of that assembly (**section 142**). Persons may have associated themselves with a mob from perfectly innocent motives, but if the

mob becomes an unlawful assembly, and they take part in its proceedings, they will be liable. Every such member is deemed guilty of an offence committed in prosecution of the common object. There must be nexus between the common object and the offence committed.

*Leading case:—**Allauddin Mia.***

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 said assembly, is guilty of that offence (**section 149**). This section prevents the accused from putting forth the defence that he did not with his *own* hand commit the offence committed in prosecution of the common object. Common object does not mean common intention. All will be guilty of any offence done in prosecution of the common object, though there was no common intention to commit the offence as a means to the end. But members of an unlawful assembly may have a community of object only up to a certain point and beyond that they may differ in their objects.

*Leading cases:—**R v Sabedali; Dalip Singh; Khudiram; Mushakhan; Beatty v Gillbanks.***

The common object may develop at the spot itself.

*Leading case:—**Vithal Bhimshah Kali.***

Other cognate offences—

1. Joining an unlawful assembly armed with a deadly weapon (**section 144**).

2. Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (**section 145**).

3. Hiring of persons to join an unlawful assembly (**section 150**).

4. Harbouring persons hired for an unlawful assembly (**section 157**).

5. Being hired to take part in an unlawful assembly (**section 158**).

Persons, who are engaged or hired to do any of the acts which make an assembly unlawful, are likewise punished *(ibid)*.

Riot.

II. When (1) force of violence is used, (2) by an unlawful assembly or by any member thereof, (3) in prosecution of the common object, every member is guilty of rioting (section 146). [Two years or fine, or both. If armed with a deadly weapon, Three years, or fine, or both (section 148).]

Riot is an unlawful assembly in a particular state of activity. To constitute the offence of rioting it must be proved:

(1) that the accused, being five or more in number, formed an unlawful assembly;

(2) that they were animated by a common unlawful object;

(3) that force or violence was used by the unlawful assembly or any member of it; and

(4) that such force was used in prosecution of the common object.

If the common object of an assembly is not illegal, it is not rioting even if force is used by a member of it. If persons lawfully assembled for any purpose suddenly quarrel they do not commit riot.

Other cognate offences—

1. Rioting with deadly weapons (**section 148**).
2. Hiring or conniving at hiring of persons to join unlawful assembly (**section. 150**).
3. Assaulting or obstructing a public servant in the suppression of a riot (**section. 152**).
4. Malignantly or wantonly giving provocation with intent to cause riot (**section. 153**).

Liability of persons who provide space

Liability of persons who own, occupy, or have an interest in land, is governed by the following provisions:

(1) The owner, or any person having or claiming an interest in land upon which an unlawful assembly is held, or riot is committed, is punishable with Rs. 1,000 fine, if he or his agent (a) knowing of the offence do not give the earliest notice thereof at the nearest police station; or (b) believing the offence likely to be committed do not use any lawful means to prevent it; or (c) in the event of the offence taking place do not use all lawful means to disperse the unlawful assembly or suppress the riot (**section 154**).

(2) Where a riot is committed on behalf of a person who is the owner or occupier of land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which caused the riot, such person is liable to a fine, if he or his agent having reason to believe that the riot is likely to be committed, or the unlawful assembly causing the riot is likely to be held, fails to use all lawful means for preventing the riot, or for suppressing and dispersing the same (**section 155**).

Under similar circumstances, the agent or manager is punishable likewise (**section 156**).

Promoting enmity, etc.

III. (a) Promoting disharmony or enmity or hatred or ill-will between different religious, racial, language, caste or community groups on grounds of religion, race, language, caste or community, or

(b) Committing act which is prejudicial to the maintenance of harmony or disturbing public tranquillity,

by words or signs, or visible representations, or otherwise [Three years, or fine, or both].

(c) Committing offence as stated in paras (a) and (b) in a place of worship or in any assembly engaged in religious worship or ceremonies (**section 153A**). [Five years and fine].

(d) Knowingly carrying arms in any procession or organizing, or holding taking part in ant mass drill mort mass training with **(section 153AA)** [Six months and fine.]

*Leading cases:—**Babu Rao Patel. Varsha Publications Pvt Ltd. Nand Kishore Singh. Chandanmal Chopra.***

Affray.

IV. When (1) two or more persons, (2) by fighting in a public place, (3) disturb the public peace, they commit an affray (**section 159**). [One month or Rs. 100, or both (**section 160**).]

The word 'affray' is derived from the French word *affraier,* to terrify. An 'affray' is an offence against the public peace because it is committed in a public place and is likely to cause general alarm and disturbance. 'Public place' is a place where the public go, no matter whether they have a right to go or not. No quarrelsome or threatening words will amount to an affray.

An 'affray' differs from a 'riot'.

(1) An affray cannot be committed in a private place, a riot can be.

(2) An affray is committed by *two or more* persons, a riot by *five or more.*

(3) A riot is more severely punishable than an affray.

Persons other than the actual rioters are punishable in respect of riot in the following cases:—

(1) Owner or occupier of land on which an unlawful assembly is held (**section 154**).

(2) The person for whose benefit a riot is committed (**section 155**).

(3) The agent of owner or occupier for whose benefit a riot is committed(**section 156**).

(4) One who knowingly harbours, in any house or premises under his control, any persons being or about to be hired or employed as members of an unlawful assembly (**section 157**).

(5) One who is engaged, or hired, or offers to be hired, to do or assist in doing any of the acts specified in s. 141, as making an assembly unlawful (**section 158**).

Offences by or relating to public servants. Chapter IX.

Chapter IX deals with offences by or relating to public servants. They are as follows:—

Note:Sections 161 to 165A have been repealed by the Prevention of Corruption Act (vide, amendment of 1988).

1. Whoever being, or expecting to be, a public servant
    - (i) accepts or obtains, or agrees to accept, or attempts to obtain, any *gratification other than legal remuneration,*
    - (ii) as a reward for
        - (a) doing or forbearing to do any official act, or
        - (b) showing or forbearing to show favour or disfavour to any person in

the exercise of his official functions, or

(c) rendering or attempting to render any service or dis-service to any person, with the Central or any State Government or Parliament or the Legislature of any State, or a public servant,

is guilty of taking illegal gratification (**section 161**). [Three years, or fine or both.] It is essential that the gratification should be obtained "as a motive or reward".

*Leading cases:—**Mahesh. Maha Singh. R S Nayak v A R Antulay.***

2. Taking a gratification in order by corrupt or illegal means to influence a public servant (**section 162**). [Three years, or fine or both.]

3. Taking a gratification for the exercise of personal influence with a public servant (**section 163**). [One year's simple imprisonment, or fine, or both.]

4. Public servant abetting either of the two last mentioned offences (**section 164**).

5. Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant (**section 165**).

6. Abetting a public servant in committing an offence under section 161 or section 165 (**section 165A**).

7. Public servant knowingly disobeying law with intent to cause injury to any person (**section 166**).

9. Public servant disobeying direction under law (**section 166A**).

10. Punishment for non-treatment of victim (**166B**).

8. Public servant framing or translating a document in a way which he knows or believes to be incorrect, intending to cause injury to any person (**section 167**).

9. Public servant unlawfully engaging in trade (**section 168**).

10. Public servant unlawfully buying or bidding for property (**section 169**).

11. Personating a public servant, and doing or attempting to do an act in such assumed character under colour of office (**section 170**).

12. Wearing a garb or carrying a token used by a public servant with fraudulent intent (**section 171**).

Offences relating to elections. Chapter IXA.

Chapter IXA deals with offences relating to elections. It seeks to make punishable, under the ordinary penal law, bribing, undue influence, and personation, and certain other malpractices at elections. It applies to membership of any public body where the law prescribes a method of election. Persons guilty of malpractices are debarred from holding positions of public responsibility for a specified period. The following are deemed to be offences under this chapter:—

1. Giving or accepting gratification with the object of exercising any electoral right (**section 171B**). Gratification includes treating, i.e., giving of food, drink, entertainment or provisions (**section 171E**).

2. Interfering with the free exercise of any electoral right (clause 1), threatening any candidate or voter, or any person in whom he is interested, with injury of any kind; or inducing any candidate or voter to believe that he or any person in whom he is interested will become an object of Divine displeasure or of spiritual censure (clause 2) (**section 171C**).

Something more than a mere act of canvassing would be necessary: *Charan Lal Sahu v Giani Zail Singh.*

3. Personation at an election (**section 171D**).

4. Publishing false statements in relation to the personal character or conduct of any candidate (**section 171G**).

5. Illegal payments in connection with an election (**section 171H**).

6. Failure to keep election accounts (**section 171I**).

Contempt of the authority of public servants. Chapter X.

Chapter X deals with contempt of the lawful authority of public servants. It contains those provisions which are intended to enforce obedience to the lawful authority of public servants.

The following provisions relate to wilful omission or evasion of the performance of a public duty:—

1. Absconding to avoid service of a summons, notice, order or other proceeding from a public servant (**section 172**).

'Absconding' here means simply hiding. The section does not speak of a warrant.

2. Preventing service of summons or other proceeding, or removing the same from any place to which it is lawfully affixed, or preventing the making of any proclamation under due authority of publication thereof (**section 173**).

3. Non-attendance, in obedience to a summons, notice, order, or proclamation proceeding from a public servant in person or by agent, or having attended, departing before it is lawful to depart (**section 174**).

4. Non-appearance in response to a proclamation under **section** 82 of Act 2 of 1974 **(section 174A)**

[Failure by person released on bail or bond to appear in court is an offence under **section 229A.]**

The attendance must be in a place in India. The summons should be specific in its terms as to the title of the Court, the place at which, the day, and the time of the day when the attendance is required. A verbal order is quite sufficient. Mere affixing of summons to a house is not enough; personal service must be attempted.

4. Intentional omission to produce or deliver up any document to a public servant by person legally bound to produce such document (**section 175**).

5. Intentional omission to give, or furnish, at the time and in the manner aforesaid by law, any notice or information to a public servant (**section 176**).

6. Section 202, though not appearing in this Chapter, punishes intentional omission to give information of offence by person bound to inform.

7. Intentional omission to assist public servant in the execution of his duty when bound by law to give assistance (**section 187**).

A person refusing to give true information to a public servant will be liable under the following circumstances:—

1. Refusing on oath or affirmation to state the truth when required by a public servant legally competent to require it (**section 178**).

The penalty of the section would not be attracted where the refusal to take oath would be justifiable: *Kiran Bedi and Inder Singh v Commission of Inquiry.*

2. Refusing by a person *legally bound* to state the truth, to answer any question, demanded of him by a public servant authorized to question (**section 179**).

A person examined under **section** 161 of Cr PC is now legally bound to state the truth.

*Leading case:—**Nandini Sathpathy.***

3. Refusing to sign any statement made by the party when required by a public servant legally competent to require that he shall sign it (**section 180**).

A person giving false information to a public servant is liable in the following cases:—

1. Furnishing, as true, information which the person furnishing same, being legally bound to furnish, knows or has reason to believe to be false [six months simple imprisonment, Rs. 1,000 fine]. If the information respects the commission of an offence, or prevention of it, or the apprehension of an offender—two years' imprisonment or fine (**section 177**).

2. False statement on oath to a public servant, or person authorised to administer oath, by a person legally bound to state the truth on the subject in question (**section 181**).

This section refers to cases in which the false statements are made to any public servant in proceedings *other than judicial.*Section 191 refers to judicial proceedings.

3. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit to do anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person (section 182).

4. Section 203, though not appearing in this chapter, punishes the giving of false information respecting an offence.

The following provisions deal with obstructing or disobeying a public servant:—

1. Resistance to the taking of property by the lawful authority of a public servant (**section 183**).

2. Obstructing the sale of property offered for sale by the lawful authority of a public servant (**section 184**).

3. Illegal purchase or bid for property, offered for sale by the authority of a public servant, on account of any person, whether himself or any other, who is under a legal incapacity to purchase that property at such sale, or bid for such property not intending to perform the obligation thereby, incurred (**section 185**).

4. Obstructing a public servant in the discharge of his public functions (**section 186**).

5. Intentional omission to assist public servant in the execution of his duty when bound by law to give assistance (**section 187**).

6. Knowingly disobeying an order 'promulgated by a public servant lawfully empowered to promulgate it' (**section 188**). [If such disobedience tends to cause obstruction or injury to any person lawfully employed, then the punishment is simple imprisonment for one month, or Rs. 200 fine, or both. If it causes riot or affray, or danger to human life, health or safety, then with imprisonment of either description for six months, or Rs. 1,000 fine, or both].

For violation of a curfew order under section 144 Cr PC, 1973, only a prosecution under section 188, IPC, 1860, can be launched in an appropriate case but no "shoot to kill" order is justified merely on that account.

Three things are necessary—

(1) A *lawful* order promulgated by a public servant,

(2) *knowledge* of the order and disobedience of it, and

(3) the adverse result that is likely to follow from such disobedience.

Disobedience *per se* of an order promulgated under section 144 Cr PC, 1973, is not an offence and that it is necessary to prove that the disobedience would have tended to have certain results mentioned in section 188 IPC, 1860.

*Leading cases:—**Saroj Hazra. Jayantilal.***

7. Threat of injury to a public servant, or to any person in whom such public servant is believed to be interested in order to induce such public servant to do or refrain from doing an official act (**section 189**).

8. Threat of injury to induce any person to refrain from applying for protection to a public servant (**section 190**).

Chapter XI treats offences relating to false evidence and public justice.

A person is said to give 'false evidence', if he

False evidence. Chapter XI.

(1) being legally bound by an oath, or by an express provision of law to state the truth; or

(2) being bound by law to make a declaration upon any subject;

(3) makes any statement which is false; and

(4) which he either knows or believes to be false, or does not believe to be true (**section 191**).

If the Court has no authority to administer an oath, or if it has no jurisdiction at all, the proceedings will be without jurisdiction. Oath or solemn affirmation is not a condition precedent to this offence. The false statement need not be material to the case. It is not limited to evidence before a Court of Justice, but covers any statement made, under oath or otherwise, in pursuance of a legal duty to make it. A false allegation in a written statement amounts to this offence. Illegality of a trial does not purge perjury committed in that trial. An accused is not liable if he gives false answers to questions put by the Court.

