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Notes On
Law of Crimes
(Bharatiya Nyaya Sanhita, 2023)
(The Penal Code)

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Topic - I

INTRODUCTION

Maintenance of "Peace and Order" / "Law and Order" in the society is one of the most important and legitimate functions of every State. It is one of the main sovereign functions of the State. This function includes the protection of life, liberty and property of persons. Maintenance of peace and order is absolutely essential for human beings to live peacefully and without fear of injury to their lives and property. In order to maintain 'law and order' certain acts and omissions of human beings are prohibited by law. If a person violates such prohibited act or omission, he commits a criminal wrong and will be punished according to law. The instrument by which the State discharges its primary function of maintaining law and order is the penal law (criminal law) of the land. The measure adopted by the State to maintain law and order is the threat of punishment. The main object of criminal law is the protection of life, liberty and property of people living in the society.

A crime is an **act or omission** which the law punishes. A crime is considered to be a public wrong, i.e., a wrong against public at large or wrong against the State. When a person commits a crime, the State prosecutes and punishes him.

Definition of Crime

Several authorities have defined the term "crime". The following definitions are noteworthy.

Sir William Blackstone

"A crime is an act committed or omitted in violation of public law forbidding or commanding it".

Sir James Fitz James Stephen

"A crime is an act or omission in respect of which legal punishment may be inflicted on the person who is in default either by acting or omitting to act".

Kenny

"Crimes are wrongs whose sanction is punitive and in no way remissible by any private person, but is remissible by the Crown (State) alone, if remissible at all".

According to him, the following are the three characteristics of a crime:

- (1) That it is a harm, brought about by human conduct, which the sovereign power in the State desires to prevent;
- (2) That among the measures of prevention selected is the threat of punishment;

(3) That legal proceedings of a special kind are employed to decide whether the person accused did, in fact cause the harm, and is according to law to be held legally punishable for doing so.

Professor Goodhart

A crime is any act which is punished by the State.

A crime is an offence (i.e., an act or omission) punishable at law. A punishment in any form is inflicted in a crime. There are different kinds of punishment ranging from death to warning. If a law awards punishment for a wrong it is known as criminal or penal law.

The Indian Penal Code, 1860

In India, the criminal jurisprudence came into existence from the time of Manu. Manu has recognised assault, theft, robbery, false evidence, slander, criminal breach of trust, cheating, adultery and rape as offences. The King protected his subjects and the subjects in return owed him allegiance and paid him revenue(tax). The King administered justice by himself, if unable due to certain reasons, the matter was entrusted to a judge. If a criminal was fined, the fine went to the King's treasury and was not given as compensation to the injured party.

Different laws came into existence in the reigns of different rulers. When the Britishers came into India, Muslim criminal law as applicable in major part of India. They adopted a different set of law which was based on British pattern, but it

was not uniform throughout India. Different regulations were passed prescribing practices and procedures to be followed.

The First Law Commission was appointed in India in 1835. The commission had four members. Lord T.B.Macaulay was the Chairman of the First Law Commission. The Commission was directed to prepare a draft of penal code for India. The Commission prepared the draft and submitted it to the Government in 1837. This draft was enacted into law in 1860 by the Legislative Council. It received the assent of the Governor General on 6th October, 1860. By this enactment, Muslim Criminal Law was completely abolished and a uniform penal law for India was introduced.

In India, several enactments contain penal provisions. The Indian Penal Code, 1860 hereinafter referred to as “Code or I.P.C” is the major criminal law but it is not exhaustive. It is supplemented by several other statutes to address a wide array of criminal offenses. However, these laws have been periodically amended to remain relevant to modern-day challenges. For instance, the **Arms Act, 1959**, was amended through the **Arms (Amendment) Act, 2019**, which introduced stricter penalties for illegal arms possession and enhanced regulations for firearms licensing. Similarly, the **Narcotic Drugs and Psychotropic Substances Act, 1985**, was revised by the **NDPS (Amendment) Act, 2021**, to address loopholes related to the misuse of narcotic substances. The **Motor Vehicles Act, 1988**, saw significant updates under the **Motor Vehicles (Amendment) Act, 2019**, which emphasized road safety through stricter traffic violation penalties.

Amendments to the **Food Safety and Standards Act, 2006**, have focused on improving food safety standards and strengthening

regulatory frameworks, while the **Prevention of Damage to Public Property Act, 1984**, was revised in 2016 to expand its scope to include damages to public infrastructure during protests and unrest.

Other important legislations have also undergone changes to adapt to contemporary needs. For instance, the **Immoral Traffic (Prevention) Act, 1956**, has been updated to enhance victim protection and combat human trafficking more effectively. The **Negotiable Instruments Act, 1881**, was amended in 2018, addressing issues related to dishonored cheques and ensuring timely redressal of financial disputes. Similarly, the **Explosive Substances Act, 1908**, and the **Explosives Act, 1884**, have been periodically revised to address evolving national security concerns and ensure safe handling of explosive materials. These amendments reflect an ongoing effort to strengthen the Indian criminal law framework to address the complexities of contemporary society while safeguarding public interest.

The Indian Penal Code, 1860, has been amended 78 times, with the last amendment introduced through the Criminal Law (Amendment) Act, 2021. However, a significant shift occurred with the enactment of the **Bharatiya Nyaya Sanhita, 2023**, which replaced the IPC, marking a major step toward reforming India's criminal justice system.

The Bharatiya Nyaya Sanhita, 2023

The **Bharatiya Nyaya Sanhita** hereinafter referred to as "Sanhita or B.N.S" consists of 358 sections divided into 20 chapters, offering a comprehensive framework to address crimes effectively and equitably. By eliminating outdated provisions and incorporating progressive measures, it seeks to provide a robust, efficient, and

victim-centric justice delivery system. The Bharatiya Nyaya Sanhita officially came into force on July 1st 2024, symbolizing a break from colonial-era legal principles and the embrace of an independent and forward-looking legal ethos.

The Bharatiya Nyaya Sanhita (B.N.S), 2023, introduces several legal reforms, new offences, and gender-neutral amendments while omitting certain outdated provisions. It defines 'transgender' in line with the Transgender Persons (Protection of Rights) Act, 2019, and introduces 'community service' as a punishment for minor offences. New laws criminalize abetment from abroad, deceitful sexual intercourse, and hiring children for criminal activities. Provisions now cover mob lynching, snatching, hit-and-run incidents, organized crime, terrorism, and actions endangering national sovereignty. The punishment for murder by a life convict has been revised. Additionally, sections on sedition, adultery, and unnatural sex have been removed in compliance with judicial rulings.

This law emphasizes gender neutrality by modifying provisions related to disrobing, voyeurism, and child procurement. The amendments also enhanced fines and term of imprisonment for counterfeiting, public disorder, theft (including vehicle and idol theft), causing death by negligence, and mischief. Some changes, such as the removal of Section 153AA (which penalized carrying arms in public processions), have raised concerns about potential misuse.

The B.N.S has consolidated similar provisions and scattered provisions into single chapters.

Overall, B.N.S aims to modernize India's legal framework, ensuring proportional punishments while addressing contemporary societal and security challenges.

Topic - II

WHAT ARE THE CONSTITUENT ELEMENTS OF A CRIME?

"Actus non facit reum nisi mens sit rea". Comment.

or

What are the Essential Conditions for Criminal Liability ?

The fundamental principle of penal liability is contained in the maxim: "**actus non facit reum nisi mens sit rea**". The maxim means that an act does not amount to a crime, unless it is done with a guilty intention. In other words, the act alone does not amount to guilt, it must be accompanied by a guilty mind. The *intent* and the *act* must both concur to constitute the crime. Thus there are two essential conditions of criminal liability.

They are:

- (1) **Actus reus; and**
- (2) **Mens rea.**

(1) Actus reus. (Result of human conduct)

Actus reus is the first essential element or ingredient of a crime. An act is any event which is subject to the control of human will. An act is a conscious movement. It is the conduct which results from the operation of will. "Actus reus" refers to the result of human conduct which the law seeks to prevent. If any human conduct (actus) is not prohibited by law, the act or conduct will not be termed as a crime. A person who commits such an act is not liable for a crime. Any movement of the body which is not a consequence of the determination of the will is

not an act. Thus involuntary actions will not become criminal act. If a somnambulist sets fire to a house during his sleepwalk, he will not be liable to be punished under the criminal law.

