

De Facto IAS
Landmarks Judgements on IPC

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The Indian Penal Code

GENERAL PRINCIPLES, MENS REA

Queen v. Tolson (1889)232 BD168

It was held by the court that as a general rule there must be a guilty mind before there can be a crime but a statute may make an act criminal whether there has been any intention to break the law or not.

State of Maharashtra v. M.H. George, AIR 965 SC 722

The Supreme Court considered the application of the principle of mens rea in statutory offences. The court held that unless the statute either clearly or by necessary implication rules out mens rea as a constituent part of the crime the accused should not be held guilty of an offence unless he has a guilty mind.

Sherras v. De Rutzen (1895) 1 QB 918

There is a presumption that mens rea is an essential element of every offence. But this presumption is liable to be displaced either by the words of the statute creating the offence or by the subject matter with which it deals.

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PUNISHMENTS

Bachan Singh v. State of Punjab, AIR 1980 SC

The Supreme Court held that the death sentence should not be passed except in 'rarest of the rare case'.

Gopal Vinayak Godse v. State, AIR 1961 SC 600

Life imprisonment means an imprisonment that continues till the life of the convict and is nothing less.

Shiva Kumar @ Shiva @ Shivamurthy vs State of Karnataka (2023)

The majority view in the case of Union of India v. V. Sriharan @ Murugan & Ors., 2016 (7) SCC 1 cannot be construed to mean that power to impose fixed term sentence cannot be exercised by the Constitutional Courts unless the question is of commuting the death sentence - When a Constitutional Court finds that though a case is not falling in the category of 'rarest of the rare' case, considering the gravity and nature of the offence and all other relevant factors, it can always impose a fixed-term sentence so that the benefit of statutory remission, etc. is not available to the accused.

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GENERAL EXCEPTION

KM. Nanawati v. State of Maharashtra AIR 1962 SC 605

Supreme Court observed that if an accused pleads exceptions contained in Indian Penal Code then there is a presumption against him and the burden to rebut that presumption is on him

McNaughten's Case

The court laid down the following propositions regarding insanity:

1. Every man is presumed to be sane and possess a sufficient degree of reason to be responsible for his crimes until the contrary is proved.
2. To establish the defence of insanity it must be clearly shown that at the time of committing the act, the party accused was labouring under such defect of reason as not to know the nature and quality of the act he was doing or if he did know this, that he did not know that what he was doing was wrong.
3. If the accused was conscious that the act was one which he ought not to do and if that act was at the same time contrary to the law of the land, he is punishable.
4. Where a person is under an insane delusion as to the existing facts commits an offence in consequence thereof, the answer must depend on the nature of the delusion, but making the assumption that he labours under partial delusion only and is not in other respects insane, he must be considered in the same situation as to the responsibility as if the facts with respect to which the delusion exists were real.

Queen Empress v. K.N. Shah, (1896)ILR23 Cal 604

Not every form of unsoundness of mind would exempt one from criminal responsibility. It is only that unsoundness of mind which materially impairs the cognitive faculties of the mind that can form the ground of exemption from criminal liability.

Dayabhai Thakkar v. State of Gujarat, AIR 1964 SC 1563

When a plea of insanity is set up the court has to consider whether at the time of commission of the offence the accused by reason of unsoundness of mind, was incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed.

Director of Public Prosecutions v. Beard, (1920) AC 479

House of Lords laid down three rules regarding drunkenness:

1. Insanity, whether produced by drunkenness or otherwise is a defence to the crime charged;
2. Evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had the intent

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3. Evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut presumption that a man intends that natural consequences of his acts.

Basudev v. State of Pepsu, AIR 1956 SC 488

So far as the knowledge is concerned we must attribute to the intoxicated man the same knowledge as if he was quite sober, but as far as intent is concerned it must be gathered from the attending general circumstances of the case paying due regard to the degree of intoxication.