A person is said to 'fabricate false evidence' if he

Fabricating false evidence.

(1) causes any circumstance to exist; or

(2) makes any false entry in any book or record; or

(3) makes any document containing a false statement;

(4) intending that such circumstance, *false entry or false statement* may appear in evidence in (a) a judicial proceeding, or (b) a proceeding taken by law before a public servant or an arbitrator; and

(5) may cause any person, who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion;

(6) touching any point material to the result of such proceeding (**section 192**). [If evidence is given or fabricated for the purpose of being used in any stage of a judicial proceeding, seven years and fine; in any other case, three years and fine (**section 193**).]

This section refers to judicial proceedings. Section 181 refers to any proceeding before a public servant. The definition of 'judicial proceeding' in Cr PC, 1973, is not applicable to sections 192 and 193.

Intention is the gist of the offence of fabricating false evidence.

The false evidence must be *material* to the case, though it may not be so under section 191. If no erroneous opinion could be formed touching any point material to the result of a proceeding there is no fabrication.

As soon as the false evidence is *fabricated* the offence is complete. Actual use of such evidence is not necessary. Such use is punishable under section 196. The fabricated evidence must, however, be admissible evidence. The offence cannot be committed before a public servant not authorized to hold an investigation.

Where a person makes two contradictory statements he can be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of those contradictory statements is false. *KTMS Mohd v UOI,* (Supreme Court).

Persons accused of giving or fabricating false evidence should be tried separately and not jointly.

An accused person who fabricates evidence to escape punishment is not liable under this section, unless he contemplates injury to someone else.

The aggravated forms of these two offences are—

1. Giving or fabricating false evidence with intent to procure conviction of a capital offence (**section 194**).

2. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with imprisonment for life or imprisonment (**section 195**).

3. Threatening or inducing any person to give false evidence (**section 195A**).

The following offences are punishable in the same manner as the giving of false evidence:—

1. Issuing or signing any certificate required by law to be given or signed or by law made evidence of any fact knowing or believing that such certificate is false in any material point (**section 197**).

2. Using as true a certificate known to be false in a material point (**section 198**).

3. False statement made in any declaration which touches any material point and which is by law receivable as evidence (**section 199**).

4. Using as true any such declaration known to be false in any material point (**section 200**).

5. Causing disappearance of evidence of the offence or giving false information to screen offender. The punishment is linked with the type of offence of which the evidence is destroyed. **(section 201)**.

6. Intentional omission to give information by the person who is bound to inform (**section 202**).

7. Giving false information in respect of an offence which has been committed (**section 203**).

Destruction or secreting or obliteration of a document to prevent its production in evidence in a court is punishable (**section 204**).

There are two offences in this chapter dealing with false personation.

Personation

1. Falsely personating another, and in such assumed character making any admission or statement, or confessing judgment or causing any process to be issued or becoming bail or security, or doing any other act in any suit or prosecution (section 205).

Any fraudulent gain or benefit to the offender is not necessary.

The Calcutta High Court has held that a person commits this offence even if he personates a purely imaginary person. The Madras High Court, following English precedents, has held to the contrary.

2. Personating a juror or assessor. (**section 229**).

The following provisions deal with the abuse of process of court:—

Abuse of process of Court.

1. Fraudulent removal or concealment of property to prevent its seizure as forfeiture or in execution of a decree (section 206).

2. Fraudulent claim to property to prevent its seizure as forfeiture or in execution (**section 207**).

3. Fraudulently suffering a decree for a sum not due (**section 208**).

4. Fraudulently or dishonestly making a false claim in court (**section 209**).

5. Fraudulently obtaining a decree for a sum not due or causing a decree or order to be executed against any person after it has been satisfied (**section 210**).

The fact that the satisfaction of a decree is of such a nature that the court executing the decree cannot recognize it, does not prevent the decree-holder from being convicted of this offence.

6. False charge of an offence.

This has four ingredients:—

(1) Instituting or causing to be instituted any criminal proceedings, or

(2) Falsely charging any person with having committed an offence,

(3) Knowledge that there is no just or lawful ground for it,

(4) Doing as above with intent to cause injury to any person (**section 211**). [Two years, or fine, or both. If criminal proceedings, be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, then the punishment is seven years and fine.]

Criminal law may be put in motion—

(1) by giving information to the police, or

(2) by lodging a complaint before a Magistrate.

A false charge to the police in respect of a *cognizable* offence amounts to institution of criminal proceedings. But as the police have no power to take any proceedings in *non-cognizable* cases without orders from a Magistrate, a false charge of such offence made to the police is not an institution of criminal proceedings but merely a false charge. No such distinction exists when a false charge of any offence is made before a Magistrate.

*Leading cases:—**R v Karim Buksh. R v Jijibhai. Santosh Singh.***

For a false charge of offence of a serious nature severe punishment is provided. According to the Calcutta and the Madras High Courts, in such cases it is not necessary that criminal proceedings should be instituted, the charge should merely relate to a serious offence; whereas the Allahabad High Court has held that criminal proceedings should have been actually instituted.

*Leading cases:—**R v Karim Buksh**(Cal)*. ***R v Nanjunda Row**(Mad)*. ***R v Bisheshar**(All)*.

The bringing of a vexatious charge is not an offence under this section. The compounding of the offence alleged to have been committed is no bar to a prosecution

under this section. The person aggrieved may sue in a civil suit for damages for malicious prosecution instead of instituting criminal proceedings.

There is a difference between section 182 and section 211.

Bombay High Court.—Under section 182 proof of (1) malice, and (2) want of reasonable and probable cause, except so far as they are implied in the act of giving false information, is not necessary; under section 211 such proof is absolutely required (*Raghavendra v Kashinathbhat*).

Calcutta High Court.—Prosecution for a false charge may be under either of these sections. But if the false charge is of a serious nature, section 211 should be applied *(Sarada Prosad Chatterjee).*

Allahabad High Court.—Where a specific false charge is made, the proper section to apply is section 211. An offence under section 182 is complete when false information is given to a public servant although the latter takes no steps towards the institution of criminal proceedings (*Jugal Kishore; Raghu Tiwari*).

Patna High Court.—It follows the view of the Calcutta High Court.

Punjab.—The former Chief Court of the Punjab followed the view of the Bombay High Court.

Screening an offender.

1. Causing disappearance of evidence of an offence or giving false information to screen the offender (section 201).

An offence should have been actually committed to render a person liable. An offender himself causing the disappearance of evidence can be held liable under this section.

2. Taking gift to screen an offender from punishment (**section 213**).

3. Offering gift or restoration of property in consideration of screening an offender (**section 214**).

Taking any gratification on account of helping any person to recover any moveable property of which he has been deprived by any offence under this Code is punished unless the person taking gift uses all means in his power to cause the offender to be apprehended (**section 215**).

Harbouring an offender.

1. Harbouring or concealing a person knowing him to be an offender with the intention of screening him from legal punishment (**section 212**).

2. Harbouring or concealing an offender who has escaped from custody, or whose apprehension has been ordered (**section 216**).

3. Knowingly harbouring any persons who are about to commit, or have committed, robbery or dacoity (**section 216A**).

The following provisions deal with offences against public justice committed by public servants:—

Offences by public servants.

1. Public servant knowingly disobeying a direction of law with an intent to save any person from punishment or any property from forfeiture (**section 217**).

2. Public servant, charged as such with the preparation of a record or other writing, framing it incorrectly with intent to cause loss or injury to the public or any person, or to save any person from punishment or property from forfeiture (**section 218**).

3. Public servant in a judicial proceeding corruptly or maliciously making any report, order, verdict, or decision, knowing that it is contrary to law (**section 219**).

4. Public servant corruptly or maliciously committing any person for trial, or keeping any person in confinement knowing that he is acting contrary to law (**section 220**).

The Supreme Court analysed the requirements of this section in *Suryamoorthy v Govindaswami*.

5. Public servant intentionally omitting to apprehend, or suffering to escape, any person when legally bound to apprehend or keep him in confinement (**section 221**).

6. Same as above, when such person is under sentence or lawfully committed to custody (**section 222**).

7. Public servant legally bound to keep in confinement a person charged with, or convicted of, any offence, negligently suffering him to escape (**section 223**).

8. Public servant omitting to apprehend or suffering to escape from confinement any person in cases not otherwise provided for (**section 225A**).

Resisting the law is punishable in the following cases:—

1. A person resisting or obstructing the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted; or escaping or attempting to escape from legal custody (**section 224**).

2. Resisting or obstructing lawful apprehension of another person for an offence, or rescuing or attempting to rescue him from legal custody (**section 225**).

3. Resistance or obstruction to lawful apprehension, or escaping or rescuing from legal custody in cases not otherwise provided for (**section 225B**). Violation of condition of remission of punishment (**section 227**).

Contempt of Court.

A person is guilty of contempt of Court if he intentionally offers any insult or causes any interruption to any public servant, while he is sitting in any stage of a judicial proceeding (**section 228**). [Six months' simple imprisonment, or Rs. 1,000, or both.]

A person who prints or publishes the name or discloses the identity of the victim of a rape case and other sexual offences under sections 376A, 376B, 376C or 376D without due authorisation or permission of the court shall be punishable with imprisonment of either description for a term which may extend to two years and shall also be liable to fine (**section 228A**).

This section, however, does not apply to the publication of the judgment of any High Court or the Supreme Court (**Explanation to section 228A**).

Coin and Stamps. Chapter XII.

Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign power in order to be so used. Old coins not used as money are not coins under this definition.

Indian coin is—

(1) metal stamped and issued—

(a) by the authority of the Government of India,

(b) in order to be used as money;

(2) Metal which has been so stamped or issued shall continue to be Indian coin notwithstanding that it may have ceased to be used as money (**section 230**).

Following are the various offences relating to coin:—

1. Counterfeiting coin or Indian coin (**sections 231, 232**).

2. Making, mending, buying, or selling, or disposing of any die or instrument for counterfeiting coin or Indian coin (**sections 233, 234**).

3. Being in possession of any instrument or material for the purpose of using the same for counterfeiting of coin or Indian coin (**section 235**).

4. Abetting in India, counterfeiting of coin out of India (**section 236**).

Abetment must be completed in India.

5. Importing or exporting of a counterfeit coin or Indian coin (**sections 237, 238**).

6. Delivery to another of a coin or Indian coin possessed with the knowledge that it is counterfeit (**sections 239, 240**).

7. Delivery to another of a counterfeit coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit (**section 241**).

8. Possession of a counterfeit coin or Indian coin by a person who knew it to be counterfeit when he became possessed thereof (**sections 242, 243**).

Possession must be with intent to defraud.

9. Any person employed in a mint causing a coin to be of different weight or composition from that fixed by law (**section 244**).

10. Unlawfully taking from a mint any coining instrument or tool (**section 245**).

11. Fraudulently or dishonestly diminishing the weight or altering the composition of any coin or Indian coin (**sections 246, 247**).

12. Altering appearance of any coin or Indian coin with intent that it shall pass as a coin of different description (**sections 248, 249**).

13. Delivery to another of a coin or Indian coin possessed with the knowledge that it is altered (**sections 250, 251**).

There must be both possession with knowledge and fraudulent delivery.

14. Possession of an altered coin or Indian coin by a person who knew it to be altered when he became possessed thereof (**sections 252, 253**).

15. Delivery to another of an altered coin as genuine, which, when first possessed, the deliverer did not know to be altered (**section 254**).

The following offences relate to Government stamps:—

1. Counterfeiting or performing any part of the process of counterfeiting a government stamp (**section 255**).

2. Possession of an instrument or material for the purpose of counterfeiting a government stamp (**section 256**).

3. Making, buying, or selling any instrument for the purpose of counterfeiting a government stamp (**section 257**).

4. Sale of a counterfeit government stamp (**section 258**).

5. Possession of a counterfeit government stamp (**section 259**).

6. Using as genuine a government stamp known to be counterfeit (**section 260**).

7. Fraudulently affecting any writing from a substance bearing a Government stamp or removing from a document the stamp used for it, with intent to cause loss to the Government (**section 261**).

8. Using a government stamp known to have been before used (**section 262**).

9. Fraudulently erasing from a government stamp any mark denoting that the same has been used, or selling or disposing of a stamp from which such a mark has been erased (**section 263**).

10. Possession of a fictitious stamp or of any die, plate or instrument for making any fictitious stamp (**section 263A**).

Weights and measures. Chapter XIII.

The following offences relate to weights and measures:—

1. Fraudulent use of false instruments for weighing (**section. 264**).

2. Fraudulent use of a false weight or measure or using any weight or measure of length or capacity, as a different weight or measure from what it is (**section 265**).

3. Possession of any instrument for weighing, or of any weight or measure of length or capacity, knowing it to be false, intending that the same may be fraudulently used (**section 266**).

4. Making, selling, or disposing of any false instrument for weighing or any false weight or measure of any length or capacity in order that the same may be used or knowing that it is likely to be used as true (**section 267**).

Nuisance. Chapter XIV.

A person is guilty of public nuisance who does

(1) any act, or is guilty of an illegal omission; and

(2) such act or omission causes

(a) any common injury, danger, or annoyance (i) to the public, or (ii) to the people in general who dwell or occupy property in the vicinity; or

(b) any injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right (**section 268**).

Nuisance is either (1) public, or (2) private. The former is an offence against the public as it affects the public at large, or some considerable portion of public. It depends in a great measure upon the number of houses and the concourse of people in the vicinity; and the annoyance or neglect must be of a real and substantial nature. Public nuisance cannot be excused on the ground that the act complained of is inconvenient to a large number of the public. Acts which seriously interfere with the health, safety, comfort, or convenience of the public generally, or which tend to degrade public morals, have always been considered public nuisance. A brew-house, glass-house, or swine-yard, may be a public nuisance if it is shown that the trade is such as to render enjoyment of life and property uncomfortable. Public nuisance can only be the subject of one indictment, otherwise a party might be ruined by a million prosecutions. No prescriptive right can be acquired to maintain a public nuisance.

Private nuisance is anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another, and not amounting to trespass. It is an act affecting some particular individual or individuals as distinguished from the public at large. It is in the quantum of annoyance that public nuisance differs from private. Private nuisance cannot be a subject of indictment but a ground of a civil action for damages, or injunction, or both.