Actus reus may be negative or positive. 'X' shoots 'Y' and kills him. It is a positive *actus reus*.

The mother of a child does not feed the child and causes the death of the child by putting it in starvation. The *actus reus* is negative. Thus, *actus reus* in this illustration is omission to act.

In order to be liable for a crime, the act or omission should be one prohibited by law. The following illustrations will make the point more clear.

- (i) 'A', who is having sufficient means, failed to help a starving man. The man dies due to starvation. 'A' is not criminally liable since his omission is not prohibited by law.
- (ii) 'A', who knows swimming, failed to save the life of a drowning child and the child died as a result of the omission. The omission is not prohibited by law and 'A' is not liable for any crime. If 'A' was a coast-guard, the omission to act would have been a crime.
- (iii) 'A' is a Jail warden. He failed to supply food to the prisoners in the jail and several prisoners died due to starvation. 'A' is liable to be punished for murder as he violated a prohibited omission.

(iv) 'A' shoots 'B' and causes the death of 'B'. 'A' is liable to be punished for murder since he violated a prohibited act.

(II) Mens rea (Guilty Mind)

A prohibited act will become a crime when it is accompanied by a certain state of mind. There must be a mind at fault before any crime can be committed. An act or omission alone is not sufficient to constitute a crime. The act or omission should have followed by an evil intent. Thus we may say,

A crime = A prohibited act or omission + Guilty mind.

The combination of an act with the evil or guilty intent makes a crime. An act by itself is not a wrong. An act which has done with guilty mind makes it a crime, if the act is prohibited by law. Mens rea is an evil intention or knowledge of the wrongfulness of the act.

Mens rea may be of different kinds:

(1) Intention

Intention indicates the state of mind of a man who not only foresees but also desires the possible consequence of his conduct.

Example

'X' threw a stone at 'Y' with a desire to cause injury to 'Y'. As a result of that, injury was caused to 'Y'. The desire of 'X'

to cause injury to 'Y' is the intention or *mens rea* and the act of throwing the stone and the consequential injury is the *actus reus*.

(2) Recklessness /Rashness

When a person does an act with foresight of injury but without desire to cause harm to any person, the state of mind can be called "recklessness".

Example : 'X' drives a vehicle at high speed through a busy street without any desire to commit injury to any person. He foresees the possibility of accident but consciously takes the risk that may result from such a driving. The accident may or may not happen. The state of mind of 'X', at the time of driving, is recklessness. It is a mind at fault (*mens rea*) for constituting a crime.

(3) Negligence

Negligence means 'want of care'. When a person who is bound to take care fails to take care of an ordinary prudent man his mind is at fault and the faulty state of mind is known as "negligence". Recklessness includes negligent conduct.

(4) Knowledge

Knowledge refers to the personal information of a person who does an act. It is a state of mind of a person. Under law, doing of an act with knowledge may constitute a crime.

Example : 'X' receives stolen property from 'Y' with knowledge that it is stolen property. The act of 'X' is an offence punishable under law.

(5) Motive

Motive is an attitude of the mind. It is the emotion that prompting to do an act. Love, compassion, fear, jealousy, hatred, perverted lust, desire for money etc., are examples of emotion promoting us to do an act and they constitute motive.

Motive refers to the ultimate intent of a person. 'X' is a starving man. He decides to commit theft of bread to satisfy his hunger and he commits theft of bread from B's shop. The immediate intention of his act is theft of bread and the motive is to satisfy his hunger. Thus, motive is the ulterior object of an act which prompted him to do an act. Purity of motive or good motive will not convert an act which otherwise is criminal into one which is not punishable.

Topic -III

MENS REA UNDER THE BHARATIYA NYAYA SANHITA, 2023.

The term *mens rea* as such is not included in the Bharatiya Nyaya Sanhita. The well known terms like *intentionally*, *voluntarily*, *fraudulently*, *dishonestly*, *knowingly*, etc., are used in various sections of the B.N.S. to define offences. By using these terms the offences are defined with sufficient *mens rea* required to treat an act as a crime.

Some of the terms used in the B.N.S to denote the requisite *mens rea* for a crime are defined below.

1. Voluntarily

Section 2(33) of the B.N.S defines the term *Voluntarily*,

It is as follows:

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

A person is said to have done an act or caused an effect 'voluntarily' under the following circumstances:

- (i) He has caused an effect by any means with intention to cause it.
- (ii) He has caused an effect by any means and at the time of employing those means he knew that it (the effect) is likely to cause.
- (iii) He has caused an effect by any means and at the time of employing those means he had reason to believe that it (the effect) is likely to cause.

The term 'voluntarily' covers intention and knowledge. If a person has done an act with intention to cause an effect or with the knowledge of the effect resulting from his act, he is said to have done the act 'voluntarily'.

Example

'A' sets fire at night to an inhabited house for the purpose of facilitating robbery, and thus causes the death of a person. He has caused death voluntarily.

2. Dishonesty

Section 2(7) of the Bharatiya Nyaya Sanhita, defines the word “dishonestly”.

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

If a person has done an act with intention of causing wrongful gain to one person or wrongful loss to another, he is said to have done the act “dishonestly”.

If the following conditions are satisfied, an act of a person can be treated as ‘dishonest’.

- (i) He should have done an act.
- (ii) The act was done with intention to cause ‘wrongful gain’ of any property to himself, or the act was done with intention to cause ‘wrongful loss’ of property to another person.
- (iii) The person who has gained the property **should not be legally entitled to it**, or the person who has lost the property **should be legally entitled to it**.

Example

‘A’ finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z’s possession. If A takes the ring out of Z possession without Z’s consent, with intention of

causing wrongful gain to A and thereby to cause wrongful loss to Z, A does the act "dishonestly". Here A is guilty of theft.

"Wrongful Gain" and "Wrongful Loss"

Section 2(36) and 2(37) of the B.N.S defines the expressions "wrongful gain" and "wrongful loss"

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

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

In order to constitute "wrongful gain", the following conditions are to be satisfied:

- (i) A person should gain some property.
- (ii) He should gain the property by unlawful means.
- (iii) He should not be legally entitled to it.

In order to constitute "wrongful loss", the following conditions are to be satisfied:

- (i) There should be loss of some property to one person.
- (ii) The loss must be caused by unlawful means.
- (iii) The person suffers loss of property should be legally entitled to it.

Example

Z is owner of a ring. The ring is in the possession of Z. X steals the ring. There is wrongful gain to X and wrongful loss to Z. It is because X has gained the ring by unlawful means though he is not legally entitled to it and caused loss to Z by unlawful means.

"Gaining Wrongfully" and "Losing Wrongfully" (section 2(38))

Section 2(38) of the Sanhita defines the expressions "Gaining Wrongfully" and "Losing Wrongfully"

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully.

A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

A person is said to have "gained wrongfully" under the following two circumstances:

- (i) He has wrongfully retained any property.
- (ii) He has wrongfully acquired any property.

A person is said to have "lost wrongfully" under the following two circumstances:

He is wrongfully kept out of any property.

He is wrongfully deprived of any property.

Fraudulently

Section 2(9) of the B.N.S defines the term "fraudulently"

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

If the following conditions are satisfied, a person is said to have done an act "fraudulently".

- (i) He should have done an act.
- (ii) He should have intention to defraud another.
- (iii) The intention should be to defraud another and not other wise.

Topic - IV

MENS REA IN STATUTORY OFFENCES

OR

DOCTRINE OF STRICT LIABILITY

OR

EXCEPTION TO THE DOCTRINE OF MENS REA

In England and India the general rule relating to criminal liability is that "an act is not a crime unless it is done with guilty mind". This general principle of common law is contained in the maxim: "*actus non facit reum nisi mens sit rea*".

There are certain enactments which define offences without mentioning the necessity of *mens rea*. In those statutes offences are defined in absolute terms. The Opium Act, 1878 (It has been repealed by the Narcotic Drugs and Psychotropic

Substances Act, 1985), the Foreign Exchange Regulation Act, 1947, the Prevention of Food Adulteration Act, 1954, the Narcotic Drugs and Psychotropic Substances Act, 1985 etc., are examples of such enactments.

When an offence is defined in absolute terms i.e., without mentioning the necessity of *mens rea*, the question that would normally arise is: Can a court read in between lines the necessary *mens rea*?