Puran Singh v. State of Punjab, AIR 1975 SC 1674

The court laid down the following criteria as to the nature of possession which may entitle a trespasser to exercise the right of private defence of the property and person:-

1. The trespasser must be in actual physical possession of the property over a sufficiently long period.
2. The possession must be in the knowledge, either express or implied, of the owner or without any concealment and which contains an element of *animus possidendi*.
3. The process of dispossession of the true owner by the trespasser must be complete and final.
4. One of the usual tests to determine settled possession of the true owner by the trespasser in the case of cultivable land, would be whether any crop has been grown on the land. If the crop has been grown, even the true owner has no right to destroy the crop grown by the trespasser.

Deo Narain v. State of U.P., AIR 1973 SC 473

According to Section 102, the right to private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed. Such right continues so long as such apprehension of danger to the body continues. The threat, however, must reasonably give rise to present and imminent danger and not remote danger.

Mahavir Chowdhary v. State of Bihar, (1996) 5 SCC 107

Section 97 recognizes the right of a person not only to defend his own or another's body but to defend his own or another's property. It is well settled that the rule of retreat which common law courts have recognized is not relevant under Indian Penal Code. In India there is no rule which expects a man to run away when confronted with a situation where he can exercise his right of private defence.

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Sukumaran v. State, (2019) 15 SCC 117

A mere reasonable apprehension is enough to put the right of self defence into operation. It is not necessary that there should be actual commission of the offence in order to give the right to private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

Mohd. Anwar v. State (NCT of Delhi), (2020) 7 SCC 391

In order to successfully establish the defence of unsoundness of mind under Section 84 IPC, accused must show a preponderance of probabilities that he or she suffered from a serious enough mental disease which would affect an individual's ability to distinguish right and wrong. It must also be established that the accused was afflicted by such disability particularly at the time of commission of crime and that but for such impairment, crime would not have been committed.

Prem Singh vs State of NCT of Delhi (2023)

The burden of proving the existence of circumstances so as to bring the case within the purview of Section 84 IPC lies on the accused in terms of Section 105 of the Evidence Act; and where the accused is charged of murder, the burden to prove that as a result of unsoundness of mind, the accused was incapable of knowing the consequences of his acts is on the defence, as duly exemplified by illustration (a) to the said Section 105 of the Evidence Act - The mandate of law is that the Court shall presume absence of the circumstances so as to take the case within any of the General Exceptions in IPC.

Paul v. State of Kerala, (2020) 3 SCC 115

So far as knowledge is concerned in case of voluntary drunkenness, knowledge is to be presumed in the same manner as if there is no drunkenness. So far as intention is concerned, it must be gathered from attending to the general circumstances of the case.

CONSPIRACY

Bimbadhar Pradhan v. State of Orissa, AIR 1954 SC 469

The Supreme Court observed that it is not essential that more than one person should be convicted of the offence of conspiracy. It is enough if the court is in a position to find that two or more persons were actually concerned in the conspiracy.

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State of Tamil Nadu v. Nalini 1999 Cri. LJ. 3124 (SC)

The Supreme Court held that association of the accused with the main accused or knowledge of conspiracy would not make the accused a conspirator. Agreement is sine qua non for the offence.

Rajender v. State (NCT of Delhi), (2019) 10 SCC 623

Three essentials must be proved to establish charges of criminal conspiracy. Firstly, a criminal object, secondly, a plan or a scheme embodying means to accomplish that and lastly, an agreement between two or more persons to cooperate for the accomplishment of such object.

State (NCT of Delhi) v. Shiv Charan Bansal, (2020) 2 SCC 290

Conspiracy is mostly proved by circumstantial evidence by taking into account the cumulative effect of the circumstances indicating the guilt of the accused rather than adopting an approach by isolating the role played by each accused.

Manoj Kumar Soni vs State of Andhra Pradesh (2023)

One person alone can never be held guilty of criminal conspiracy because one cannot conspire with oneself. The offence of criminal conspiracy is committed only when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means.

OFFENCES AGAINST THE STATE

State (N.C. T of Delhi) v. Navjot Sandhu 2005 Cri. L.J. 3950

The Supreme Court held that to constitute an offence of waging war under Section 121 of the Code the intention and purpose of the warlike operations directed against the government is sine qua non.

Kedar Nath v. State AIR 1962 SC 955

The Supreme Court held that Section 124-A does not violate Article 19 (1) (a) of the Constitution as it is a reasonable restriction.