The following offences affect public health:—

1. Negligent or malignant act likely to spread infection of any disease dangerous to life (**sections 269, 270**). The Supreme Court considered under this section the position of a person suffering from HIV (AIDS) X *v Z*.

2. Wilful disobedience to a quarantine rule (**section 271**).

3. Adulteration of food or drink intended for sale so as to make it noxious (**section 272**).

4. Selling, offering or exposing for sale, as food or drink, any article which has been rendered or has become noxious or unfit for food or drink (**section 273**).

5. Adulteration of drug so as to lessen its efficacy, change its operation or render it noxious (**section 274**).

6. Knowingly selling or causing to be used for medicinal purposes any adulterated drug (**section 275**).

7. Selling, or offering or exposing for sale, or issuing from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation (**section 276**). Possession has been taken to be evidence of intention *(sabapathee)*.

In the States of West Bengal and Uttar Pradesh offences under **sections** 272, 273, 274, 275 and 276 IPC, 1860, have by virtue of local amendments been made cognizable,

non-bailable and punishable with imprisonment for life (see COMMENT under **section** 272).

8. Voluntarily corrupting or fouling the water of a public spring or reservoir so as to render it less fit for the purpose for which it is ordinarily used (**section 277**).

9. Voluntarily vitiating the atmosphere so as to make it noxious to the public health (**section 278**). Carrying such material without proper protection and dumping it at some place, though temporarily, constituted offences. *Durham County Council v Peter Connors Industrial Services* and *R v Metropolitan S Magistrate.*

The following offences relate to public safety:—

1. Rash or negligent driving or riding on a public way so as to endanger human life, or to cause hurt or injury to any other person (**section 279**).

Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do.

There is a distinction between a rash act and a negligent act. Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow but with the hope that they will not. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow. As between rashness and negligence, rashness is a graver offence.

*Leading cases:—**Bhalchandra. Padmacharan Naik.***

2. Rash or negligent navigation of a vessel (**section 280**).

3. Exhibiting any false light, mark, or buoy, intending or knowing it to be likely to mislead any navigator (**section 281**).

4. Conveying a person by water for hire in a vessel overloaded or unsafe (**section 282**). Hijacking and threat to blow up an aircraft have been considered under this section *(R v Mason).*

5. Causing danger, obstruction, or injury to any person in a public way or public line of navigation (**section 283**).

6. Rash or negligent conduct with respect to any poisonous substance so as to endanger human life, or to be likely to cause hurt or injury to any person (**section 284**).

7. Rash or negligent conduct with respect to any fire or combustible matter (**section. 285**).

8. Rash or negligent conduct with respect to any explosive substance (**section. 286**).

9. Rash or negligent conduct with respect to any machinery in the possession or under the charge of the offender (**section. 287**).

10. Negligence with respect to pulling down or repairing buildings (**section. 288**).

11. Negligence with respect to any animal (**section. 289**).

Acts of public nuisance other than those mentioned above are punishable under the general section (**section. 290**). A person cannot continue a public nuisance after injunction to discontinue (**section. 291**).

Offences against public morals and decency are:—

1. (a) Selling, letting to hire, distributing, or publicly exhibiting or circulating any obscene book, pamphlet, paper, drawing, painting, representation or figure or any obscene object; or

(b) importing, exporting, or conveying any obscene object for any of the above purposes; or

(c) taking part in or receiving profits from any business conducted for the abovementioned purposes; or

(d) advertising that any person is engaged in any of the abovementioned acts, or that any obscene object can be got from that person; or

(e) attempting to do any act which is an offence under this section (**section. 292**).

*Leading cases:—**Ranjit Udeshi. Samaresh Basu v Amal Mitra. Rajkapoor v Laxman. Mahajan Singh v Commr. of Police.***

2. Selling, letting to hire, distributing, exhibiting, or circulating to any person under the age of 20 years any obscene object referred to above, or attempting to do so (**section. 293**).

A book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object is deemed obscene if it is lascivious or appeals to the prurient interest or if its effect taken as a whole is such as tends to deprave and corrupt persons who are likely to see, read or hear the matter.

3. Causing annoyance to others by—

(a) doing any obscene act in any public place; or

(b) singing, reciting, or uttering any obscene song, ballad or words, in or near any public place (**section 294**).

(4) Keeping any office, or place, for the purpose of drawing any lottery not being a state lottery or a lottery authorised by the State Government (**section 294A**).

Whoever publishes any proposal to pay any sum, or to deliver any goods, on drawing of any ticket, lot or number, in a lottery is also punished *(ibid).* [Fine up to Rs. 100.]

An agreement for contributions to be paid by lot, or a transaction requiring skill for winning prizes is not a lottery. Transactions in which prizes are decided by chance amount to lottery.

Offences relating to religion. Chapter XV.

Chapter XV treats of offences relating to religion. They are as follows:—

1. Injuring or defiling a place of worship, or any object held sacred by any class of persons, with intent to insult the religion of any class of persons (**section 295**).

2. Deliberate and malicious acts intended to outrage religious feelings of any class, by insulting its religion or religious belief irrespective of the fact whether the religious belief in question is rational or irrational. (**section 295A**).

*Leading cases:—**Shalibhadra Shah. Nandkishore Singh. Chandanmal Chopra. T Parameswaran v District Collector.***

3. Voluntarily disturbing a religious assembly lawfully engaged in the performance of religious worship or religious ceremonies (**section 296**).

4. Trespassing in a place of worship or burial place, offering any indignity to corpse, or disturbing persons performing funeral ceremonies, with intent to wound the feelings, or insult the religion of any person or with the knowledge that the feelings of any person are likely to be wounded (**section 297**).

5. Uttering any word or making any sound in the hearing of that person, or making any gesture in the sight of that person, or placing any object in the sight of that person (**section 298**).

Offences affecting human body. Chapter XVI.

Offences against the person are—

(1) Unlawful homicide.
    (a) Culpable homicide.
    (b) Murder.
    (c) Homicide by rash or negligent act.
    (d) Suicide.
    (e) Being a Thug.
(2) Causing miscarriage.
(3) Exposure of infants and concealment of births of children.
(4) Hurt and grievous hurt.
(5) Wrongful restraint.
(6) Wrongful confinement.
(7) Criminal force.
(8) Assault. prostitution.
(9) Kidnapping.
(10) Abduction.
(11) Slavery.
(12) Selling or buying a minor for prostitution.
(13) Forced labour.
(14) Rape and other sexual offences.
(15) Unnatural offence.

Culpable homicide, the genus, and murder, the species, are defined in very close resembling terms.

Culpable homicide.

A person commits murder (**section 300**) culpable homicide if he causes death by doing an act— (**section 299**) if he causes death by doing an act—

(1) with the intention of causing death; or	(1) with the intention of causing death; or
(2) with the intention of causing such bodily injury as is *likely* to cause death;	(2) with the intention of causing such bodily injury as the offender *knows to be likely* to cause death of the person to whom the harm is caused; or
	(3) 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) with the knowledge that he is *likely* by such act to cause death.	(4) with the knowledge that it is so *imminently dangerous* that it must *in all probability* cause death, or such bodily injury as is likely to cause death.
[Imprisonment for life; or 10 years and fine, if the offence comes under clause 2. If it comes under clause 3, then 10 years, or fine, or both—(**section 304**).]	Capital punishment, or imprisonment for life, and fine—(**section. 302**).

An offence cannot amount to murder unless it falls within the definition of culpable homicide; but it may amount to culpable homicide without amounting to murder. All acts of killing done with the intention to kill, or to inflict bodily injury sufficient to cause death, or with the knowledge that death must be the most probable result are *prima facie* murder; while those committed with the knowledge that death will be a likely result are culpable homicide not amounting to murder. Where the act is not done "with the intention of causing death" (clause 4, section 300) the difference between culpable homicide and murder is merely a question of different degrees of probability that death would ensue. It is culpable homicide where death must have been known to be a *probable* result. It is murder where it must have been known to be *the most probable* result. If an injury is deliberately inflicted, in the sense that it is not accidental or unintentional, and the injury, objectively speaking, is sufficient to cause death in the ordinary course of nature and death results, the offence is murder (clause 3, section 300).

*Leading cases:—**State of AP v R Punnayya. R v Govinda. R v Idu Beg. R v Gora Chand Gopee. Virsa Singh.***

English case.—"Likely".—The accused was convicted of an offence of behaving in a manner likely to endanger the safety of an air craft by the persistent use of his mobile telephone in mid-flight. His appeal against conviction failed because the word "likely" was correctly construed in its statutory context as meaning "a real risk not to be ignored." *(R v White house).*

Death caused by an act, for example, setting a house on fire, done with foresight that someone may die, but without any intention of that kind, has been held by an English Court to be not murder but only culpable homicide. Foresight is not the same thing as an intention. Foresight may only be an evidence of intention.

*Leading case:—**R v Nadrick.***

Other circumstances may also prove intention. For example, a married woman burning in the kitchen and her husband and others not at all coming up to her, held by the

Supreme Court to be evidence of intention. *Subedar Tewari v State of UP.*

Where death is caused by poison, the earlier legal propositions, one of which required that the accused must be shown to have possessed poison of the kind in question, have now been revised.

Death in police custody is not capable by itself of creating an inference of murder. *State v Balkrishna*.

*Leading case:—**Bhupinder Singh v State of Punjab.***

Death caused by the effect of words on the imagination or the passions of a person amounts to culpable homicide. If a person engaged in the commission of an offence causes death by pure accident, he shall suffer only the punishment provided for the offence, without any addition on account of the accidental death. Culpable homicide presupposes an intention, or knowledge of likelihood, of causing death. In the absence of these elements, even if death be caused, the offence will be that of hurt or grievous hurt, e.g., death caused by kicking a person suffering from a diseased spleen.

A person who causes bodily injury to another who is labouring under a disease or bodily infirmity, and thereby accelerates the death of that other is guilty of homicide (**Explanation 1**). Similarly, where death is caused by bodily injury, the person who causes such injury is guilty of this offence, although by resorting to proper remedies and skilful treatment death might have been prevented (**Explanation 2**). The causing of the death of a child in the mother's womb is not homicide. But it is 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 (**Explanation 3**).

If death is caused by the voluntary act of the deceased resulting from fear of violence on the part of the offender, the offence will be murder. For instance, if four or five persons were to stand round a man, and so threaten him and frighten him as to make him believe that his life was in danger, and he were to back away from them and tumble over a precipice to avoid them, the persons threatening him will be guilty of murder.

Where the attack was aimed at one person but it fell upon another resulting in the latter's death, it was held that under the doctrine of transfer of malice, the attacker would be guilty of murder. *Nagaraj v State,* (2006) Cr LJ 3724 (Mad—FB); *Rahimbux v State of MP,* (2008) 12 SCC 270 [LNIND 2008 SC 2798] .

The punishment for murder is either death or imprisonment for life and also fine. The Supreme Court has, in a long course of decisions, made it an established principle that the normal punishment for murder is life imprisonment and that "death" should be awarded in "rarest of rare cases". Examples of such rarest of rare cases are:

*Leading cases:—**Kehar Singh v State (Delhi Administration). Lichhmadevi v State of Rajasthan.***

An abnormal delay in executing a death sentence has been recognised as a ground for converting death sentence into life imprisonment.

*Leading cases:—**Bachan Singh v State of Punjab Triveniben v State of Gujarat Madhu Mehta v UOI.***

The Supreme Court has noted serious changes which have taken place in the state of the society since the categories for award of death sentence were laid down. Because of such changes, there should be some flexibility in the application of the categories. *Swami Shraddananda v State of Karnataka,* (2008) 13 SCC 767 [LNIND 2008 SC 1488] .

The Supreme Court has also taken opportunities to explain the impact of the special State-wise enactments for punishment of children *vis-a-vis*IPC, 1860: *Bhoop Ram v State of UP*.

There is no difference in the liability of the offender if the injury intended for one falls on another by accident (**section 301**).

Exceptions.

Culpable homicide is not murder in the following cases:—

Provocation.

1. Grave and sudden provocation depriving the offender of the power of self-control, provided that the provocation is not—

(a) sought or voluntarily provoked by the offender as an excuse;

(b) given by anything done in obedience to the law or by a public servant in the lawful exercise of his powers;

(c) given by anything done in the lawful exercise of the right of private defence.

Provocation resulting from abusive language has been considered to be grave enough. Female infidelity is a common cause of provocation.

An English decision allowed even a self-induced provocation to be taken into account for recording a finding of manslaughter: *R v Johnson*.

The longer the gap between the provoking incidents, less likely the defence of provocation is to succeed. The loss of self-control need not be immediate. The mental state of accused at the time of the incident may be taken into account for determining whether the response was the result of the loss of self-control: *R v Ahluwalia; Dhandayuthan v State*.

Private defence.

2. If the offender, in the exercise in good faith of the right of private defence of person or property, exceeds it, and causes death without premeditation and without intending more harm than is necessary.

Public servant.

3. If the offender being a public servant or aiding a public servant exceeds his legal powers and causes death by an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty, and without ill-will towards the deceased.

Sudden fight.

4. If it is committed, without premeditation, in a sudden fight, in the heat of passion, upon a sudden quarrel, and without the offender having taken undue advantage, or acted in a cruel or unusual manner.

The fight should not have been pre-arranged.

Consent.

5. When the deceased, being above the age of 18 years, suffers death or takes the risk of harm with his own consent.

Where any of the five exceptions applies, the offence will be punishable under the first part of section 304.

The special category of murder enshrined in section 303 under the heading "punishment for murder by life-convict" has been declared by the Supreme Court to be unconstitutional.

*Leading case:—**Mithu***

The result is that all murders are now punishable under section 302.

Culpable homicide which does not amount to murder is punishable under section 304 for a term extending to 10 years, if the act by which death is caused is done with the intention of causing death or by causing such bodily injury as is likely to cause death. The same section in its second paragraph, popularly known as Part II, provides that the accused causing death may be punished with imprisonment extending to 10 years or fine or both, if the act is done without intention to cause death or such bodily injury as is likely to cause death, but with only knowledge that it is likely to cause death (**section 304**).

The nature of the intention has to be gathered from the kind of weapon used, the part of the body hit, the amount of force employed, and attending circumstances. *Manubhai Atabhai v State of Gujarat,* (2007) 10 SCC 358 [LNIND 2007 SC 822] .