In former times, it was thought that the legislature was not competent to over-ride the established rules of common law. According to this view, even if the necessity of *mens rea* is not expressly mentioned in a particular statute, the judges should read in between lines the necessary *mens rea*. In other words the necessity of *mens rea* should be taken as granted. Thus even if the offence is defined without mentioning the necessity of *mens rea*, the courts used to acquit the accused in the absence of guilty mind. But the present view is that when the legislature defines an offence in absolute terms the courts cannot read in between lines the necessary *mens rea*.

In **State of Maharashtra v. M.H. George** (AIR 1965 SC 722), the accused was prosecuted for bringing gold into India in violation of statutory prohibition. Section 8(1) of the Foreign Exchange Regulation Act, 1947 prohibited a person from bringing gold into India without special or general permission of the Reserve Bank of India. The Reserve Bank of India by a Notification issued on August 25, 1962 granted a general permission to bring gold from places outside the territory of India for transit to another country. But by a subsequent

Notification dated November 8, 1962, it was made clear that the person bringing gold for transit should make a declaration in the "manifest" of the aircraft.

The accused was a passenger from Zurich to Manila in a Swiss plane which left Zurich on 27-11-1962. The plane landed at the airport in Bombay on 28th November, 1962. On a search in the plane, 34 kilos of gold bars were found in the possession of the accused, who was still sitting in the plane. He had not made the declaration in the "manifest" of the aircraft. The accused was prosecuted for bringing gold into India in violation of the statutory prohibition.

The Presidency Magistrate sentenced him to rigorous imprisonment for one year. On appeal, the High Court of Bombay acquitted the accused for the reason that the accused had no *mens rea* as he had brought gold into India for mere transit to Manila. The State of Maharashtra appealed before the Supreme Court of India. The Supreme Court set aside the judgement of acquittal of the Bombay High Court and restored the conviction of the accused made by the Presidency Magistrate. The court held that mere bringing of gold into India in violation of law itself is sufficient to attract punishment though there is no guilty mind.

In **Inder Singh v. State of Punjab** (1972 (2) SCC 372) the appellant received a parcel containing fruits. While he was carrying the parcel from the Railway Station, he was arrested by the police. The parcel was found to contain opium along with fruits. The mere possession of opium was punishable under the Opium Act, 1878. The accused was punished for possession

of opium though he had no knowledge of the existence of opium in the parcel.

Thus the classical view that 'no *mens rea*, no crime' has been avoided by several statutes enacted by the legislatures in India and by such laws severe punishments have been prescribed for mere '*actus reus*'. Thus the statutory offences constitute an exception to the doctrine of *mens rea*.

Topic - V

VICARIOUS LIABILITY IN CRIMES

Vicarious liability is a principle by which one person is held liable for another's wrong. In the case of crimes, the person who has actually committed the crime only is normally responsible. There are certain exceptions to the general rule that in case of crime only the person who committed the crime is liable. The following are the exceptions:

- (I) By s. 193 (1) of the B.N.S , if an unlawful assembly or a riot takes place on the land of a person, the owner or occupier of such land is liable to be punished with fine not exceeding one thousand rupees, where he or his agent or manager fails to give the earliest notice of the unlawful assembly or the riot to the principal officer of the nearest police-station.

In *R. v. Prayag Singh* (1890)12 All 550, a riot took place on the land of one Prayag Singh during the course of which one

Pir Khan was killed. Prayag Singh was punished with fine of Rs.1000/-.

- (ii) By s. 193 (2) of the B.N.S , whenever a riot is committed for the benefit of the owner or occupier of any land who claims any interest in such land, if such person has reason to believe that such riot was likely to be committed, the owner or occupier is liable for fine if he has not taken all lawful means to prevent such riot.
- (iii) Section 3(5) deals with joint liability or vicarious liability on the basis of "common intention". By virtue of section 3(5) of the Bharatiya Nyaya Sanhita, "when a criminal act is done by several persons in furtherance of the common intention of all each of such persons is liable for that act in the same manner as if it were done by him alone".
- (iv) Section 61(1) and 61(2) deal with joint liability of a member of a conspiracy to commit an offence.
- (v) Section 190 deals with joint liability or vicarious liability of members of an unlawful assembly when an offence is committed by a member in prosecution of the common object of the unlawful assembly.
- (vi) Section 310 (3) deals with joint liability or vicarious liability of dacoits when a dacoit commits murder for committing dacoity.
- (vii) Section 331 (8) deals with joint liability of persons concerned in lurking house trespass or house breaking by night when death or grievous hurt is caused by one of them.

Topic - VI

TERRITORIAL AND EXTRA-TERRITORIAL APPLICATION OF THE BHARATIYA NYAYA SANHITA, 2023

(a) Territorial Application

The Bharatiya Nyaya Sanhita, 2023 intends to provide a general Penal Code for India.

The Territorial Waters of India (ie. 12 nautical miles of sea from the base line - one nautical mile = 1.852 km) are part of India and offences committed within the territorial waters of India will be deemed to have been committed in India and is made punishable in India.

(b) Personal Application

This Sanhita applies to all persons who have committed an offence under the Bharatiya Nyaya Sanhita anywhere in India. Thus anyone, citizens and foreigners, who has committed an offence punishable under the Bharatiya Nyaya Sanhita within the territory of India is amenable to the jurisdiction of the Indian Courts and is liable to be punished.

In **Mobarik Ali Ahmed v. State of Bombay** (AIR 1957 SC 857) the accused was a Pakistani National who was residing in Pakistan. The accused made false representations to the complainant at Bombay by letters, telegrams and telephone talks and as a result of which the complainant parted with money to the tune of over Rs. 5 lakhs to the agents of the accused at Bombay. As a result of the extradition proceedings taken against the accused, he was arrested while he was in England and was brought to Bombay where he was tried and convicted for offence under s. 420 of the I.P.C.[now under section 318(4) of the B.N.S]

Section 420 deals with the offence of "cheating and dishonestly inducing delivery of property". The Supreme Court held that the entire offence under s. 420 was committed by the accused at Bombay, though he was not personally present in India at the time of its commission. Once the presence of the accused in India is properly secured, the Indian courts will have jurisdiction against the accused.

Problem

'X', a foreigner, commits murder of 'Y', a foreigner, within the territorial waters of India while they were on board a foreign ship. Whether 'X' is liable to be punished under the Bharatiya Nyaya Sanhita?

By virtue of sections 1 (3) of the Bharatiya Nyaya Sanhita , 'X' is liable to be punished in India for murder section 103(2) of the B.N.S prescribes punishment for murder.

The Indian territory includes 28 States and 8 Union territories and territorial waters of India. By s.1(3) of the B.N.S ., every person is liable to be punished under the B.N.S if he or she commits an offence within the territory of India. Every person includes a citizen or a foreigner.

Thus if a foreigner commits an offence under the B.N.S. within the territorial waters of India he is liable to be punished under B.N.S even though the offence was committed on board a foreign ship.

Persons who enjoy Immunity

The Bharatiya Nyaya Sanhita is applicable to all persons, both citizens and foreigners, if an offence is committed within India. To this general rule there are certain exceptions.

(1) President and Governor

The President of India and Governors of States are exempt from the jurisdiction of all courts in India under Art. 361 of the Constitution. No criminal proceedings can be initiated or continued and no process for the arrest or imprisonment shall issue against these high dignitaries.

(2) Foreign Sovereign

Foreign sovereigns are not amenable to the criminal or civil jurisdiction of Indian Courts. They are completely immune from the jurisdiction of Indian Courts by virtue of Public International Law.

(3) Ambassadors and other Diplomatic Agents

No criminal Proceeding can be initiated against them in India for the offences committed by them while they are in the Indian territory.

(4) Foreign Army

Armies of a foreign state are exempted from the jurisdiction of Indian Courts when they are within the territory of India with her consent.

(C) Extra-Territorial Application of the Bharatiya Nyaya Sahita

The jurisdiction to try an offence committed outside India is known as extra-territorial jurisdiction of the Indian Courts.

Sections 1(4) and 1(5) of the Sanhita provides for the punishment of offences committed outside India.

If an Indian citizen commits an offence punishable under the B.N.S beyond India, he can be tried and convicted for such

offence in India. If any person commits an offence under the Sanhita on any ship or aircraft registered in India wherever it may be, he can also be tried and convicted in India [s 1(4) and s. 1(5)].