SG Vombatkere v. Union of India (2023)

The provisions of Section 124A of the IPC continue to remain on the statute book. Even if the new law which is proposed to be placed by the Government before the legislature results in a modification of the existing provision of Section 124A, there is a presumption that a penal statute

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would have prospective and not retrospective effect. Existing prosecutions under Section 124A will likely be governed by that provision. Consequently, the validity of the prosecutions which have been launched or would be launched so long as Section 124A continues to remain on the statute would have to be assessed under it. The issue of the validity of the provision for the period that it continues to operate would, therefore, need to be determined.

COMMON INTENTION AND COMMON OBJECT

Mahboob Shah v. Emperor, AIR 1945 PC 118

The court held that common intention implies a pre-arranged plan, prior meeting of minds or prior consultation between all persons constituting the group. The court laid down the following principles under Section 34 :-

1. Essence of liability under Section 34 is found in 'common intention'
2. To invoke Section 34 it must be shown that act was done in furtherance of common intention;
3. Common intention implies pre-arranged plan and it must be proved that criminal act was done in concert pursuant to pre-arranged plan;
4. For intention to be common it must be known to all members and must also be shared by them.

Barendra Kumar Ghosh v. Emperor, 52 LA. 40 (P.C.)

The court held that even if a person who does not do anything but if he has common intention he will be liable. The court said 'they also serve who only stand and wait'.

Pandurang v. State of Hyderabad AIR 1955 SC216

The Supreme Court differentiated between similar intention and common intention. The court held that several persons can simultaneously attack a man and each can have the same intention, namely, the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the specific section because there was no prior meeting of minds to form a pre-arranged plan.

Mala Singh v. State of Haryana, (2019) 5 SCC127

The Supreme Court observed that, while convicting accused by altering charge from Section 149 IPC to Section 34 IPC, their 'common intention' should be proved.

Rajesh Govind v. State of Maharashtra, AIR 2000 SC 160

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Common intention may develop on the spur of the moment. However, in such cases there has to be cogent material to arrive at the finding to hold all accused guilty

Tukaram Ganpat v. State of Maharashtra, v AIR 1974 SC 514

Section 34 does not envisage the separate act by all the accused persons for becoming responsible for the ultimate criminal act. Establishment of an independent overt act on the part of each accused is not the requirement of law to allow Section 34 to operate.

Madan Singh v. State of Bihar, 2004 CriLJ 2862 (SC)

Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he shared the same or was actuated by that common object and that object is one of those set out in Section 141 Indian Penal Code.

Balvir Singh v. State of M.P., (2019) 15 SCC 599

To invoke Section 34 it must be established that the criminal act was done by more than one person in furtherance of common intention of all. It must therefore, be proved that

1. There was common intention on part of several persons to commit a particular crime; and
2. The crime was actually committed by them in furtherance of a common intention

Subed Ali v. State of Assam, (2020) 10 SCC 517

Common intention consists of several persons acting in unison to achieve a common purpose, though their roles may be different, the role may be active or passive is irrelevant, once common intention is established, there can hardly be any direct evidence of common intention. It is a matter of inference to be drawn from facts and circumstances of the case. The foundation for conviction on the basis of common intention is based on the principle of vicarious liability by which a person is held responsible for the acts of others with whom he shared the common intention.

Chellappa v. State, (2020) 5 SCC 160

Section 34 is not a substantive offence. Before a person can be held liable under Section 34, it must be established that there was a common intention. Common intention shared by the accused should be anterior in time to commission of offence but it may also develop on the spot

Ram Naresh v. State of UP (2023)

For applying Section 34 IPC there should be a common intention of all the co-accused persons which means community of purpose and common design. Common intention does not mean that the co-accused persons should have engaged in any discussion or agreement so as to prepare a plan or hatch a conspiracy for committing the offence. Common intention is a psychological fact

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and it can be formed a minute before the actual happening of the incidence or as stated earlier even during the occurrence of the incidence.