For distinction between section 304 and section 304-A, see Supreme Court decision noted of p 615.

Death by negligence.

Causing the death of any person by doing any rash or negligent act not amounting to culpable homicide is punishable (section 304A). [Two years and fine.]

Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, or knowledge that injury will probably be caused.

Criminal negligence is acting without the consciousness that the illegal and mischievous effect will follow but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had he would have had the consciousness.

If death results from injury *intentionally* inflicted this section does not apply. Death should have been the direct result of the rash and negligent act and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causacausans;* it is not enough if it is *causa sine qua non.*

Dowry death.

An unnatural death of a woman within seven years of marriage, whether by burns or injury or otherwise, taking place in the background of cruelty or harassment for dowry, is called a "dowry death". Whoever is guilty of causing such death is punishable for a term not less than seven years and which may extend to imprisonment for life. The ingredients of section 304-B offence have been stated by the Supreme Court in *Shanti v State of Haryana* (**section 304-B**).

*Leading cases:—**R v Nidamarti Nagabhushanam. R v Ketabdi Mundal. Bhalchandra. Syed Akbar.***

The expression "soon before" as occurring in the section has been construed by the Orissa High Court in *Keshab Chand Pandit v State,* (1995) Cr LJ 175 (Ori), and also by the Supreme Court in *Yashoda v State of MP,* (2004) 3 SCC 98 [LNIND 2004 SC 155] . *Deen Dayal v State of Up,* (2009) 11 SCC 157 [LNIND 2009 SC 19] .

The Supreme Court has observed that death "otherwise than in normal circumstances" would mean that the death was not in the usual course but apparently under suspicious circumstances if it was not caused by burn or bodily injury. Death of a woman by suicide occurring within seven years of marriage cannot be described as occurring in normal circumstances. *(Rajayyan).* The court has to analyse the facts and circumstances leading to the victim's death to see whether there is proximate connection between the cruelty or harassment for dowry demand and death. *State of Rajasthan v Jaggu Ram,* (2008) 12 SCC 51 [LNIND 2007 SC 1514] . *Kailash v State of MP,* (2006) 12 SCC 667 [LNIND 2006 SC 803] ; *Dhian Singh* v *State of Punjab,* (2004) 7 SCC 759 .

Suicide.—There are two provisions regarding abetment of suicide:—

(1) Abetment of suicide of a child or an idiot or an insane or a delirious or an intoxicated person (**section 305**).

(2) Abetment of suicide by any person (**section 306**). There can be abetment of suicide through dowry demand.

Attempts.

Attempts to destroy life are of three kinds:—

1. Attempt to murder, i.e., doing an act with such intention or knowledge, and under such circumstances that if the doer by that act caused death he would be guilty of murder (**section 307**). [Ten years and fine. If hurt is caused, then imprisonment for life or 10 years. If the offender is under sentence of imprisonment for life, then death.]

The Bombay High Court held that there may be an attempt under section 511 which does not come under this section. It is not intended to exhaust all attempts to commit murder which can be punished under the Code (*R v Cassidy*). But the Allahabad High Court has laid down that section 511 does not apply to attempts to commit murder which are fully and exclusively provided for by this section (*R v Niddha*).

The Supreme Court held that a person commits an offence under this section when he has an intention to commit murder and in pursuance of that intention he does an act towards its commission irrespective of the fact whether that act is the penultimate act or not *(Om Prakash); Samersimbh Umedsinh Rajput v State of Gujarat,* (2007) 13 SCC 83 [LNIND 2007 SC 1450] .

*Leading case:—**State of Maharashtra v Balaram Bama Patil.***

In the matter of suicide by a married woman in the circumstances specified in the amendments, the burden of proving that her in-laws had not abetted the suicide has been put upon them.

*Leading case:—**Gurbachan Singh v Satpal Singh. Brij Lal v Prem Chand.***

There must be proof of the fact that the death in question was due to suicide.

*Leading case:—**Wazir Chand v State of Haryana.***

2. Attempt to commit culpable homicide, i.e., doing an act with such intention or knowledge, and under such circumstances, that, if the doer by that act caused death, he would be guilty of culpable homicide not amounting to murder (**section 308**). [If hurt is caused, then seven years, or fine, or both; in other cases three years, or fine, or both.]

3. Attempt to commit suicide.— An act towards the commission of this offence should have been done (**section 309**). [One year, or fine, or both.] The act must have been done in the course of the attempt, otherwise no offence is committed.

Criminologists feel that an attempt to commit suicide being the manifestation of a diseased condition of mind, this section should be deleted from the Code; as such a person requires sympathy and treatment rather than condemnation and punishment. The Supreme Court ruled that the section was unconstitutional and, therefore, void *P Rathinam v UOI*. This decision was subsequently **reversed** by another Supreme Court decision *Gian Kaur v State of Punjab*. The section is thus back to its honourable position in the Code as a measure to dissuade people from horrifying the society by attempting self-demolition. See also section 115 of the Mental Healthcare Act, 2017, which lays down that notwithstanding anything contained in section 309 of IPC, 1860, any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.

Thug.

A 'thug' is a person who has been

(1) habitually associated with any other or others for the purpose of committing—

(a) robbery, or

(b) child stealing,

(2) by means of, or accompanies with, murder (**section 310**). [Imprisonment for life and fine (**section 311**).]

Miscarriage, exposure of children, etc.

The following offences relate to birth and exposure of children:—

1. Voluntarily causing a woman with child or quick with child to miscarry, otherwise than in good faith for the purpose of saving the life of the woman (**section 312**) and without her consent (**section 313**).

The Medical Termination of Pregnancy Act, 1971, provides for the termination of pregnancy under several other circumstances mentioned in that Act and these sections should now be read subject to those provisions.

2. Causing the death of a woman by an act done with intent to cause miscarriage (**section 314**). *Jacob George v State of Kerala.*

3. Doing an act without good faith with intent to prevent a child being born or to cause it to die after birth (**section 315**).

4. Causing the death of a quick unborn child by an act amounting to culpable homicide (**section 316**).

5. Exposure and abandonment of a child under 12 years by parent or persons having care of it (**section 317**).

6. Concealment of birth by secret disposal of dead body (**section 318**).

Whoever causes (1) bodily pain, (2) disease, or (3) infirmity, to any person is said to cause hurt (**section 319**).

Hurt.

A person voluntarily causes hurt, if he does any act

(a) with the intention of thereby causing hurt to any person, or

(b) with knowledge that he is likely thereby to cause hurt (**section 321**). [One year, or fine up to Rs. 1,000, or both (**section 323**).]

Acts which will amount to hurt may amount to assault. But hurt may be caused by many acts which are not assaults, for instance, a person who mixes poison and places it on the table of another, or conceals a scythe in the grass on which another is in the habit of walking, or digs a pit in a road intending that another may fall into it, will be guilty of hurt and not assault.

Grievous hurt.

The following kinds of hurt are designated as 'grievous':—

1. Emasculation.

2. Permanent privation of the sight of either eye.

3. Permanent privation of the hearing of either ear.

4. Privation of any member or joint.

5. Destruction or permanent impairing of the powers of any member or joint.

6. Permanent disfiguration of the head or face.

7. Fracture or dislocation of a bone or tooth.

8. Any hurt which endangers life, or which causes the sufferer to be, during the space of 20 days, in severe bodily pain, or unable to follow his ordinary pursuits (**section 320**).

A seller of arrack who mixed with it a dangerous substance was awarded maximum punishment which was possible under the section. *EK Chandrasenan v State of Kerala,* AIR 1995 SC 1066 [LNIND 1995 SC 88] .

Voluntarily causing grievous hurt is voluntarily causing hurt, intending it or knowing it likely to be grievous (**section 322**). [Imprisonment for seven years and fine (**section 325**).]

The following are aggravated forms of the above two offences:—

1. Voluntarily causing hurt (**section 325**), or grievous hurt (**section 326**), by an instrument used for shooting, stabbing, or cutting or which used as a weapon of offence is likely to cause death; or by fire or any heated substance or poison, or any explosive or deleterious substance, or by means of any animal, Voluntarily causing grievous hurt by use of acid (**section 326A**). [Voluntarily throwing or attempting to throw acid is also made an offence by introducing **section 326B.**]

2. Voluntarily causing hurt (**section 327**), or grievous hurt (**section 329**), to extort from the sufferer or anyone interested in him, property or valuable security; or to constrain him to do anything illegal; or to facilitate the commission of an offence.

3. Causing hurt by administering poison or any stupefying, intoxicating, or unwholesome drug, with intent to commit or facilitate the commission of an offence (**section 328**).

4. Voluntarily causing hurt (**section 330**), or grievous hurt (**section 331**), to extort from the sufferer or anyone interested in him, a confession or any information which may lead to the detection of an offence; or to constrain the restoration of property, or the satisfaction of any claim.

5. Voluntarily causing hurt (**section 332**), or grievous hurt (**section 333**), to a public servant in the discharge of his duty, or to prevent or deter him from so discharging it. Humiliation and abuse of the head master and other teachers of a Government school after entering the premises was held to be covered by the section. *Madhudas v State of Rajasthan.*

Hurt or grievous hurt caused on grave and sudden provocation is not severely punished (**sections 334 and 335**). Rash or negligent acts which endanger human life or the personal safety of others are made punishable even though no harm follows (**section 336**); and if hurt or grievous hurt is caused by such acts the punishment will be more severe (**sections 337 and 338**).

Wrongful restraint.

Wrongful restraint is (1) voluntarily obstructing a person, (2) so as to prevent him from proceeding in any direction, (3) in which he has a right to proceed. There must be the right to proceed *Vijay Kumari v SM Rao,* (SC). The word "voluntarily" connotes direct physical restraint. There should be a restriction on the normal movement of a person. *Keki Harmusji Gharda v Mehervan Rustom Irani*, (2009) 6 SCC 475 [LNIND 2009 SC 1276] (**section 339**). [One month, or Rs. 500, or both (**section 341**).]

The slightest unlawful obstruction to the liberty of a person to go lawfully when and where he likes to go is punishable.

Wrongful confinement.

Wrongful confinement is (1) wrongfully restraining a person, (2) in such a manner as to prevent him from proceeding beyond certain circumscribing limits (**section 340**). [One year, or Rs. 1,000 or both (**section 342**).]

Wrongful confinement is a form of wrongful restraint. Wrongful restraint keeps a man out of a place where he wishes to be. Wrongful confinement keeps a man within limits out of which he wishes to go, and has a right to go.

In wrongful confinement there must be a total restraint, not a partial one. If a man merely obstructs the passage of another in a particular direction, leaving him at liberty to stay where he is or to go in any other direction if he pleases, he cannot be said thereby to confine him wrongfully. Detention through the exercise of moral force, without the accompaniment of physical force or actual conflict, is sufficient. But there must be voluntary obstruction to the person alleged to be confined so as to prevent him from proceeding in any direction. Malice is not necessary. The period of confinement is immaterial except with reference to punishment.

*Leading cases:—**Bird v Jones. Dhania v Clifford. Austin v Dowling.***

The Court can award compensation for false imprisonment in cases where the victim gains his freedom through Court order. *Poonam v SI of Police; Paothing v State of Nagaland.*

The following are aggravated forms of this offence:—

1. Wrongful confinement for three or more days (**section 343**).

2. Wrongful confinement for ten or more days (**section 344**).

3. Wrongful confinement of a person knowing that a writ for his liberation has been issued (**section 345**).

4. Wrongful confinement is secret so as to indicate an intention that the confinement of such person may not be known to any person interested in that person or to any public servant (**section 346**).

5. Wrongful confinement for the purpose of extorting any property or valuable security, or constraining person to do anything illegal or to give any information which may facilitate the commission of an offence (**section 347**).

6. Wrongful confinement for the purpose of extorting confession or information which may lead to the detection of an offence, or compelling restoration of any property or valuable security or the satisfaction of any claim or demand (**section 348**).

Force.

A person is said to use force to another,

(1) if he causes motion, change of motion, or cessation of motion to that other, or

(2) if he causes to any substance such motion, or change of motion or cessation of motion as brings that substance into contact (a) with any part of that other's body, or (b) with anything which that other is wearing or carrying, or (c) with anything so situated that such contact affects that other's sense of feeling; provided that he does so in any of the three following ways:—

(i) By his own bodily power.

(ii) By disposing any substance in such a manner that the motion or change of motion, or cessation of motion takes place without any further act on his part, or on the part of any other person.

(iii) By inducing any animal to move, to change its motion, or to cease to move (**section 349**).

Criminal force.

A person uses 'criminal force' to another if

(1) he intentionally uses force to any person,

(2) without that person's consent,

(3) in order to the committing of any offence, or

(4) intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause, injury, fear, or annoyance to the person to whom the force is used (**section 350**). [Three months, or Rs. 500, or both.]

Assault.

A person commits an 'assault', if he

(1) makes any gesture or any preparation,

(2) intending or knowing it to be likely,

(3) that such gesture or preparation will cause any person present to apprehend,

(4) that he is about to use criminal force to that person (**section 351**). [Three months, Rs. 500, or both (**section 352**).]

An assault is something less than the use of criminal force, the force being cut short before the blow actually falls. An assault is included in every use of criminal force. Mere words do not amount to an assault, but the words which the party threatening uses at the time may give his gestures such a meaning as may make them amount to an assault (**Explanation**).

Assault or criminal force on grave provocation is not severely punishable. [One month, or Rs. 200 fine, or both (**section 358**).] The provocation should not be voluntarily sought, or it should not have been given by anything done in obedience to the law or done by a public servant in the lawful exercise of his powers, or done in the lawful exercise of the right of private defence.

*Leading cases:—**Cama v Morgan. Stephen v Myres. Awadesh Mahato.***

An 'assault' differs from an 'affray'—

(1) An 'assault' may take place anywhere, whereas an 'affray' must be committed in a public place.

(2) An 'assault' is regarded as an offence against the person of an individual, whereas an 'affray' is regarded as an offence against the public peace.