Problems:

(1) 'X' is a citizen of India. He commits a murder in England. Whether he can be tried and convicted for murder in India?

Ans: 'X' being an Indian citizen he can be tried and convicted in any place in India in which he may be found. By s. 208 of the Bharatiya Nagarik Suraksha Sanhita,2023, previous sanction of the Central Government is to be obtained for initiating proceedings in India.

If a foreigner commits an offence under the Sanhita on any ship or aircraft registered in India, he may be tried and convicted in any place in India at which he may be found or where the offence is registered in India . By virtue of section 208 of the Bharatiya Nagarik Suraksha Sanhita,2023, previous sanction of the Central Government is to be obtained.

(2) 'X', a foreigner commits murder on board a ship registered in India while the ship was lying in territorial waters of England. Can 'X' be tried and convicted in India for murder.?

Ans: 'X' can be tried and convicted in India since he had committed murder on board an Indian ship registered in India. However, previous permission of Central Government is to be obtained.

(3) 'A' an Indian citizen instigates 'B', a Pakistani to murder 'C', another Pakistani by writing a letter from Delhi to Karachi where 'B' and 'C' reside. B declines to act according to A's

wishes. Can 'A' be tried and convicted in India for any offence?

Ans: A can be tried and convicted in India for abetment to murder.

(4) A citizen of America murdered of an Indian citizen in England. Subsequently he acquires Indian Citizenship. Can he be tried and convicted for murder in India ?

If a foreigner commits an offence under the Sanhita in a foreign country, Indian courts have no jurisdiction to try or convict him even though the offence was committed against an Indian Citizen. Such a person cannot be tried and convicted for any offence under the Bharatiya Nyaya Sanhita, by a criminal court in India even if he acquires Indian citizenship subsequently.

In Central Bank of India v. Ram Narain (AIR 1955 SC 36), the Supreme Court held that if a person who is not an Indian citizen commits an offence outside India, he cannot be tried for it by an Indian Court merely because he subsequently acquires Indian Nationality. The provisions of s. 4 of I.P.C. (now under section 4 of the Sanhita)and s. 188 of the Code of Criminal Procedure(now under section 208 of the Bharatiya Nagrik Suraksha Sanhita,2023) are not attracted to such a case.

In Republic of Italy v. Union of India, 2013 (1) KLT 367 (SC) : (2013) 4 SCC 721, two Indian fishermen were shot dead while they were on board a boat registered in India. They were fired by two Naval Officers deployed by the Italian government for the protection of merchant-ship (M.T. Enrica Lexie) from pirates. The incident occurred at distance of 20.5 nautical miles away from coastline of

State of Kerala, a unit of the Indian Union. The incident occurred not within the territorial waters (12 nautical miles) of the coastline, but within the Contiguous Zone (24 nautical miles from coastline), over which the state police of the State of Kerala has no jurisdiction. Under such a circumstance, the Supreme Court held that the state police has no jurisdiction to investigate the crime. However, it was held that as the incident occurred within the Contiguous Zone, the Central Government has jurisdiction to prosecute the offenders. The Supreme Court directed the Central Government to constitute a special court at Delhi to try the offenders for the offence of murder.

Abetment outside India for offence in India.

By section 48 any person abets an offence within the meaning of this Sanhita who, without and beyond India, abets the commission of any act in India which would constitute an offence as if it is committed in India.

By Section 112 of BNSS dealing 'letter of request to competent authority for investigation in a country or place outside India' also section 356 of Bharatiya Nagarik Suraksha Sanhita,2023 or B.N.S.S are to be put in use , to bring the offenders to justice under section 48 of B.N. S.

Illustration

A, in country X, instigates B, to commit a murder in India; A is guilty of abetting murder.

Topic -VII

JOINT LIABILITY (CONSTRUCTIVE LIABILITY)

A crime may be committed by an individual or in collaboration with others. In a case where an individual commits a crime, there would be no difficulty in assessing his criminal guilt. He can be punished according to the nature of the offence committed. The difficulty arises when several persons are engaged in the commission of an offence and different roles are played by each of such individuals.

In a case where two or more persons are involved, either jointly or in group, and it is not possible to apportion criminal guilt of each of the participants, all the participants would be liable for the offence committed by any one or all the members of the group. This is based upon the doctrine of joint liability.

The provisions relating to joint liability(or constructive liability or group liability) are contained in sections 3(5) to 3(9), 61 (1) and 61 (2), 190 , 310(3) and 331 (8) of the Bharatiya Nyaya Sahita.

Sections 3(5) to 3(9) deal with joint liability on the basis of "common intention".

Section 61 (1) and 61 (2) ,deal with joint liability of a member of a conspiracy to commit an offence.

Section 190 deals with joint liability of members of an unlawful assembly when an offence is committed in prosecution of the 'common object' of the unlawful assembly.

Section 310 (3) deals with joint liability of dacoits when a dacoit commits murder for committing dacoity.

Section 331 (8) deals with joint liability of persons concerned in lurking-house trespass or house breaking by night when death or grievous hurt is caused by one of them.

Liability on the basis of “Common Intention”

By virtue of section 3(5) of the Bharatiya Nyaya Sanhita , “when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone”.

Section 3(5) of the Sanhita embodies the principle of joint liability. If two or more persons have intentionally done a criminal act jointly, it will be treated that each of them has done it individually. Once it is found that a criminal act was done by several persons “*in furtherance of the common intention of all*”, each of such persons is liable for the criminal act as if it was done by him alone.

Example - A police party went to arrest 'A' from his house. There were several persons in A's house. All of them came out to drive away the policemen in order to evade A's arrest. In the joint attack one of the police constables was killed. It could not be found out who was the real offender. In such a case all of them would be liable for the murder of the police constable as if each of them had done it alone. This is based on the principle of joint liability or constructive liability.

In order to apply s. 3(5), the following conditions should be satisfied:

- (i) A criminal act should have been done.
- (ii) The criminal act must have been done by several persons.

- (iii) All the offenders should have a common intention.
- (iv) All of them should have acted in furtherance of that common intention.

If all the above conditions are satisfied, each of them would be liable for the criminal act as if it has been done by him alone.

Decided Cases

In Vasant @ Girish Akbarasab Sanavale v. State of Karnataka(2025 KHC 6154)

In this case ,an FIR was registered against the husband and mother-in-law of deceased, for allegedly causing death of deceased by setting her on fire. After one year of marriage, deceased was harassed for dowry and household work. On the day of the incident,mother-in-law of deceased, allegedly poured kerosene on the victim and set her ablaze,causing 90% burns. Before her death, victim gave dying declaration primarily implicating her mother-in-law.

The trial Court acquitted both husband and mother- in -law , but on State's appeal High Court reversed the acquittal and sentenced them both to life imprisonment, relying primarily on the dying declaration of the deceased. High Court also found the husband guilty, reasoning that his presence at the crime scene and failure to take immediate action indicated a shared common intention.

The Supreme Court found error in the findings of the High Court and held that , an accused cannot be convicted under S.34 without clear proof of shared common intention. Mere presence at the crime scene or failure to prevent an act is not enough to establish common intention under S.34(now under section 3(5) of the Sanhita).

Every person charged with the aid of S. 34 (now under section 3(5) of the Sanhita), must in some form or the other participated in the offence in order to make him liable thereunder.

Presence on the spot for the purpose of facilitating or promoting the offence tantamount to actual participation in the criminal act. Thus, held the husband not guilty of offence of murder with the aid of S.34 IPC.

Barendra Kumar Ghosh v. Emperor(A.I.R 1925 P.C.1)
(popularly known as Post-master Murder Case)

Three persons entered a post-office. The post master was counting money. They demanded the money. The post-master had not delivered the money as per their demand. One of them fired shots at the post-master. The post master died as a result of this shots. The accused persons *took to their heels* (ran away) without taking money. The assistants of the post office chased them and caught the appellant, Barendra Kumar Ghosh. All of them were tried for murder. The appellant argued that he was only standing outside the post office and had not fired at the deceased. Though he joined the others for robbery, he had no intention to kill the post master. The court held that the post master was killed in furtherance of common intention of all the three men and the appellant was guilty of murder whether he fired or not.

Emperor v. Indar Singh (1933) 14 Lah 814

A,B,C and D went armed to commit robbery at K's house. K was absent and D went to search for him. In the absence of D, the remaining accused had a scuffle with the sons of K and killed X, one of the sons of K. All the four accused persons

were charged for murder of X. D argued that he was absent from the place of occurrence and was unaware of the murder.