State of M.P. v. Killu, (2020) 16 SCC 735

Under Section 149 IPC once the membership of unlawful assembly is established, it is not incumbent upon the prosecution to establish whether any specific overt act has been assigned to any accused. Mere membership of unlawful assembly is sufficient and every member of unlawful assembly is vicariously liable for the acts of others.

Chandra Pratap Singh v. State of MP (2023)

A clear distinction is made between common intention and common object in that common intention denotes action in concert and necessarily postulates the existence of a prearranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or pre concert. Though there is a substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more, do an act and intend to do it, both Section 34 and Section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not, therefore, to be permitted.



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OFFENCES AGAINST HUMAN BODY

R. v. Swindall and Osborne (1846)2 C&K 230

Two car drivers after getting drunk began to race with each other and drove over an old man. Both were charged with contributing to death of deceased by their negligence and improper conduct

State of UP. v. Virendra Prasad, 2004 CriLJ. 1373 (SC)

Under clause 3 of Section 300 culpable homicide is murder if both of the following are satisfied:-

1. The act which caused death is done with the intention of causing death or is done with the intention of causing a bodily injury;
2. The injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

Mithu v. State of Punjab, AIR 1983 SC

The Supreme Court held Section 303 unconstitutional, as it is against the spirit of Articles 14 and 21 of the Constitution.

Anbazhagan vs State (2023)

Difference between the two parts of Section 304- Under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC - If the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention ', whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

Balu Sudam Khalde And Another v. The State Of Maharashtra 2023

On a plain reading of Exception 4 of Section 300, it appears that the help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found.

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Jacob Mathew v. State of Punjab, 2005 CriLJ. 3710 (SC)

The word ‘gross’ has not been used in Section 304A, but it is settled that in criminal law, negligence or recklessness must be of such a high degree as to be ‘gross’. The expression ‘rash and negligent act’ is to be qualified by the word ‘grossly’.

Arvind Kumar v State, NCT of Delhi (2023)

There is a failure on the part of the appellant who was holding a sophisticated automatic weapon to ensure that the change lever was always kept in a safety position. This was the minimum care that he was expected to take while he approached the deceased. Thus, there is gross negligence on the part of the appellant which led to a loss of human life.

Mustafa Shahdal Shaikh v. State of Maharashtra, AIR 2013 SC 851

The Supreme Court interpreted the expression ‘soon before death’ and held that there must be a proximate and live link between the effect of cruelty based on dowry demand and the concerned death.

Om Prakash v. State of Punjab, AIR 1961 SC 1782

A person commits an offence with the intention to commit murder and in pursuance of such intention does an act towards its commission, he will be liable to attempt to murder. It is not necessary that bodily injury capable of causing death should have been caused.

S K Khaja vs State of Maharashtra (2023)

Merely because the injuries sustained by the complainant were very simple in nature, that would not absolve the appellant/accused from being convicted for the offence under Section 307 of the IPC. What is important is an intention coupled with the overt act committed by the appellant/accused.

P. Rathinam v. Union of India, AIR 1994 S.C.

The Supreme Court observed that Section 309 violates Article 21 of the Constitution.

Smt. Gyan Kaur v. State of Punjab, JT1996 (3) SC 339

The Supreme Court overruled previous decisions and held that Section 309 is not violative of Article 14 and 21 of the Constitution. Right to die is not included in the Right to life.

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Varadarajan v. State of Madras, AIR 1962 SC 942

The Supreme Court said that there was a distinction between the 'taking' and 'allowing a minor to accompany any person'. Something more has to be shown, some kind of inducement or active participation of the accused in 'taking' the person.

T.D. Vadgama v. State of Gujarat, AIR 1973 SC 2313

The Supreme Court held that the word 'entice' seems to involve the idea of inducement or allurement by giving rise to hope or desire on the other.

Independent Thought v. Union of India, (2017) 10 SCC 800

The Supreme Court read down Exception 2 of Section 375. The court held that sexual intercourse with wife below the age of 18 years constitutes rape. Therefore, after the decision of the Supreme Court in this case 'fifteen years' in Exception 2 of Section 375 should be read as 'eighteen years'.