The following are aggravated forms of the offence of 'assault' and 'use of criminal force':—

1. Assaulting or using criminal force to deter a public servant from the discharge of his duty (**section 353**).

2. Assaulting or using criminal force to a woman with intent to outrage her modesty (**section 354**). The Criminal Law Amendment Act introduced some new offences against women;

(a) Sexual harassment (**section 354A**)

(b) Assault or use of criminal force to woman with intent to disrobe (**section 354B**)

(c) Voyeurism (**section 354C**)

(d) Stalking (**section 354D**)

Knowledge that modesty is likely to be outraged has been held to be sufficient to constitute the offence without any deliberate intention to do so. *Raju Pandurang Mohale v State of Maharashtra*, (2004) 4 SCC 371 [LNIND 2004 SC 194] . Police officers committing cruelty upon a woman-worker who came into the police station along with other workers have been held liable to pay her compensation. The Government was ordered to pay out of their salary.

*Leading cases:—**People's Union of Democratic Rights v Police Commissioner, Delhi Police; Rupan Deol Bajaj v Kanwar Pal Singh Gill***

3. Assaulting or using criminal force with intent to dishonour a person otherwise than on grave provocation (**section 355**).

4. Assaulting or using criminal force in attempting to commit theft of property carried by a person (**section 356**).

5. Assaulting or using criminal force to any person, in attempting wrongfully to confine that person (**section 357**).

Kidnapping.

Kidnapping is of two kinds:

(**I**) Kidnapping from India, and

(**II**) Kidnapping from lawful guardianship (**section 359**). [Seven years and fine.]

I. Whoever

(1) conveys any person beyond the limits of India,

(2) without the consent (a) of that person, or (b) of some person legally authorised to consent on behalf of that person,

is said to kidnap that person from India (**section 360**).

II. Whoever (a) takes, or (b) entices

(1) any minor (a) under 16 years of age, if a male, or (b) under 18 years of age, if a female, or

(2) any person of unsound mind,

(3) out of the keeping of the lawful guardian of such minor or person of unsound mind,

(4) without the consent of such guardian,

is said to kidnap such minor or person from lawful guardianship (**section 361**).

These sections protect children of tender age from being kidnapped or seduced for immoral purposes, as well as protect the rights of parents and guardians having the custody of minors or insane persons.

The persons kidnapped must be *taken* out of the possession of the parent by any means, forcible or otherwise: and the consent of the person kidnapped does not lessen the offence.

The offence of kidnapping is complete when the minor is actually taken from lawful guardianship (*R v Nemai Chattoraj; R v Ram Dei; Nanhak Sao v King-Emperor*). Kidnapping from guardianship is not a continuing offence.

It is no defence that the accused did not know that the person kidnapped was under 18 or believed that she had no guardian. Anyone dealing with such person does so at his peril. The period of detention is immaterial.

The circumstance that the act of the accused was not immediate cause of the girl leaving her father's place is no defence if he had at an earlier stage solicited her or induced her to take this step (*Varadrajan*).

*Leading cases:—**T D Vadgama. Sachindra Nath.***

Abducting.

A person is said to 'abduct' another if he

(1) by force compels, or

(2) by any deceitful means induces,

any person to go from any place (**section 362**).

'Abduction' differs from 'kidnapping'—

(1) In 'abduction' the removal of the person need not be from the protection of the lawful guardian.

(2) The element of force or fraud existing in 'abduction' is absent in kidnapping.

(3) In 'abduction' the age of the person abducted is immaterial, in 'kidnapping', the person must be under 16, if a male, and under 18, if a female.

(4) Abduction is a continuing offence. Kidnapping is not a continuing offence.

The following are aggravated forms of the offence of 'kidnapping' or 'abducting':—

1. Kidnapping or maiming a minor for purposes of begging (**section 363A**).

2. Kidnapping or abducting in order to murder (**section 364**). *Badshan v State of UP,* (2008) 3 SCC 681 [LNIND 2008 SC 310] .

2a. Kidnapping for ransom, etc., (**section 364-A**) *Suman Sood v State of Rajasthan,* (2007) 5 SCC 634 [LNIND 2007 SC 647] , statement of ingredients.

3. Kidnapping or abducting with intent secretly and wrongfully to confine a person (**section 365**).

4. Kidnapping or abducting a woman to compel her to marry any person against her will, or to force or seduce her to illicit intercourse (**section 366**).

*Leading case:—**Ramesh.***

Punishment followed where the offence was established by other evidence, though the body of the young widow who was subjected to gang rape was not traceable.

*Leading case:—**Arun Kumar v State of UP.***

5. Inducing a woman to go from any place, by means of criminal intimidation or abuse of authority or any method of compulsion, in order that she may be forced or seduced to illicit intercourse (*ibid*).

6. Inducing a minor girl under the age of 18 years to go from any place or to do any act with the intention or knowledge that she will be forced or seduced to illicit intercourse (**section 366A**).

7. Importing a girl under 21 years of age from a foreign country or from the State of Jammu and Kashmir with intent or knowledge that she will be forced or seduced to illicit intercourse (**section 366B**).

8. Kidnapping in order to subject a person to grievous hurt, slavery, or unnatural lust (**section 367**).

9. Wrongfully concealing or confining a kidnapped or abducted person (**section 368**).

10. Kidnapping or abducting a child under 10 years with intent to steal movable property from the person of such child (**section 369**).

Offences dealing with trafficking

1. Trafficking of person (**section 370**)

2. Exploitation of a trafficked person (**section 370A**)

3. Habitually importing, exporting, removing, buying, selling, trafficking or dealing in slaves (**section 371**).

Sale of minor for immoral purposes.

Two provisions relate to selling or buying of persons under 18 years of age for immoral purposes:—

1. Selling, letting to hire, or otherwise disposing of any person under the age of 18 years for the purpose of (a) prostitution, or (b) illicit intercourse, or (c) for any unlawful and immoral purpose, or (d) knowing it to be likely that such person will at any age be used for such a purpose (**section 372**).

2. Buying, hiring, or otherwise obtaining possession of such person for a like purpose (**section 373**).

When a girl under 18 years is disposed of to, or is obtained possession of by, a prostitute or a brothel-keeper, the person disposing of or obtaining possession of such girl shall be presumed to have disposed of her or obtained possession of her, for prostitution (**Explanation 1, sections 372 and 373**).

"Illicit intercourse" means sexual intercourse between persons not united by marriage, or by any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasimarital relation (**Explanation 2, sections 372 and 373**).

Unlawful labour.

Unlawfully compelling any person to labour against his will [One year or fine, or both (**section 374**).]

Sexual offences

As introduced by the Criminal law (Amendment Act), 2013—A man is said to commit "rape" if he—

(a) 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

(b) 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

(c) 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

(d) 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:—

First.—Against her will.

Second.—Without her consent.

Third.—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.

Fourth.—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 roan to whom she is or believes herself to be lawfully married.

Fifth.—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.

Sixth.—With or without her consent, when she is under 18 years of age.

Seventh.—When she is unable to communicate consent.

Leading cases:—***Rameswar. Bhoginbhai. Rafique.***

It is a crime against basic human rights violative of Article 21 of the Constitution. The courts should deal with such offence sternly and severely. The victim's testimony can be acted upon without corroboration in material particulars. *Aman Kumar v State of Haryana,* (2004) 4 SCC 379 [LNIND 2004 SC 184] .

For the purposes of this section, "vagina" shall also include *labia majora* (**Explanation-1**). 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 (**Explanation-2**).

A medical procedure or intervention shall not constitute rape (**Excep.1**).

Sexual intercourse or sexual acts by a man with his own wife, the wife not being under 15 years of age, is not rape (**Excep. 2**). See ***Independent Thought v UOI***, where the Supreme Court held that sexual intercourse with girl below 18 years of age is rape regardless of whether she is married or not. The Supreme Court held that Exception 2 to section 375, IPC, 1860, is to read down as, "Sexual intercourse or sexual acts by man with his own wife, wife not being 18 years, is not rape".

Leading cases:—***Balwant Singh v State of Punjab Arun Kumar v State of UP. Promod Mehta v State of Bihar.***

Indecent assault upon a woman does not amount to an attempt to commit rape unless the Court is satisfied that the accused was determined to gratify his passion at all events, and in spite of all resistance.

Leading case:—***Rameshwar*(see comments under section 354).**

Other Rape related offences

Causing death or resulting in persistent vegetative state of victim (**section 376A**)

Sexual intercourse by husband upon his wife during separation (**section 376B**)

Sexual intercourse by a person in authority (**section 376C**)

Gang rape (**section 376D**)

Punishment for repeat offenders (**section 376E**)

The circumstances in which the corroboration of the testimony of the victim of a rape would be necessary have been explained by the Supreme Court in *State of Maharashtra v CK Jain.*

The mitigating circumstances which would enable the Court to award less than 10 years' imprisonment have been explained by the Supreme Court in *State of Haryana v Prem Chand,* with this caution that though the conduct of the prosecutrix in the facts and circumstances of the case may be taken into account, her general character or reputation would neither be an aggravating factor, if good, nor a mitigating factor, if bad.

The need for proper identification of the offender and that of promptitude in filing FIR have also been explained.

*Leading cases:—**Harpal Singh v State of HP; R v Chance.***

Unnatural offence.

Unnatural offence is having (1) carnal intercourse, (2) against the order of nature, (3) with any man, woman or animal (section 377).

*Leading case:—**Navtej Singh Johar v UOI*** (holding that consensual carnal intercourse among adults in private space, does not in any way harm public decency or morality).

Offences against property. Chapter XVII.

The following are the offences against property dealt with in Chapter XVII:—

1. Theft.
2. Extortion.
3. Robbery.
4. Dacoity.
5. Criminal misappropriation of Property.
6. Criminal Breach of Trust.
7. Receiving stolen property.
8. Cheating.
9. Fraudulent deeds and dispositions of Property.
10. Mischief.
11. Criminal trespass.

The above offences may be grouped in three classes:—

(1) Offences dealing with deprivation of property (**sections 378–424**).

(2) Offences dealing with injury to property (**sections 125–440**).

(3) Offences dealing with violation of rights of property in order to the commission of some other offence (**sections 441–462**).

Theft.

A person is said to commit theft who

(1) intending to take dishonestly,

(2) any movable property,

(3) out of the possession of any person,

(4) without that person's consent,

(5) moves that property, in order to such taking (**section 378**). [Three years, or fine, or both (**section 379**).]

A thing attached to the earth can be the subject of theft when separated from the earth. A person moving an obstacle which prevented a thing from moving is said to cause it to move. A person causing an animal to move is said to move whatever is thereby moved by the animal. The owner's consent may be express or implied (**Explanations**).

The intention to take dishonestly must exist at the time of the moving of the property. If the act is not done *animofurandi,* it will not amount to theft. The test is: Is the taking warranted by law? It is not necessary that the taking should be of a permanent character, or that the accused should have derived any profit. Property removed in the assertion of a contested claim does not constitute theft. A *bona fide* claim of right rebuts the presumption of dishonesty. But a creditor removing a debtor's property to enforce payment is liable. A person taking dishonestly his own property out of the possession of another is guilty of this offence. Thus, the person from whose possession the property is taken may not be the owner. If one of the joint owners takes exclusive possession of joint property dishonestly he would be guilty of theft. The least removal of the thing from its place is sufficient for the offence. It does not matter whether the property remains within its owner's reach or not.

*Leading cases:—**Ramratan, K N Mehra, Chandi Kumar v Abanidhar Roy, R v Nagappa, R v Shri Churn Chungo, Ram Ekbal.***

The following are aggravated forms of the offence:—

1. Theft in any building, tent, or vessel, used as a human dwelling or for the custody of property (**section 380**).

2. Theft by a clerk or a servant, of property in possession of his master (**section 381**).

3. Theft after preparation made for causing death, hurt, or restraint, or fear of death, hurt, or restraint to any person, in order to the committing of such theft or the effecting of such escape afterwards, or the retaining of property taken by such theft (**section 382**). Knowledge acquired by those who forced their entry into a house that there was only one old man inside and he suffered from a weak heart would be sufficient for conviction, though they left without taking away anything and the man died behind them, his heart giving way.

*Leading case:—**R v Watson.***

Extortion

A person commits 'extortion' if he

(1) intentionally puts any person in fear of any injury
    (a) to that person, or
    (b) to any other, and thereby
(2) dishonestly induces the person so put in fear
(3) to deliver to any person any
    (a) property, or

(b) valuable security, or

(c) anything signed or sealed, which may be converted into a valuable security (**section 383**). [Three years, or fine, or both (**section 384**).] Putting any person in fear of injury in order to commit extortion [Two years, or fine, or both (**section 385**).]

The inducement to part with the property should be dishonest, i.e., with intent to cause wrongful gain or loss.

The 'fear' in extortion must be such as to unsettle the mind of the person on whom it operates and to take away from his acts that element of free voluntary action which alone constitutes consent. The terror of a criminal charge or of loss of an appointment amounts to a fear of injury. 'Fear' must precede the delivery of property. Thus, wrongful retention of property obtained without threat will not amount to extortion, even though subsequent threats are used to retain it.

'Theft' differs from 'extortion':—

(1) In 'theft' the property is taken without the owner's consent; in 'extortion' the consent is obtained by putting a person in fear of any injury to him or any other. In theft element of force does not arise.

(2) 'Theft' can only be committed of movable property; 'extortion' may be committed of immovable property as well.

The following are aggravated forms of extortion:—

1. Extortion by putting a person in fear of death, or grievous hurt to that person or to any other (**section 386**).

2. Putting or attempting to put any person in fear of death, or grievous hurt to himself or any other in order to commit extortion (**section 387**).

3. Extortion by threat of accusation of an offence, punishable with death or imprisonment for life, or 10 years' imprisonment, or of having attempted to induce any other person to commit such offence (**section 388**).

4. Putting or attempting to put any person in fear of such accusation as is mentioned above in order to commit extortion (**section 389**).

Robbery. 'Robbery' is an aggravated form of either theft or extortion. In all 'robbery' there is either theft or extortion.

Theft is 'robbery' if—

(1) in order to the committing of the theft, or in committing the theft, or

(2) in carrying away, or attempting to carry away, property obtained by the theft,

(3) the offender, for that end, voluntarily causes, or attempts to cause, to any person

(a) death, hurt, or wrongful restraint, or

(b) fear of instant death, instant hurt, or instant wrongful restraint.