This argument was rejected by the court and held that all of them are liable for murder of X since the murder was committed in furtherance of common intention of all.

In order to attract s.34(now under section 3(5) of the Sanhita), the prosecution must establish common intention of all. Common intention of the offenders can be inferred from the circumstances of the case. Common intention pre-supposes a pre-arranged plan ie., a prior meeting of minds.

Mahboob Shah v. Emperor (72 I.A. 148 (PC))

On August 25, 1943 at about sunrise, "A", the deceased, along with a few others left their village and proceeded on a boat for cutting and collecting reeds on the bank of the river Indus. When they had travelled about a mile down the stream, they saw "M", father of "Wali" bathing on the bank of the river. "M" warned them against collecting reeds from his land. But "A", inspite of this protest, collected reeds from that land and started for the return journey. While they were returning with the bundle of reeds and sailing upstream in the river, one "G", nephew of "M", asked them to deliver him the reeds that were collected from his uncle's land. But "A" refused to do so. He then caught the rope of the boat and pushed "A" and gave him a blow with a stick which was warded off. "A" then picked up a bamboo pole from the boat and struck "G". "G" then shouted for help. Then "W" and "M" came up with loaded guns. On seeing them, "A" and his friend "H" tried to run away. But "W" fired at "A" who died almost instantaneously. "M" fired at "H" causing injuries to him. "W" absconded and was not arrested. "M" and

'G' were tried under section 103 (murder) read with section 3(5) of the Bharatiya Nyaya Sanhita for the murder of "A".

M was sentenced by the trial court to seven years' rigorous imprisonment for attempt to murder H. But on appeal the Lahore High Court sentenced him to death under s. 302 (punishment for murder) (now under section 103 of the Sanhita) read with s. 3(5) of the Bharatiya Nyaya Sanhita for committing murder of A. 'M' appealed to the Privy Council against his conviction. The appeal was allowed and conviction for murder was set aside.

The Privy Council held that to invoke the aid of section 3(5), it must be shown that the criminal act complained against was done by one of the accused persons in furtherance of the common intention. If this is so, then liability for the crime may be imposed on any one of the persons in the same manner as if the acts were done by him alone. *Common intention within the meaning of section 3(5) implies a pre-arranged plan*, and to convict the accused for an offence applying the section, it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. In the present case there was no evidence to show that "M" had acted in concert with "W" in pursuance of a pre-plan. They had the common intention to rescue "G" but there was no evidence that they entered into a pre-planned concert to bring about the murder of "A" in carrying out their intention of rescuing G.

Kassim Pillai Asanaru Kutty v. State of Travancore-Cochin (1951 KLT 735)

Hydrose Kunju had killed the father of "A" and "B" and uncle of "C". A, B and C, in turn, out of revenge, lay in wait for Hydrose Kunju near an uninhabited hut fully armed and when

Hydrose Kunju came along that way attacked him with their dangerous weapons and killed him.

The Court held that all the accused were liable for murder under s.103 read with s.3(5) of the Bharatiya Nyaya Sanhita.

Shree Kantiah v. State of Bombay (AIR 1955 SC 287)

The Supreme Court held that the essence of section 34 (now under section 3(5) of the Sanhita)is that the accused must be physically present at the actual commission of the offence and must also participate in the commission of it.

Rishi Deo Pandey v. State of U.P. (AIR 1955 SC 331)

The Supreme Court held that common intention may develop at the spot of a crime.

Sheoram Singh v. State (AIR 1972 S.C. 2555)

The Supreme Court held that the common intention may develop all of a sudden during the course of the occurrence of the crime. If the crime charged against the accused is one of murder, then the prosecution should establish by reliable evidence that all of them had the common intention to kill the deceased. The common intention may develop at the last moment. But this must be proved by cogent evidence.

Suresh v. State of U.P (2001) 3 SCC 673

The Supreme Court held that s.34 of IPC(now under section 3(5) of the Sanhita) recognises the principle of **vicarious liability** in criminal jurisprudence. It makes a person liable for action of an offence not committed by him but by another with whom he shared the common intention. It is a rule of evidence and does not create a substantive offence. The section gives

statutory recognition to the commonsense principle that if more than two persons intentionally do a thing jointly, it is just the same as if each of them had done it individually. A common intention pre-supposes prior concert, which requires a pre-arranged plan of the accused participating in an offence. Such pre-concert or pre-planning may develop on the spot or during the course of commission of the offence but the crucial test is that such plan must precede the act constituting an offence. Common intention can be formed previously or in the course of occurrence and on the spur of the moment.

The Supreme Court further held that to attract s. 34 of IPC(now under section 3(5) of the Sanhita) two postulates are indispensable:

- (1) The criminal act should have been done, not by one person, but by more than one person.
- (2) Doing of every such individual act cumulatively resulting in the commission of criminal offence should have been in furtherance of the common intention of all such persons.

Harjit Singh v. State of Punjab (2002)6 SCC 739

The Supreme Court held that the common intention can develop *on the spur of the moment* (without previous planning : on a sudden impulse).

Lallan Rai v. State of Bihar (2003) 1 SCC 268

The Supreme Court held that the essence of s.34 (now under section 3(5) of the Sanhita) is simultaneous consensus of the mind of persons participating in the criminal action to bring about a particular result. Such consensus can be developed at the spot.

If there is no common intention to commit a particular crime, section 34 (now under section 3(5) of the Sanhita) is not applicable. If two or more persons enter a house with the intention of stealing a jewel, but one of them unknown to others having a small pocket rifle concealed under his coat, causes the death of an inmate, his associates will not be liable for murder.

Goudappa and Others v. State of Karnataka (2013 (3) SCC 675

The Supreme Court held that no man can be held responsible for an independent act and wrong committed by another. However, s. 34 (now under section 3(5) of the Sanhita) makes an exception to this principle. It lays down a principle of joint liability in doing of a criminal act. Section 34 (now under section 3(5) of the Sanhita) lays down a principle of joint criminal liability which is only a rule of evidence but does not create a substantive offence. If a criminal act is the result of a common intention, every person, who did the criminal act shared, would be liable for offence committed irrespective of role which he had in its perpetration. Common intention is to be gathered from the manner in which crime has been committed, conduct of accused soon before and after occurrence, determination and concern with which crime was committed, weapon carried by accused and from nature of injury caused by one or some of them.

In Subed Ali and Others v. State of Assam (AIR 2020 SC 4657) the Supreme Court held that the foundation for conviction on the basis of common intention is based on the principle of vicarious responsibility by which a person is held to be answerable for the

acts of others with whom he shared the common intention. The presence of the mental element or the intention to commit the act if cogently established is sufficient for conviction, without actual participation in the assault. It is therefore, not necessary that before a person is convicted on the ground of common intention, he must be actively involved in the physical activity of assault.

In **Virender v. State of Haryana** (2020 (2) SCC 700), it was held that in order to invoke the principle of joint liability in the commission of a criminal act as laid down in s.34, (now under section 3(5) of the Sanhita) the prosecution should show that the criminal act in question was done by one of the accused persons in furtherance of the common intention of all. If this is shown, the liability for the offence may be imposed on any one of the persons in the same manner as if the act was done by him alone.

In **Chellappa v. State** (2020 (5) SCC 160) it was held that before a person can be held responsible under section 34,(now under section 3(5) of the Sanhita) it must be established that there was a common intention and the person being sought to be held liable must have participated in some manner in the act constituting the offence. The common intention shared by the accused should be anterior in time to the commission of the offence, but may develop on the spot when the crime is committed.

In **Chhota Ahirwar v. State of Madhya Pradesh** (2020 (4) SCC 126), it was held that the principle of vicarious / joint liability under s.34(now under section 3(5) of the Sanhita) is only attracted when a specific criminal act is done by several persons in furtherance of the common intention of all, in which case all the offenders are liable for that criminal act in the same manner as the principal offender as if the act were done by all the offenders. This section does not

whittle down the liability of the principal offender committing the principal act but additionally makes all the other offenders liable. The essence of liability under section 34(now under section 3(5) of the Sanhita) is simultaneous consensus of the minds of persons participating in the criminal act to bring about a particular result, which consensus can even be developed at the spot.