Navtej Singh Johar & Ors. v. Union of India, (2018) 10 SCC 1

Supreme Court held Section 377 of Indian Penal Code held unconstitutional to that extent it criminalizes consensual homo-sexual acts in private. The Supreme Court overruled its previous 2013 judgement in *Suresh Kumar Kaushal v. Naz Foundation*.

Baldev Singh v. State of Punjab, (2008) 13 SCC 233

The expression 'soon before her death' used in the substantive S. 304-B IPC and S. 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. The expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death.

State of Madhya Pradesh v. Kalyan Singh & Ors. (2019) 4 SCC 268

The Supreme Court observed that offence under Section 307 of the IPC (Attempt to Murder) cannot be quashed, even when there is any settlement between the complainant and the accused, as it is a non-compoundable offence.

Rajesh v. State of Haryana, (2019) 6 SCC 368

The Supreme Court reiterated that conviction under Section 306 of the Indian Penal Code (abetment of suicide) is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide.

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Anurag Soni v. State of Chhattisgarh, (2019) 13 SCC 1

The Supreme Court reiterated that the consent for sexual intercourse obtained by a person by giving false promise of marriage would not excuse him from rape charges.

Stalin v. State, (2020) 9 SCC 524

There is no hard and fast rule that in a case of single injury Section 302 IPC would not be attracted. It depends upon the facts and circumstances of each case. The nature of injury, the part of the body where it is caused, the weapon used in causing such injury are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not.

Paul v. State of Kerala, (2020) 3 SCC 115

In order for an act to be punished as murder, it must be culpable homicide which is declared to be murder under Section 300. Murder requires establishment of special mens rea while all cases of culpable homicide may not amount to murder.

OFFENCES AGAINST PROPERTY

R. K. Dalmia v. Delhi Administration, AIR 1962 SC 1821

The words of Section 405 is wide enough to include the case of a partner, if it be proved that he was in fact entrusted with the partnership property, or with a dominion over it, and had dishonestly misappropriated it or converted it to his own will.

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Satishchandra Ratanlal Shah v. State of Gujarat, (2019) 9 SCC 148

The Supreme Court observed that inability of a person to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction.

Deepak Gaba vs State of Uttar Pradesh (2023)

A mere dispute on monetary demand does not attract the offence of criminal breach of trust - Mere wrong demand or claim would not meet the conditions specified by Section 405 of the IPC in the absence of evidence to establish entrustment, dishonest misappropriation, conversion, use or disposal, which action should be in violation of any direction of law, or legal contract touching the discharge of trust.

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Deepak Gaba vs State of Uttar Pradesh (2023)

The sine qua non of Section 415 of the IPC is “fraudulence”, “dishonesty”, or “intentional inducement”, and the absence of these elements would debase the offence of cheating - For the offence of cheating, there should not only be cheating, but as a consequence of such cheating, the accused should also have dishonestly adduced the person deceived to deliver any property to a person; or to make, alter, or destroy, wholly or in part, a valuable security, or anything signed or sealed and which is capable of being converted into a valuable security.



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Joseph Shine v. Union of India, (2019) 3 SCC 39

The Supreme Court struck down Section 497 of Indian Penal Code which criminalises adultery as unconstitutional.

Nitika v. Yadwinder Singh, 2019 (3) RCR (Criminal) 973

The Supreme Court reiterated that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code.

Rashmi Chopra v. State of UP., (2019) 15 SCC 357

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The Supreme Court held that Section 498A does not contemplate that a complaint for offence under Section 498A should be filed only by women, who are subjected to cruelty by husband or his relative.

ATTEMPT

Abhayanand Mishra v. State of Bihar, AIR 1961 SC 1698

Supreme Court held that a person commits the offence of attempt when-

1. He intends to commit that offence;
2. Having made preparations and with the intention to commit the offence does an act towards its commission;
3. Such an act need not be a penultimate act towards the commission of offence but must be an act during the course of committing the offence.

State of Maharashtra v. Mohd. Yakub AIR 1980 SC 1111

The Supreme Court held that some act must be done towards the commission of offence and such act must be 'proximate' to the intended result. Proximity need not be in relation to time and action but in relation to intention.

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