Extortion is 'robbery' if the offender, at the time of committing the extortion, is

(1) in the presence of the person put in fear, and

(2) commits the extortion by putting that person in fear of instant death, instant hurt, or instant wrongful restraint to that person, or to some other person, and

(3) by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted (**section 390**). [Ten years and fine. If the robbery is committed on the highway between sunset and sunrise, then 14 years (**section 392**). Attempt, seven years and fine (**section 393**). If hurt is caused, imprisonment for life, or 10 years and fine (**section 394**).] The offender is said to be *present* if he is near enough to put the other in fear.

An accidental injury by a thief will not convert his offence into robbery. Similarly, if hurt is caused to avoid capture, while retreating without any property, the offence will not amount to robbery, e.g., throwing stones to avoid pursuit.

Belonging to a wandering gang of persons associated for the purpose of habitually committing theft or robbery is made punishable (**section 401**).

Dacoity.

When (1) five or more persons conjointly commit, or attempt to commit, a robbery, or

(2) where the whole number of persons conjointly committing or attempting to commit, a robbery, *and* persons present and aiding such commission or attempt amount to five or more, every person so committing, attempting or aiding, is said to commit 'dacoity' (**section 391**). [Imprisonment for life or 10 years (**section 395**).]

If any one of the dacoits commits murder in committing dacoity, every one of them shall be punished with death, or imprisonment for life, or rigorous imprisonment extending to 10 years and fine (**section 396**). It does not matter whether a particular dacoit was inside the house where the dacoity was committed, or outside the house, so long as the murder is committed in the commission of the dacoity. It is not necessary that the murder should be committed in the presence of all. It is, however, necessary that murder should be committed in course of the commission of dacoity. Thus, while the dacoits were returning after an attempt to commit dacoity without any booty due to stiff opposition of the villagers and one of the dacoits to facilitate retreat killed one of the villagers by shooting, it was held that as dacoity had ended the moment the dacoits took to their heels without any booty the murder was an individual act of the dacoit who fired the fatal shot and other dacoits could only be held liable for an offence under section 395, IPC, 1860, and not under section 396.

*Leading case:—**Shyam Behari.***

Preparation to commit dacoity is punishable (**section 399**). and so is either belonging to a gang of dacoits (**section 400**), or assembling for the purpose of committing dacoity (**section 402**).

Aggravated forms of robbery and dacoity are—

(1) Offender using any deadly weapon at the time of committing robbery or dacoity or causing or attempting to cause death or grievous hurt to any person (**section 397**).

For the purpose of this section it is not necessary that the weapon should be actually used. Mere carrying of the weapon causes a psychological sense of insecurity and fear and this would constitute enough use within the meaning of this section.

*Leading case:—**Phool Kumar.***

This section only applies to the offender who actually uses a deadly weapon, or causes grievous hurt.

(2) Attempt to commit robbery or dacoity when armed with a deadly weapon (**s 398**).

Criminal misappropriation.

A person commits 'criminal misappropriation' if he

(1) dishonestly misappropriates or converts to his own use

(2) any movable property (**section 403**). [Two years, or fine, or both.]

The offence is committed though the misappropriation be only temporary. The finder of property is not guilty if he takes it to protect it or to find the owner; but he is guilty, if he appropriates it knowing the owner, or having the means of discovering him, or before using reasonable means to discover him, or not believing it to be his own property, or not believing in good faith that the owner cannot be found (**Explanations 1 and 2**).

This offence takes place when the possession has been innocently come by, but where by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent. Thus, retention of money by a servant authorized to collect it from a person may be criminal misappropriation even though he retains it on account of wages due to him.

A person retaining money paid by mistake will be guilty of criminal misappropriation. But there can be no criminal misappropriation of things which have actually been abandoned.

*Leading cases:—**Bhagiram v Abar Dome. R v Sita. Romesh Chunder v Hiru Mondal.***

'Theft' is distinguished from 'criminal misappropriation'—

(1) In 'theft' the property is taken out of the possession of another person and the offence is complete as soon as the offender moves the property. In 'criminal misappropriation' there is no invasion of another's possession. The property is often innocently got into possession.

(2) In 'theft' the dishonest intention must precede the act of taking; in 'criminal misappropriation' it is the subsequent intention to convert or misappropriate the property that constitutes the offence.

There is a difference between 'criminal misappropriation' and 'cheating'. In 'criminal misappropriation' as in 'criminal breach of trust', the original reception of property is legal, the dishonest conversion takes place subsequently. In 'cheating' deception is practised to get possession of the thing.

Dishonest misappropriation of property possessed by a deceased person at the time of his death is an offence (**section 404**).

Criminal breach of trust.

A person commits 'criminal breach of trust', if he

(1) being in any manner entrusted with (a) property, or (b) any dominion over property;

(2) dishonestly (a) misappropriates, or (b) converts to his own use, that property; or

(3) dishonestly (a) uses, or (b) disposes of, that property;

(4) in violation (a) of any direction of law prescribing the mode in which such trust is to be discharged, or (b) of any legal contract, express or implied, which he has made touching the discharge of such trust; or

(5) wilfully suffers any other person so to do (**section 405**). [Three years, or fine, or both (**section 406**).]

The property may be movable or immovable.

'Criminal misappropriation' differs from 'criminal breach of trust'—

(1) In the former the property comes into the possession of the offender by some casualty, and he afterwards misappropriates it; in the latter the offender is lawfully entrusted with property and he dishonestly misappropriates it or wilfully suffers any other person to do so.

(2) 'Criminal breach of trust' only applies to conversion of property held by a person in a fiduciary capacity; 'criminal misappropriation', to property coming into possession of the offender anyhow.

(3) 'Criminal misappropriation' can only be of movable property. 'Criminal breach of trust' can be of any property, movable or immovable.

The following are aggravated forms of criminal breach of trust:—

1. Criminal breach of trust by a carrier, wharfinger, or warehouse-keeper (**section 407**).

2. Criminal breach of trust by a clerk or servant (**section 408**).

3. Criminal breach of trust by a public servant, banker, merchant, factor, broker, attorney or agent (**section 409**).

The Supreme Court has laid down that the offence is not wiped off by reason of the fact that the money in question has been returned or accounted for.

*Leading case:—**Viswanath v State of J&K.***

Stolen property.

'Stolen property' is—

(1) property the possession whereof has been transferred by (a) theft, (b) extortion, or (c) robbery;

(2) property criminally misappropriated;

(3) property in respect of which criminal breach of trust has been committed.

It is immaterial whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it ceases to be stolen property (**section 410**). [Receiving or obtaining stolen property

knowing it to be such is punishable with three years, or fine, or both (**section 411**).] A person who is found to be in the possession of property shortly after an offence, is presumed to be criminally mixed up with the transaction. The Supreme Court has explained the meaning of the term "recent possession" in this connection.

*Leading case:—**Earabhadrappa v State of Karnataka.***

This section does not apply to the actual thief when theft is committed in India.

If stolen goods are restored to the possession of the owner and he returns them to the thief for the purpose of enabling him to sell them to a third person, they are no longer stolen goods; and the third person cannot be convicted of receiving them although he received them knowing them to be stolen.

'Dishonest retention' of property is distinguished from 'dishonest reception' of it. In the former offence the dishonesty supervenes after the act of acquisition of possession, while in the latter dishonesty is contemporaneous with such act. Thus a person cannot be convicted of 'receiving' if he has no guilty knowledge at the time of receipt. But he is guilty of 'retaining' if he subsequently knows or has reason to believe that the property was stolen. Neither the thief, nor the receiver of stolen property, commits the offence of retaining such property dishonestly merely by continuing to keep possession of it.

Property into or for which the stolen property has been converted or exchanged is not stolen property, e.g., proceeds of a stolen cheque, or the change given for a stolen currency-note. But an ingot made out of stolen ornaments still retains it character as stolen property.

Res nullius cannot be the subject of receiving, e.g., a bull let loose as a part of religious ceremony and belonging to no one is not the subject of theft.

If articles belonging to different persons are received at one time, the conviction will be only for one act of receiving and not separate convictions.

The following are aggravated forms of this offence:—

1. Dishonestly receiving property stolen in the commission of a dacoity (**section 412**).

2. Habitually dealing in stolen property (**section 413**).

3. Voluntarily assisting in concealing or disposing of, or making away with, stolen property (**section 414**).

Cheating.

A person is said to 'cheat' if he

(1) by deceiving any person;

(2) fraudulently or dishonestly induces the person so deceived;

(3) to deliver any property to any person; or

(4) to consent that any person shall retain any property; or

(5) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not deceived; and which

(6) act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property (**section 415**).

Dishonest concealment of facts is a deception (**Explanation**).

[One year, or fine, or both (**section 416**).]

Like 'extortion', cheating is committed by the wrongful obtaining of a consent. The difference is that, in the former the consent is obtained by intimidation, in the latter, by deception.

'Cheating' also differs from 'theft'

(1) In the former the property obtained by deception may be movable or immovable, in the latter, it must be movable.

(2) In 'theft' the property is taken without the consent of the owner, in 'cheating' the owner's consent is obtained by deception.

It is not necessary that cheating should be committed in express words if it can be inferred from all the circumstances attending the obtaining of property. But it is necessary that a person should be deceived. If a person knows what the deception is and acts on it, the person practising deception will be guilty of attempt to cheat but not of cheating. The offence will be committed even if the person deceived is other than the one on whom the deception is practised. Similarly, it is not necessary that there should be an intent to deceive any particular individual. If a false prospectus or balance-sheet is issued to the public, or to a section of the public, the persons issuing it will be guilty of cheating although there was no intent to deceive any one in particular (***R v Ross***).

The person to whom the property is delivered may not be *participescriminis*. Property obtained by cheating does not fall within the definition of stolen property.

Mere puffing will not amount to this offence (***R v Bryan***, the *Elkington spoon* case).

*Leading cases:—**R v Abbas Ali. R v Appasami. R v Soshi Bhushan. Bashirbhai.***

If the deception is in regard to a future event, then there must be evidence of an intention to cheat when the deception was made. Mere failure to carry out a promise is not enough. A man may intend to fulfil his promise, but subsequently he may change his mind.

The following are aggravated forms of cheating:—

1. Cheating with knowledge that wrongful loss may thereby be caused to a person whose interest the offender is bound to protect (**section 418**).

2. Cheating by personation (**sections 416, 419**).

3. Cheating and thereby dishonestly inducing the person deceived to deliver any property to any person, or to make, alter, or destroy a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security (**section 420**). Provisions of the section.

A person is said to 'cheat by personation' if he cheats

Cheating by personation.

(1) by pretending to be some other person, or

(2) by knowingly substituting one person for another, or

(3) by representing that he or any other person is a person other than he or such other person really is (**section 416**).

It is immaterial whether the individual personated is a real or imaginary person (**Explanation**). [Three years, or fine or both (**section 417**).]

As soon as a man by words, act, or sign, holds himself out as a particular person with the object of passing himself off as that person, and exercising the right which that person has, he has personated him. For instance, if A represents himself to be B at an examination, or represents himself to be of a particular caste which he is not, or gives a false description of his position in life, he commits this offence.

Fraudulent deeds and dispositions.

The following provisions relate to fraudulent deeds and dispositions of property:—

1. Dishonest or fraudulent removal or concealment or transfer of property to prevent distribution among creditors (**section 421**).

2. Dishonestly or fraudulently preventing from being made available for creditors a debt or demand due to the offender or to any other person (**section 422**).

3. Dishonestly or fraudulently signing, executing or becoming a party to any instrument which purports to transfer or charge any property and which contains any false statement as to the consideration for such transfer or charge or as to the person or persons for whose benefit it is intended to operate (**section 423**).

4. Dishonestly or fraudulently concealing or removing any property of the offender or of any other person or assisting in the concealment, or removal thereof, or dishonestly releasing any demand or claim to which the offender is entitled (**section 424**).

A person commits 'mischief' if he

Mischief.

(1) with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to (a) the public or (b) any person;

(2) causes (a) the destruction of any property, or (b) any such change in any property, or in the situation thereof, as destroys or diminishes its value or utility, or affects it injuriously (**section 425**).

The offender need not intend loss or damage to the owner. The property may belong to the offender, or to him jointly with others (**Explanation**). [Three months, or fine or both (**section 426**).]

A man may commit mischief on his own property to cause wrongful loss to some person. If a person does any act amounting to mischief in the exercise of a *bona fide* claim or right he cannot be convicted of this offence. An act done through negligence will never amount to mischief. Mischief cannot be committed in respect of a *res nullius,* e.g., killing a bull which was set free.

The aggravated forms of mischief are as follows:—

1. Committing mischief, and thereby causing damage to the amount of Rs. 50 (**section 427**).

2. Mischief by killing, poisoning, rendering useless, or maiming any animal of the value of Rs. 10 (**section 428**).

3. Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow or ox or any other animal of the value of Rs. 50 or upwards (**section 429**).

This offence is similar to that created under section 50 of the Wild Life Protection Act, 1972. The two enactments are, therefore, not likely to attract the doctrine of double jeopardy.

*Leading case:—**State of Bihar v Murad Ali Khan.***

4. Mischief by injury to works of irrigation or by wrongfully diminishing the supply of water for agricultural purposes or for food, or drink, or cleanliness (**section 430**).

5. Mischief by injury to public road, bridge, river or channel, so as to render it impassable or less safe for travelling or conveying property (**section 431**).

6. Mischief by causing inundation or obstruction to public drainage attended with damage (**section 432**).

7. Mischief by destroying, or moving or rendering less useful a light house or sea-mark or by exhibiting false lights (**section 433**).

8. Mischief by destroying, moving, or rendering less useful any land-mark fixed by the authority of a public servant (**section 434**).

9. Mischief by fire or explosive substance with intent to cause damage to the amount of Rs. 100 or upwards or where the property is agricultural produce—Rs. 10 or upwards (**section 435**).

10. Mischief by fire or explosive substance with intent to destroy any building used as a place of worship, or human dwelling, or as a place for the custody of property (**s. 436**).

What is a new development under the section, the Madras High Court allowed public interest litigation under the section and compelled the State to pay compensation to the victims of a riot to whom the State did not provide any protection at the material time nor prosecuted the offenders afterwards.

*Leading case:—**R Gandhi v UOI.***

11. Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden (**section 437**).