Topic - VIII

WRITE A NOTE ON “DIFFERENT FORMS OF PUNISHMENTS” UNDER THE BHARATIYA NYAYA SANHITA, 2023

The Bharatiya Nyaya Sanhita provides for the following punishments under section 4 .

- (1) Death**
- (2) Imprisonment for life**
- (3) Imprisonment for a fixed period. It may be rigorous or simple or solitary.**
- (4) Forfeiture of property**
- (5) Fine**
- (6) Community Service .**

(1) Death Sentence

The capital punishment of death sentence is prescribed in the following causes.

- (1) Waging war against the Government (s. 121), It is also known as “treason” .**
- (2) Abetment of mutiny actually committed (s. 160)**

- (3) Fabricating or giving false evidence upon which an innocent person suffers death (s. 230)
- (4) Murder (s.103)
- (5) Murder by person under sentence of imprisonment for life (s.104). Section 104 has been struck down by the Supreme Court and hence it is not in operation.
- (6) Abetment of suicide of an insane or intoxicated persons (s.107)
- (7) Attempt to murder by a person under sentence of imprisonment for life, if hurt is caused (s.109)
- (8) Kidnapping for ransom (s. 140(2)
- (9) Causing death in the course of rape (s.66)
- (9) Dacoity with murder (s.310(3)

In **Mithu v. State of Punjab** (AIR 1983 SC 473), the Supreme Court struck down s. 303 of I.P. C (now under section 104 of the Sanhita) as unconstitutional. Section 303 provides that if a person "under sentence of imprisonment for life commits murder, he shall be punished with death".

The Supreme Court in **Bachan Singh v. State of Punjab** (AIR 1980 SC 878) held that the death sentence is to be given only in 'rarest of rare cases'. This is at present an important guiding principle for the awarding of capital sentence though it is retained in the Indian Penal Code ,1860(now Bharatiya Nyaya Sanhita,2023) .

(2) Imprisonment for Life

The second mode of punishment provided under the

Bharatiya Nyaya Sanhita, is “imprisonment for life”. The sentence of imprisonment for life is a sentence for life and therefore a prisoner sentenced to life imprisonment is bound to serve the remainder of his life in prison.

Section 71 of the Sanhita says imprisonment for life which shall mean imprisonment for the remainder of that person's natural life.

By virtue of s.6 for calculating fractions of term of punishment, life imprisonment is reckoned as 20 years.

The State Government may commute a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years. A full 14 years term of imprisonment is mandatory in the following cases.

- (i) If a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law.
- (ii) If a sentence of death imposed on a person has been commuted into one of imprisonment for life.

The imprisonment for life in the Sanhita means 'rigorous imprisonment for life' and not simple imprisonment for life.

In **Shankar Kisanrao Khade v. State of Maharashtra** (2013) 5 SCC 546, it was held that a sentence of imprisonment for life means imprisonment for the rest of the normal life of the convict. However, a convict can be released before the expiry of his life by the Government by following the procedure laid down in section 432 Cr.P.C(now under section 473 of the Bharatiya Nagarik Suraksha Sanhita) or by the Governor exercising power under Article 161 of the Constitution or by the President exercising

power under Article 72 of the Constitution.

(3) Imprisonment

There are two descriptions or kinds of imprisonment. They are:

- (i) simple
- (ii) rigorous

In simple imprisonment, the offender is confined in jail and he is not put to any kind of labour.

In case of rigorous imprisonment, the offender is put to hard labour such as grinding corn, digging earth, drawing water, cutting fire wood etc.

In **Phool Kumari v. Tihar Central Jail** (2012) 8 SCC 183, it was held that person sentenced to simple imprisonment cannot be required to work unless he volunteers himself to do work. But Jail Officer who requires a prisoner sentenced to rigorous imprisonment to do hard labour would be doing so as enjoined by law and mandated by court. Thus, while a person sentenced to simple imprisonment has the option of choosing to work, a person sentenced to rigorous imprisonment is required by law to undergo hard labour. However, **undertrials** are not required to work in jail.

Solitary Confinement

Solitary confinement may be awarded for offences punishable with rigorous imprisonment for any portion of the term of imprisonment. Solitary confinement cannot be awarded for the whole term of imprisonment. By s. 11, solitary confinement must not exceed three months in the whole. The three months period is to be imposed at intervals and not at a continuous stretch.

If the term of imprisonment is for a period not exceeding 6 months, solitary confinement shall not exceed 1 month.

If the term of imprisonment is for a period not exceeding 1 year, solitary confinement shall not exceed 2 months.

If the term of imprisonment is for a period exceeding 1 year, the solitary confinement shall not exceed 3 months.

Thus solitary confinement shall not exceed 3 months in the whole. In executing a sentence of solitary confinement it shall in no case exceed 14 days at a time. After 14 days solitary confinement there shall be an interval of 14 days.

If the total imprisonment awarded exceeds 3 months, 'the solitary confinement shall not exceed 7 days in any one month. After seven days solitary confinement, there shall be an interval of minimum seven days.

(4) Forfeiture of Property

The punishment of "forfeiture of property" of the convicted is imposed under four types of offences.

- (a) Committing depredation on territories of any power at peace with the Government of India (s. 154).
- (b) Waging war against any Asiatic power in alliance with the Government of India (s. 153)
- (c) Receiving property taken by war or depredation as mentioned above (s. 155)
- (d) Improper purchase by a public servant of property which by virtue of his office he is legally prohibited from purchasing (s. 203)

(5) Fine

In the case of following offences, the punishment is fine only.

- (a) Negligently allowing a deserter to conceal himself in a vessel by person in charge of the vessel (s. 165)
- (b) Owner or occupier of land on which riot is committed not using means to prevent it or not giving notice thereof to the police (s. 193(1)) and similar failure on the part of the person for whose benefit such riot is committed or on the part of the manager or agent of such person (Ss. 193(2), 193(3))
- (c) Bribery by treating a person with drinks, food, etc. (s. 173)
- (d) Failure to keep accounts, making illegal payments or false statements in connection with an election (Ss. 177, 176, 171)
- (e) Public nuisance not otherwise punishable (s. 292)
- (f) Voluntarily vitiating the atmosphere so as to render it noxious to the public health (s. 278)
- (g) Obstruction in public way or line of navigation (s. 282)
- (h) Publication of a proposal regarding lottery (s. 297).

Section 8(1) says that if no sum is expressed to which a fine may extend, the amount of fine to which the offence is liable is unlimited but shall not be excessive.

6) Community service

By section 2(f) of the B.N.S ,prescribes,community service as a mode of punishment.

Explanation of Section 23 of the Bharatiya Nagarik Suraksha Sanhita, 2023 defines the term **community service** in the following way:-

"Community service shall mean the work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration."

Thus ,community Service means work performed by a person convicted of an offence in lieu of other punishments. It involves participation in a task or service intended for public benefit, such as environmental improvement, sanitation, or welfare activities for weaker sections of society.

This provision emphasizes reparation and societal contribution rather than punitive imprisonment, aiming for constructive rehabilitation of offenders. The nature and scope of community service are typically prescribed by the courts based on the nature and gravity of offence and the convicted person's capacity to contribute. It can be given only in cases where community service is prescribed as a mode of punishment.

In the case of following offences, the community service may be ordered as a form of punishment.

- a) Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade.(Section 202).
- b) Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 209).

(c) Whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty (Section 226).

(d) In cases of theft where the value of the stolen property is less than five thousand rupees, and a person is convicted for the first time, shall upon return of the value of property or restoration of the stolen property shall be punished with community service. (Section 303).

(e) Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both, or with community service (Section 356)

Sentence of Imprisonment for Non-payment of Fine (Default Sentence)

By section 8(2) , the Court which sentences the offender to pay fine can direct by such sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term. It is popularly known as default sentence. Such imprisonment for default of payment of fine shall be in excess of any other imprisonment to which he may have been sentenced.

By section 8(3) , the term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

In **Manjegowda M.B. v. State of Karnataka** (2021(2) KHC 186) it was held that default sentence cannot be awarded in excess of 1/4th of maximum punishment prescribed for a concerned offence.

The imprisonment which the Court imposes in default of payment of a fine or in default of community service may be of any

description (Simple or rigorous to which the offender might have been sentenced for the offence.

By section 8(5) If the offence is punishable with fine or community service, the imprisonment which the Court imposes in default of payment of the fine or in default of community service shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine or in default of community service, shall not exceed,—

- (a) two months when the amount of the fine does not exceed five thousand rupees;
- (b) four months when the amount of the fine does not exceed ten thousand rupees; and
- (c) one year in any other case.

The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law;

If a part of the fine is paid or recovered before the completion of imprisonment term for default in payment of fine , and the time served corresponds proportionally to the remaining unpaid amount, the imprisonment will be terminated.

Topic - IX

THEORIES OF PUNISHMENT

The purpose of criminal justice is to punish the wrong doer. There is difference of opinion as to the object and purpose of punishment. A number of theories have been propounded by various jurists, concerning the object and purpose of punishment. The differences of opinion among the jurists led to the evolution of various theories of punishment.

There are mainly four theories of punishment. They are the following.

1. Retributive Theory

According to this theory, the purpose of punishment is retribution. The person who has committed the wrong should suffer. Punishment is an end in itself. The object of punishment is punishment itself. This theory recognises the principle of "an eye for an eye, a tooth for a tooth".

Plato was a supporter of retributive theory. According to Kant, the German philosopher, punishment must always be inflicted on him for the sole reason that he has committed a crime. The law of punishment is a categorical imperative. According to Sir James Stephen, the purpose of punishment is to gratify the desire for vengeance by making the criminal to suffer in person or purse. The person who has committed a crime should be punished in order to assuage the desire for vengeance in the mind of a victim.

2. Preventive Theory

According to this theory, the object of punishment is prevention or disablement. The offender should be disabled from

repeating the offences by punishments such as imprisonment, death, transportation for life, forfeiture of office, etc.

Justice Holmes is an advocate of this theory. According to him prevention is the chief and only universal purpose of punishment. By putting the criminal in jail, he is prevented from committing crime in future.

3. Deterrent Theory

According to the deterrent theory of punishment, the object of punishment is to make the wrong doer an example to other persons who have criminal tendencies. Punishment is to make the evil-doer an example and a warning to all who are like minded persons. The object of punishment according to this theory is to deter the 'would be criminal'.

The deterrent theory was the basis of punishment in England in Middle Ages and continued to be so till the beginning of 19th century. The result was that severe and inhuman punishments were inflicted even for minor offences in England. In India also the penalty of death or mutilation of limbs was imposed even for petty offences in early days.

It is proved that the deterrent theory is ineffective in checking crimes. Even though there was provision for severe punishments people continued to commit the crimes. During the reign of Queen Elizabeth, who was a strong supporter of deterrent theory, severest punishment was awarded for smallest offences. The punishment for pick - pocketing was death penalty. Though such a severe punishment was awarded for pick - pocketing, the pick -pocketers were seen busy in their criminal activity among the crowd which gathered to watch the execution of condemned pick - pocketers.

Excessive harshness of punishment defeats its purpose by hardening the criminal instead of creating in him the fear of punishment.

4. Reformative Theory

According to this theory, the object of punishment should be to reform the criminal. The object of punishment should be to bring about the moral reform of the offender.

Advocates of this theory consider that even if an offender commits a crime, he does not cease to be a human being. He might have committed a crime under circumstances which may not occur again. According to this theory, crime is considered to be a disease of mind. Punishment should be a medicine to the disease of mind. This theory is against death sentence. Mild imprisonment with probation is the only mode of punishment approved by the advocates of reformatory theory. The advocates of this theory argue that by a sympathetic, faithful and loving treatment of the offenders, a revolutionary change can be brought about in their characters. Even the cruel and hardened prisoners can be reformed and converted into helpful friends by good words and mild suggestions.

The reformatory theory aims at socialisation of the offender so that the factor which motivated him to commit the crime are eliminated and he gets a chance of leading a free-life in the society. In progressive stages a lot of emphasis is given on the reformatory aspect of punishment. Reformatory theory, is adopted in the case of Juvenile offenders.

The deterrent, retributive, preventive and reformatory theories of punishments have their own merits and demerits.

No single theory would serve the interest of criminal justice administration. Undoubtedly reformative theory must be given due place but at the same time the deterrent and preventive aspect of punishment must not be completely ignored. Thus reformation may be used as a general method of treating the offenders but those who do not respond favourably to this corrective method of treatment must be severely punished.

The following decisions of our Apex Court would give an idea about the purposes of punishment.

In **T.K. Gopal v. State of Karnataka** (2000) 6 SCC 168, the Supreme Court observed: "In the matter of punishment for offence committed by a person, there are many approaches to the problem. On the commission of crime, three types of reactions may generate: the traditional reaction of universal nature which is termed as *punitive approach*. It regards the criminal as a notoriously dangerous person who must be inflicted severe punishment to protect the society from his criminal assaults. The other approach is the *therapeutic approach*. It regards the criminal as a sick person requiring treatment. The third is the preventive approach which seeks to eliminate those conditions from the society which were responsible for crime causation..

Under the punitive approach, the rationalisation of punishment is based on retributive and utilitarian theories. *Deterrent theory which is also part of the punitive approach* proceeds on the basis that the punishment should act as a deterrent not only to the offender but also to others in the community.

The therapeutic approach aims at curing the criminal tendencies which were the product of a diseased psychology. There may be many factors, including family problems. Therapeutic approach has since been treated as an effective method of punishment which not only satisfies the requirements of law that a criminal should be punished and the punishment prescribed must be meted out to him, but also reforms the criminal through various processes. He should be treated as a human being entitled to all the basic human rights, human dignity and human sympathy, even though he is guilty of heinous crime.

In **State of Karnataka v. Krishnappa** (2000) 4 SCC 75, the Supreme Court observed: "Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years and respond by imposition of proper sentence. The courts are expected to impose sentence for a proved offence, which may serve as a deterrent for the commission of like offences by others."

In **Dalbir Singh v. State of Haryana** (2000) 5 SCC 82, the Supreme Court held that in the case of death caused by rash and negligent driving, deterrence ought to be the main consideration when sentencing the offender. Every driver should have fear in his psyche that upon conviction courts will not treat him leniently.

In State of Karnataka v. Sharanappa Basanagouda Aregoudar (2002) 3 SCC 738, the Supreme Court held that the sentence imposed by the courts should have a deterrent effect on potential wrongdoers and it should commensurate with the seriousness of the offence.

In Rull Ram v. State of Haryana (2002) 7 SCC 691, the Supreme Court of India held that the punishment serves a purpose in as much as it acts as a deterrent for those who have the propensity to take the law into their own hands.

Topic - X

GENERAL EXCEPTIONS

Sections 14 to 44 of the Sanhita deals with "general exceptions". The General Exceptions can be grouped as follows:

- | | |
|----------------------------------|---------------------------------------|
| (a) Mistake of Fact (ss.14 & 17) | (b) Judicial Acts (ss. 15 & 16) |
| (c) Accident (s. 18) | (d) Necessity (s. 19) |
| (e) Infancy (s. 20 & 21) | (f) Unsound mind (Insanity) (s. 22) |
| (g) Drunkenness (ss. 23 & 24) | (h) Consent (ss. 25, 26, 27, & 28) |
| (i) Good Faith (ss. 30 & 31) | (j) Compulsion (s. 32) |
| (k) Trifles (s.33) | (l) Private Defence (ss. 34 to 44) |

When a person commits a prohibited act, he is liable to be punished under the Bharatiya Nyaya Sanhita. If he or she can show that his act comes within any one of the above stated general exceptions, he or she is not liable to be punished. This principle is evident from section 3 of the B.N.S.

Section 3 of the Sanhita provides that throughout the Sanhita every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter "General Exceptions", though those exceptions are not repeated in such definition, penal provision or illustration.

Topic -XI

MISTAKE OF FACT

Mistake of Fact is a good defence in a criminal prosecution. Sections 14 and 17 of the Sanhita deal with mistake of fact.

Section Sanhita reads as follows:

"Nothing is an offence which is done by a person who is, 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, bound by law to do it"

Section 14 declares two types of acts as not offence. They are : acts done by persons bound by law and acts done by persons bound by law but done under mistake ie a mistake of fact.

By virtue of section 17, an act done by a peron is not an offence if he is bound by law to do it.

Illustration

A, a police officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within section 76 of the Code.

By virtue of section 14, if a person who is bound by law to do an act has done it under a **mistake of fact**, then also, he is not liable to be punished for any offence. However there should not be any mistake of law. Thus section 76 recognises **mistake of fact** as defence for any criminal prosecution.