12. Mischief or attempt to commit mischief with fire or any explosive substance (**section 438**).

13. Intentionally running a vessel aground or ashore with intent to commit theft or misappropriation of property (**section 439**).

14. Mischief committed after preparation made for causing to any person death, hurt, or wrongfully restraint, or fear of death, hurt, or wrongful restraint (**section 440**).

A person commits 'criminal trespass' if he

Criminal trespass.

(1) enters into or upon property in the possession of another;

(2) with intent to commit an offence; or

(3) to intimidate, insult, or annoy any person in possession of such property; or

(4) having lawfully entered into or upon such property unlawfully remains there;

(a)with intent to intimidate, insult, or annoy any such person, or

(b)with intent to commit an offence (**section 441**). [Three months or Rs. 500, or both (**section 447**).]

Trespass can only be committed in respect of corporeal property. The essence of the offence is the intention with which it is committed. The causing of such annoyance, intimidation or insult must be the main aim of the entry *(Mathri).* It is not necessary that the intention must be to annoy a person who is actually present at the time of the trespass *(Rash Behari).* A person entering on the land of another in the exercise of a *bona fide* claim of right will not be guilty though the claim is unfounded. But if the entry is made with *intent to annoy* it does not matter whether it was made under a claim of right. The annoyance must be such as would affect an ordinary man, not what would specially and exclusively annoy a particular individual of a queer temperament.

The property must be in the actual possession of a person other than the trespasser. It is *de facto* and not *de jure* possession that is necessary. The person in possession may be an individual or a corporate person.

The entry must be to commit an offence as defined in **section 40**, and not any unlawful act. Thus entering an exhibition building without a ticket does not amount to criminal trespass. Slum dwellers upon public land cannot be equated with a trespasser under these sections. Their action has been described by the Supreme Court to be not voluntary, but one due to compulsion of circumstances.

*Leading case:—**Olga Tellis v Bombay MC.***

House-trespass.

A person commits 'house-trespass' if he

(1) commits criminal trespass

(2) by entering into, or remaining in

  (a) any building, tent, or vessel used as a human dwelling, or

  (b) any building

    (i) used as a place of worship, or

    (ii) as a place for the custody of property (**section 442**).

Introduction of any part of the trespasser's body is sufficient (**Explanation**). [One year, or Rs. 1,000, or both (**section 448**).]

The following are aggravated forms of this offence:—

1. House-trespass in order to the commission of an offence punishable with death (**section 449**).

2. House-trespass in order to the commission of an offence punishable with imprisonment for life (**section 450**).

3. House-trespass in order to the commission of an offence punishable with imprisonment (**section 451**).

4. House-trespass after preparation made for causing hurt, assault, or wrongful restraint to any person, or for putting any person in fear of hurt, assault, or wrongful restraint (**section 452**).

Lurking house-trespass.

'Lurking house-trespass' is house-trespass, after taking precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass (**section** 443). [Two years and fine (s. 453).]

Whoever commits lurking house-trespass after sunset and before sunrise is said to commit 'lurking house-trespass' by night (**section 444**). [Three years and fine (**section 456**).]

House-breaking.

A person is said to commit 'house-breaking' if he

(a) commits house-trespass, and effects his *entrance* into the house, or

(b) if being in the house for committing an offence, or after committing an offence, *quits* it in any of the following ways—

(1) Through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

(2) Through any passage not intended by any person other than himself, or an abettor of the offence, for human entrance, or through any passage to which he has obtained access by scaling or climbing over any wall or building.

(3) Through any passage which he, or any abettor of the house-trespass, has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

(4) By opening any lock.

(5) By using criminal force, or committing an assault, or by threatening any person with assault.

(6) By any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself, or by an abettor of the house-trespass (**section 445**). [Two years and fine (**section 453**).]

House-breaking after sunset and before sunrise is said to be 'house-breaking by night' (**section 466**). [Three years and fine (**section 456**).]

The following are aggravated forms of the offence of lurking house-trespass and housebreaking:—

1. Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment (**section 454**).

2. Lurking house-trespass or house-breaking after preparation made for causing hurt to any person (**section 455**).

3. Causing grievous hurt or attempting to cause death or grievous hurt to any person whilst committing lurking house-trespass or house-breaking (**section 459**).

The following are aggravated forms of the offence of 'lurking house-trespass by night' and 'house-breaking by night':—

1. Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment (**section 457**).

2. Lurking house-trespass or house-breaking by night, after preparation made for causing hurt to any person (**section 458**).

All persons jointly concerned in lurking house- trespass or house-breaking by night are punishable where death or grievous hurt is caused by one of them (**section 460**).

Dishonestly breaking open a receptacle containing property is punishable (**section 461**). The punishment is much more severe when such act is committed by a person who is entrusted with its custody (**section 462**).

Chapter XVIII deals with offences relating to documents and to property marks.

A person commits forgery if he

Forgery. Chapter XVIII.

(1) makes any false document, or part of a document,

(2) with intent

(a) to cause damage or injury to the public or to any person, or

(b) to support any claim or title, or

(c) to cause any person to part with property, or

(d) to enter into any express or implied contract, or

(e) to commit fraud, or that fraud may be committed (**section 463**).

[Three years, or fine or both (**section 465**).] Using as genuine a forged document is punishable likewise (**section 471**).

A person is said to make a false document—

I. If he dishonestly or fraudulently (a) makes, signs, seals, or executes a document,

(b) with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed

(i) 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

(ii) at the time at which he knows that it was not made, signed, sealed, or executed. Or

II. If he dishonestly, or fraudulently, without lawful authority by cancellation or otherwise,

(a) alters a document in any material part thereof,

(b) 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

III. If he dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person

(a) by reason of unsoundness of mind, or intoxication cannot, or

(b) by reason of deception practised upon him, does not, know the contents of the document, or the nature of the alteration (**section 464**).

A man's signature of his own name may amount to forgery (**Explanation 1**). But this must have been done in order that it may be mistaken for the signature of another person of the same name. Making 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 that person in his lifetime may amount to forgery (**Explanation 2**). A false document made wholly or in part by forgery is designated 'a forged document' (**section 470**).

It is not an essential quality of the fraud mentioned in the section that it should result in or aim at deprivation of property. The offence is complete as soon as a document is made with intent to commit a fraud. But the false document must appear on its face to be one which, if true, would possess some legal validity or must be legally capable of effecting the fraud intended. A writing, though not legal evidence of the matter expressed, may yet be a document if the parties framing it believed and intended it to be evidence of such matter. It is not necessary that the document should be made in the name of a really existing person.

Counterfeiting a document to support a legal claim will amount to forgery. Antedating a document or inserting a false date in it constitutes forgery.

A general intention to defraud, without the intention of causing wrongful gain or loss to any particular person, is sufficient. There must, however, be a possibility of some person being defrauded. A man may have an intent to defraud and yet there may not be any person who could be defrauded by his act.

If several persons combine to forge an instrument and each takes a distinct part in it, they are nevertheless all guilty.

It will amount to forgery even though the fabricated document purports to be a copy of another document.

Personation at an examination will amount to forgery as well as cheating.

*Leading cases:—**R v Abbas Ali. R v Lalit Mohan. R v Shoshi Bhushan. R v Kotamraju. Harnam Singh.***

A document made to conceal a previous fraudulent or dishonest act amounts to forgery. But such falsification is not forgery if it is only for the purpose of concealing a previous negligent act.

The following are aggravated forms of the offence of forgery:—

1. Forgery of a record of a Court of Justice or of a register of births, baptism, marriage or burial, or a certificate or authority to institute or defend a suit or a power of attorney (**section 464**).

2. Forgery of a valuable security or will (**section 467**).

3. Forgery for the purpose of cheating (**section 468**).

4. Forgery for the purpose of harming the reputation of any person (**section 469**).

Other offences relating to documents are:—

1. Making or possessing a counterfeit seal, plate, etc., with intent to commit forgery punishable under section 467 (**section 472**).

2. Same as above when punishable otherwise (**section 473**).

3. Possession of a valuable security or will, known to be forged, with intent to use it as genuine (**section 474**).

4. Counterfeiting a device or mark used for authenticating any document described in **section** 467, or possessing counterfeit marked material (**section 475**).

5. Same as above when the documents are other than those described in section 467 (**section 476**).

6. Fraudulent cancellation, destruction, defacement or secreting, etc., of a will or an authority, to adopt, or a valuable security (**section 477**).

7. Falsification of accounts by a clerk or officer or servant with intent to defraud (**section 477A**).

Property-mark.

A mark used for denoting that movable property belongs to a particular person is called a 'property-mark' (**section 479**).

A person uses a false property-mark

(1) if he marks any movable property or goods, or any case, package, or other receptacle containing movable property or goods; or

(2) uses any case, package or other receptacle, having any marks thereon;

(3) in a manner reasonably calculated to cause it to be believed that the property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong (**section 481**). [One year, or fine, or both (**section 482**).]

The function of a property-mark to denote certain ownership is not destroyed because any particular property on which it is impressed ceases to be of that ownership.

While trade-mark denotes the manufacture of quality of the goods to which it is attached, property-mark, the ownership of them.

The following offences relate to counterfeiting any property-mark used by a person:—

1. Counterfeiting any property-mark used by another (**section 483**).

2. Counterfeiting a mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place or that property is of a particular quality or has passed through a particular office or that it is entitled to any exemption (**section 484**).

3. Making or possession of any instrument for counterfeiting a property-mark (**section 485**).

4. Selling or exposing or possessing for sale or any purpose of trade or manufacture any goods or things with a counterfeit property-mark (**section 486**).

5. Making a false mark upon any receptacle containing goods (unless without intent to defraud) (**section 487**).

6. Making use of any false mark (unless without intent to defraud) (**section 488**).

7. Tampering with property-mark with intent to cause injury (**section 489**).

There are five offences relating to currency-notes and bank-notes.—

Currency-notes and bank-notes.

1. Counterfeiting currency-notes or bank-notes (section 489A)

2. Selling, buying, or using as genuine forged or counterfeit currency-notes or bank-notes knowing the same to be forged or counterfeit (**section 489B**).

3. Possession of forged or counterfeit currency-notes or bank-notes, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine (**section 489C**). Possession and knowledge that the currency notes in question were counterfeit are both necessary. The section is not confined to Indian currency notes alone. *K Hashim* v *State of TN,* (2005) 1 SCC 237 [LNIND 2004 SC 1142] .

4. Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes (**section 489D**). It is not necessary that the machinery for counterfeiting found in possession of the accused should be the whole set required for counterfeiting. *K Hashim* v *State of TN,* (2005) 1 SCC 237 [LNIND 2004 SC 1142] .

5. Making or using documents resembling currency-notes or bank-notes (**section 489E**).

The expression "currency-notes" or "bank-notes" would include such notes of a foreign country. In other words, foreign currency would also be within the mischief of these provisions.

*Leading case:—**State of Kerala v Mathai Verghese,*** (1986) 4 SCC 746 [LNIND 1986 SC 461] .

Contract of service. Chapter XIX.

Chapter XIX treats of criminal breach of contracts of service.

The only case in which the Code now punishes a breach of contract is the following:—

Voluntarily omitting to perform a lawful contract to attend on or supply the wants of a child, or an insane or a sick person, who is incapable of providing for his own safety or of supplying his own wants (**section 491**). [Three months, or Rs. 200, or both.]

Ordinary servants, such as cooks, do not come within the purview of this section.

Marriage. Chapter XX.

Chapter XX deals with offences relating to marriage.

The following two provisions relate to mock or invalid marriages:—

1. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage (**section 493**). [Ten years and fine.]

2. Dishonestly or fraudulently going through a marriage ceremony knowing that no lawful marriage is thereby created (**section 496**). [Seven years and fine.]

The latter offence differs from the former in the fact that in it the ceremony is gone through, which is valid on the face of it but invalid for some reason known to one party, or the other. The former section applies to deception practised by a man on a woman; the latter applies to an offence by a man as well as by a woman.

Bigamy.

A person commits 'bigamy' if that person

(1) having a husband or a wife living,

(2) marries in any case in which such marriage is void,

(3) by reason of its taking place during the life of such husband or wife (**section 494**). [Seven years and fine.] If the former marriage is concealed from the person with whom the subsequent marriage is contracted, the punishment is ten years and fine (**section 495**).

There are two exceptions in which the second marriage is not an offence—

(1) When the first marriage has been declared void by a Court of competent jurisdiction.

(2) When the husband or wife has been continually absent or not heard of for seven years, provided that this fact be disclosed to the person with whom the second marriage is contracted.

This section applies to Mohammedan women but not to men of that community and to Hindus, Christians and Parsis of either sex.

The first marriage must be a valid marriage. But a Mohammedan girl has the option, if Shia, to ratify, or if Sunni, to cancel, her marriage on reaching the age of puberty if a person other than her father or grand-father had given her in marriage.

If the marriage is not a valid marriage according to the law applicable to the parties, no question of its being void by reason of its taking place during the life time of the husband or the wife of the person arises and this section does not apply. Admission of marriage by the accused is not evidence of it in a bigamy case; the second marriage as a fact and the essential ceremonies constituting it, must be proved. The Courts are not now so emphatic about proof of ceremonies. *Indu Bhagya Natekar v BP Natekar.*

Conversion of a Hindu wife to Mohammedanism or Christianity does not dissolve her marriage with her Hindu husband and if she marries a Mohammedan or a Christian she commits bigamy.

*Leading cases:—**R v Ram Kumari, R v Ganga; R v Millard; Bhaurao Shankar, Kanwal Ram.***

It appears, however, that a Christian cannot by embracing Mohammedanism marry a second time during the lifetime of his first wife. He cannot cast off to the winds a contractual obligation by his own act.

The rigour of the second exception was somewhat modified in *Tolson's* case, which lays down that if the second marriage takes place *within* seven years under a *bona fide* belief based on reasonable grounds that the former consort was dead, no offence would be committed.

Adultery.

A person commits adultery, if he

(1) has sexual intercourse with a person,

(2) whom he knows or has reason to believe to be the wife of another man,

(3) without the consent or connivance of that man,

(4) such sexual intercourse not amounting to the offence of rape (**section 497**). [Five years, or fine, or both.]

*Leading case:—**Joseph Shine v UOI*** (holding section 497 unconstitutional).

Taking or enticing away or concealing or detaining a woman, knowing or having reason to believe her to be married, from her husband, in order that she may have illicit intercourse with any man is punishable (**section 498**). [Two years, or fine, or both.]

Cruelty to married woman.—Husband or relative of husband of a woman subjecting her to cruelty is liable to be punished with imprisonment for a term which may extend to three years and shall also be liable to fine (**section 498A**). This Chapter [Chapter XX-A] and the section have given a new dimension to the concept of cruelty for the purposes of matrimonial remedies and the type of conduct described in the section will be relevant for proving cruelty. Consequence of cruelty which was likely to drive a woman to commit suicide or to cause grave injury or danger to life or limb or health, whether mental or physical, have to be shown for attracting the section. *Noorjahan v State,* (2008) 11 SCC 55 [LNIND 2008 SC 950] . The basic ingredients of section 498A are cruelty and harassment. *Undavalli Narayana Rao* v *State of AP,* (2009) 14 SCC 588 [LNIND 2009 SC 1515] .

*Leading case:—**Wazir Chand v State of Haryana.***

This section has been introduced by Criminal Law (Amendment) Act, 1983 (Act 46 of 1983) to combat the vice of dowry deaths. By the same Act section 113A has been added to the Indian Evidence Act, 1872, which enables the Court to draw a presumption regarding abetment of suicide by a married woman if she commits suicide within seven years of her marriage and it is shown that her husband or relative had subjected her to cruelty. A mere demand for dowry is an offence.

Illustrations on the meaning of harassment have been brought in from cases decided under the [English] Protection From Harassment Act, 1997. The various types of conduct which may constitute cruelty has been judicially construed.

Defamation. Chapter XXI.

A person is guilty of 'defamation' if he,

(1) by words, either (a) spoken, or (b) intended to be read; or

(2) by signs or visible representations;

(3) makes or publishes any imputation concerning any person;

(4) intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person (**section 499**). [Two years simple, or fine, both (**section 500**).]

Defamation may be of a deceased person (**Explanation 1**). It may be concerning a company, an association, or collection of persons (**Explanation 2**). It may be by ironical expressions. It is however necessary to show that this collection of persons is a small determinate body whose identity can be fixed. Advocates as a class cannot therefore be defamed.

The fact of reference to a particular person may be proved by means of the technique of "*innuendo*".

*Leading cases:—**Manmohan Kalia v Yash. Asha Parekh v State of Bihar.***

An imputation harms a person's reputation which, in the estimation of others, directly or indirectly, either

(1) lowers his moral or intellectual character; or

(2) lowers his character in respect of his caste or calling, or his credit; or

(3) causes it to be believed that his body is in a loathsome state, or in a state generally considered disgraceful (**Explanation 4**).

The definition in the Code applies to words as well as writings.

The IPC, 1860, makes no distinction between spoken and written defamation.

The defamatory matter must be published, i.e., communicated to a person other than the one defamed. The person who *makes* the imputation intending to harm the reputation of another, as well as the person who *publishes* it are alike guilty. The publisher need not be the maker of the defamatory matter.

The publisher of a newspaper is responsible for defamatory matter appearing in the newspaper whether he knows it or not. But it will be a good justification to plead if such matter is published in his absence and without his knowledge and the temporary management of the paper was in competent hands. A newspaper published at one place and sent to a subscriber at another will be considered to have been published at the latter place.

Exceptions.

Any of the following defences may be set up against a charge of defamation:—

1. Imputation of any truth which the public good requires to be made or published.

2. Opinion expressed in good faith respecting the conduct of a public servant in the discharge of his duties, or his character so far as it appears in that conduct.

3. Opinion expressed in good faith respecting the conduct of any person touching a public question, or his character so far as it appears in that conduct.

4. Publication of a substantially true report of the proceedings of a court.

Such report cannot be published if the court has prohibited it, or where the subject-matter of the trial is obscene or blasphemous.

5. Opinion expressed in good faith respecting the merits of a case decided in a court; or the conduct of a party, witness or agent concerned therein; or the character of such person so far as it appears in such conduct.

6. Opinion expressed in good faith respecting the merits of a performance submitted by the author to public judgment; or respecting the author's character so far as it appears in such a performance.

7. Censure passed in good faith by a person having lawful authority over another.

8. Accusation preferred in good faith to a duly authorized person.

9. Imputation made in good faith by a person for the protection of his interest, or of any other person, or for the public good.

The privilege of judges, counsels, pleaders, witnesses, and parties comes under this exception. So also, as to statements made in pleadings and reports to superior officers.

JUDGE.—A Judge cannot be prosecuted for defamation for words used by him whilst trying a case in court even though such words are alleged to be false, malicious, and without reasonable cause *(Rama v Subramanya)*.

COUNSEL OR PLEADER.—The Madras High Court held in *Sullivan v Norton* that no proceedings can be instituted against a counsel or pleader for uttering words that are defamatory, or are calculated to hurt the feelings of others, or are absolutely devoid of all solid foundation. This case has been doubted in a much later decision in which it was held that in the case of a lawyer good faith is to be presumed until bad faith is proved by proof of private malice when the Court will interfere (*Mir Anwarrudin v Fathim Bai)*.

The Bombay High Court has held that so long as an advocate acts on his client's instructions, he has the fullest liberty of speech provided that he did not know or could

not know that they were false. (*Bhaishankar v Wadia).* Where express malice is absent the advocate or pleader is protected *(Re Nagarji; Purshottamdas).*

The Calcutta High Court has held that advocates have no absolute privilege. But unless a counsel or pleader is actuated by improper motives he is protected. If bad faith is proved in putting questions to witnesses he is liable. There must be evidence that he was actuated by improper motives and not by a desire to further his client's interest.

The Patna High Court has held that the privilege is not absolute but qualified and the burden is on the prosecution to prove absence of good faith.

WITNESS.—The Bombay High Court has held in a Full Bench case that relevant statements made by a witness on oath or solemn affirmation in a judicial proceeding are not absolutely privileged on a prosecution for defamation, but are governed by the provisions of this section (*Bai Shanta v Umrao*).

The Calcutta High Court has laid down that such statements should be relevant to the inquiry *(Woolfun Bibi v Jerasat Sheikh).* If a witness voluntarily makes defamatory statements he will be guilty (*Haider Ali v Abru Mia*).

The Madras High Court is of opinion that statements of a witness made in the witness-box are absolutely privileged. If they are false the remedy is by indictment for perjury, and not for defamation *(Manjaya v Shesha Shetti).*

The Allahabad High Court has held in a Full Bench case that a witness can be prosecuted for defamatory statements concerning a person unless he shows that the statements fall under one of the exceptions to this section (*Ganga Prasad*).

The former Chief Court of the Punjab had adopted the view of the Calcutta and the Allahabad High Courts.

The former Nagpur High Court had followed the Bombay, the Calcutta and the Allahabad High Courts and held that a witness is not entitled to absolute privilege *(Chotelal's* case).

PARTY.—The Bombay High Court has held that relevant statements made by an accused are not absolutely protected, but are governed by the provisions of section 499*(Bai Shanta v Umrao).*

The Madras High Court has held that if an accused puts any question while defending himself, the question cannot be made the subject of a prosecution for defamation *(Hayes v Christian).* Statement in answer to a question by the Court is not absolutely privileged (*Tiruvengada Mudali's* case). If a defamatory statement is made before an officer who is neither a judicial officer nor a court, e.g., a Registration Officer, such a statement is not absolutely privileged. *(Krishnammal's* case).

The Calcutta High Court has ruled in a Full Bench case that a defamatory statement on oath by a party falls within section 499 and is not absolutely privileged (*Satish Chandra Chakravarti v Ram Doyal De).*

The Allahabad High Court holds the view that a suitor is not absolutely privileged.

PLEADING.—Defamatory statements in applications, pleadings and affidavits are not absolutely privileged.

The Bombay High Court has held that statements made in a written statement filed by the accused are not absolutely privileged. According to the Allahabad High Court any statement made in an application in good faith is protected.

The Calcutta and the Patna High Courts have held that defamatory statements in a plaint or an affidavit are not absolutely privileged. But the decisions of the Calcutta High Court are not unanimous on the point whether statements in a complaint to a Magistrate are absolutely privileged or not.

The Madras High Court has in a Full Bench case held that a defamatory statement in a complaint to a Magistrate is not absolutely privileged. *(Triuvengada Mudali's* case).

The former Chief Court of the Punjab had laid down that such statements were not absolutely privileged.

10. Caution intended in good faith for the good of the person to whom it is conveyed or of some person in whom he is interested, or for public good.

Other offences.

The following acts also are made punishable:—

1. Printing or engraving matter known to be defamatory (**section 501**).

2. Sale of printed or engraved substance containing defamatory matter (**section 502**).

Criminal intimidation. Chapter XXII.

A person commits 'criminal intimidation' if he

(1) threatens another with any injury

(a) to his person, reputation or property, or

(b) to the person, or reputation of any one in whom that person is interested,

(2) with intent

(a) to cause alarm to that person, or

(b) to cause that person to do any act which he is not legally bound to do, or omit to do any act which that person is legally entitled to do,

(3) as the means of avoiding the execution of such threat (**section 503**). [Two years, or fine, or both.]

If the threat be to cause (1) death or grievous hurt, (2) the destruction of any property by fire, (3) an offence punishable with death, imprisonment for life, or seven years' imprisonment, then seven years, or fine, or both (**section 506**). [If intimidation is caused by an anonymous communication, then *additional* imprisonment for two years (**section 507**).]

'Criminal intimidation' is closely analogous to 'extortion.' In the former the immediate purpose is to induce the person threatened to do, or abstain from doing, something which he was not legally bound to do or omit; in the latter, the purpose is getting filthy lucre by obtaining property. In 'criminal intimidation' the threat need not produce the effect aimed at nor should it be addressed directly to the person intended to be influenced. If it reaches his ears anyhow the offence is complete.

The following two provisions relate to insult offered to persons other than public servants—

Insult.

(1) Intentional insult with intent to provoke a breach of the peace, or to cause the commission of any offence. (**section** 504).

(2) Uttering any word, or making any sound or gesture, or exhibiting any object, intending to insult the modesty of a woman or intruding upon the privacy of a woman (**section 509**).

Statement conducing to public mischief.

Making, publishing or circulating, any statement, rumour, or report

(1) with intent to cause any officer, soldier, sailor or airman in the Army, Navy or Air Force, to mutiny, or to disregard or fail in his duty, or

(2) with intent to cause fear or alarm to the public whereby any person may be induced to commit an offence against the State or public tranquillity, or

(3) with intent to incite any class of persons to commit any offence against any other class is made punishable (**section 505**). [Three years, or fine, or both.] The offence is not committed if such statement, etc., is *true* and there is no such intent as aforesaid.

Making, publishing or circulating, any statement or report containing alarming news

(1) with intent to create or promote feelings of enmity, hatred or ill will between different groups or communities on grounds of religion, race, place of birth, residence, language, caste or community (**section 505**). [Three years, or fine, or both.]

(2) Aggravated form of the same offence when committed in any place of worship or in any assembly engaged in religious ceremonies (**section 505**). [Five years and fine.]

Divine displeasure.

Act or omission caused by inducing a person to believe that he will be rendered an object of Divine displeasure if he does not do or omit to do the things which it is the object of the offender to cause him to do or omit, is punishable (**section 508**). [One year, or fine, or both.]

Intoxication.

Intoxication alone is not made punishable by the Code. But a person who in a state of intoxication appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person is liable to punishment (**section 510**). [24 hours, or Rs. 10, or both.]

Attempts. Chapter XXVIII.

The last chapter deals with attempts to commit offences. Attempting to commit or causing to be committed an offence, punishable by the Code with imprisonment for life or imprisonment, and in such attempt doing any act *towards the commission of the offence is*—where there is no express provision for the punishment of such attempt—punishable with imprisonment provided for the offence, for a term which may extend to one-half of the imprisonment for life or one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both (**section 511**).

Every commission of a crime has three stages—

(1) intention to commit it;

(2) preparation for its commission; and

(3) a successful attempt.

Mere *intention* to commit a crime, not followed by any act, does not constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it or towards maturing and effecting it.

Preparation consists in devising means for the commission of an offence. The section does not punish acts done in the mere stage of preparation. Mere preparation is punishable only when the preparation is to wage war against the Government of India (**section 122**), to commit depredations on the territories of any power at peace with the Government of India (**section 126**), or to commit dacoity (**section 399**).

Attempt is the direct movement towards the commission after the preparations are made. To constitute the offence of attempt there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence.

It is, however, not necessary to show that it is the last proximate act. It is enough if it is one in a series.

An attempt can only be manifested by acts which would end in the consummation of the offence, but for intervention of circumstances independent of the will of the party. An attempt is punishable even when the offence attempted cannot be committed; as when a person intending to pick another's pocket thrusts his hand into the pocket but finds it empty.

If the *attempt* to commit a crime is successful, then the crime itself is committed; but where the attempt is not followed by the intended consequences, section 511 applies.

*Leading cases:—**Abhayanand. Om Prakash. R v Ramsarun. R v Mac Crea. R v Mangesh. R v Peterson. R v Baku.***

1. Stephen's History of Criminal Law of England, vol I.

2. Note Q, p 174.
3. *Mrs. Sarah Mathew v The Institute of Cardio Vascular Diseases*, (2014) 2 SCC 62 [LNIND 2013 SC 997] .
4. *Standard Chartered Bank v Directorate of Enforcement,* (2005) 4 SCC 530 [LNIND 2005 SC 476] ; *Iridium India Telecom Ltd v Motorola Incorporated,* (2011) 1 SCC 74 [LNIND 2010 SC 1012] .
5. *Abu Salem Abdul Qayoom Ansari v State of Maharashtra*, (2011) 11 SCC 214 [LNIND 2010 SC 858] .
6. *Lee Kun Hee v State of UP*, (2012) 3 SCC 132 [LNIND 2012 SC 89] ; *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] .
7. *BK Wadeyar v Daulatram Rameshwarlal*, AIR 1961 SC 311 [LNIND 1960 SC 493] .
8. *M V Elisabeth v Harwan Investment and Trading*, AIR 1993 SC 1014 [LNIND 1992 SC 194] .