By s. 14 of the Sanhita, an act done by a person is not an offence if it was done by him under the following circumstances:

- (i) There was **mistake of fact**,
- (ii) Though there was **mistake of fact**, he in **good faith** believed that he is **bound by law** to do it.
- (iii) The **mistake** should not be of law.

Example - 'A' is a police officer. The court issued a warrant to arrest 'X'. The police officer after due enquiry arrested Y, instead of X. The police officer has not committed any offence since he acted under a mistake of fact. Moreover, he believed in good faith that he is bound by law to arrest X.

State of West Bengal v. Mangal Singh (1984 Cr.LJ 1683 [SC])

The Deputy Commissioner of Police ordered to open fire at a violent mob. A subordinate police officer opened fire and it caused death of two persons. The Sessions Court convicted the police Officials under s. 302 (now under section 103 of the Sanhita)read with s.34(now under section 3(5) of the Sanhita).

In an appeal, the High Court acquitted them. The State preferred an appeal against the order of the High Court. The Supreme Court affirmed the order of the High Court and held that a subordinate police officer carrying out the orders of a superior officer in obedience to a lawful order is not liable to be punished.

It is to be noted that mistake of fact alone is excused. The maxim is: *Ignorantia facti doth excusat*. Mistake of law is not an excuse. The maxim '*ignorantia juris non excusat*' is applicable in crimes also. The maxim means ignorance of law is not an excuse.

In **State of Maharashtra v. M.H.George** (AIR 1965 SC 722), the accused was prosecuted for bringing gold into India in violation of the statutory prohibition. Section 8(1) of the Foreign Exchange Regulation Act, 1947 prohibits a person from bringing gold into India without special or general permission of the Reserve Bank of India. The Reserve Bank of India by a Notification issued on August 25, 1962 granted a general permission to bring gold from places outside the territory of India for transit to another country. But by a subsequent Notification dated November 8, 1962, it was made clear that the person bringing gold for transit should make a declaration in the "manifest" of the aircraft.

The accused was a passenger from Zurich to Manila in a Swiss plane which left Zurich on 27-11-1962. The plane landed at the airport in Bombay on 28 th November, 1962. On a search in the plane, 34 kilos of gold bars were found in the possession of the accused, who was still sitting in the plane. He had not made the declaration in the "manifest" of the aircraft. The accused was prosecuted for bringing gold into India in violation of the statutory prohibition.

The Presidency Magistrate sentenced him to rigorous imprisonment for one year. On appeal, the High Court of Bombay acquitted the accused for the reason that the accused had no *mens rea* as he had brought gold into India for mere transit to

Manila. The State preferred an appeal to the Supreme Court against order of acquittal. His defence was that he was unaware of the Notification dated Nov. 8, 1962. The Supreme Court rejected the plea of **ignorance of law** and held that the accused was liable for punishment.

Section 17 also deals with mistake of fact as a defence in a criminal prosecution. Section 17 reads as follows:

"Nothing is an offence which is done by any person who is justified by law, on 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, in doing it."

By section 17, an act done by a person is not an offence if his act is justified by law.

Illustration:

X is owner of a building. He demolishes it for constructing a new house. His act is justified by law and hence demolition of the building is not an offence. If Y who has no right in the said building demolishes it, he will be liable to be punished for the offence of mischief.

By s. 17 of the Sanhita, an act done by a person by reason of a mistake of fact and not by reason of a mistake of law is not an offence if it was done by him under the following circumstances:

- (1) There was mistake of fact
- (2) Though there was mistake of fact, he in good faith, believed that he will be justified by law in doing it.
- (3) The mistake should not be of law.

Example - A and B were travelling in a train from Trivandrum to Quilon. Both of them were in possession of umbrellas of

same manufacturer. They placed these umbrellas on the berth. When the train reached Quilon, by mistake A took B's umbrella and B took A's umbrella. 'A', when taking B's umbrella, believed in good faith that the umbrella which he was taking belong to him. Same is of the case of B. Here 'A' or 'B' has not committed any offence.

Decided Cases

(1) Emperor v Jagmohan Thukral (AIR 1947 All. 99)

The accused was travelling from Sharanpur to Dehradun. When he reached Mohand-pass he saw the eyes of an animal behind bush. He took loaded gun and fired at it. This resulted in injury to two military officers who were practicing military exercises. The accused was charged with attempt to commit murder.

The court held that the accused mistakenly believed that the eyes he seen were of animals. He is not liable for any crime. He was protected by s. 79 of the I.P.C (now under section 17 of the Sanhita).

(2) State of Orissa v. Ram Bahadur (1960 Cr. L.J 1349 (Orissa))

The accused caused death of one adivasi woman and injured three others in the midnight inside an abandoned aerodrome. He was charged for murder and grievous hurt. The defence of the accused was that he bonafide believed that he was attacking a set of dancing ghosts in the mid of night in that abandoned place.

The court accepted the defence and held that the accused is entitled to the benefit of s. 79 of the I.P.C (now under section 17 of the Sanhita). The court held, a person who by reason of

mistake of fact, in good faith, believes himself to be justified by law in doing act is protected under s. 79 of the I.P.C.

(3) **State of Orissa v. Bhagwan Barik (1987 Cr.U 1115 (SC))**

The accused committed murder of the deceased by striking with a lathi on the head.

The defence was that he believed that he was striking a thief. The court rejected the the defence since the accused and the deceased were in strained relations. Moreover, the accused was well aware of the fact that the deceased had gone to the pond to search his lost bellmetal utensil.

Problem

'P', pledged gold plated ornaments, thinking that they were gold ornaments, with 'B' a banker and induced him to lend money. What offence has he committed?

If a person pledges gold plated ornaments with knowledge that they are not gold ornaments and fraudulently induces a banker to lend money, he is liable to be punished for the offence of cheating(ss.318(1)to 318(4) B.N.S).

In the given problem, 'P' pledged gold plated ornaments, thinking that they were gold ornaments, with B, a banker and induced him to lend money. P is not liable to be punished for the offence of cheating as P has done the act under a mistake of fact. His act is protected under section 17 of the Sanhita.

Difference between sections 14 and 17

In order to get defence under s. 14 , the accused has to show that he acted under the belief that he must act. In other words, he must show that he believed in good faith that he was bound by law to do it.

In order to get defence under s. 17, the accused has to show that he **acted under the belief that he is justified by law**. His act should be in good faith.

Under ss. 14 and 17 there should be mistake of fact and not mistake of law. In both the cases the act of the accused should be in good faith.

Topic -XII

JUDICIAL ACTS

By s. 15 of the Sanhita, a judge is not criminally liable for his acts if the following conditions are satisfied.

- (i) He should have done the act judicially. In other words he should have done the act in the discharge of his duties.
- (ii) He must have done the act in good faith.
- (iii) He should have believed in good faith that he is empowered to do the act by law.

Example

A judge sentences an accused person to death. He had no jurisdiction to sentence the accused to death. If he had acted in good faith believing that such a power is given to him, he is not liable for any offence under the Bharatiya Nyaya Sanhita,2023

By s. 16 of the Sanhita, an act done by a person in pursuance of judgement or order of a court is not criminally liable if the following conditions are satisfied.

- (i) He should have acted pursuant to the judgement or order of a court of justice,
- (ii) He should have acted while such judgement or order remains in force,
- (iii) He should have acted in good-faith.
- (iv) He should have believed in good faith that the court which passed the judgement or order has jurisdiction although it has not.

Thus a judge who is acting judicially, sentences, an accused person to death is protected under s. 15 and the hangman who acts in pursuance of the order of such judge is exempted from liability for such act under s. 16 of the Sanhita.

Example

A Magistrate had no jurisdiction to issue a warrant for search. The Magistrate issued a warrant for search of Z's house. As per the warrant a police officer conducted search of Z's house. Magistrate and Police officer are not liable for any offence if they had acted in good faith.

Topic -XIII

ACCIDENT

Section 18 of the Sanhita deals with the defence of accident. The term 'accident' is derived from Latin verb *accidere*. It means 'a be-fall' or 'a happening by chance' or 'a misfortune'.

Accident is an event that occurs against one's expectation. It is an event which occurs all of a sudden and no man of ordinary prudence could anticipate it. A man is not criminally responsible for unintended and unknown consequences of his lawful acts performed in a lawful manner by a lawful means with proper care and caution.

By virtue of section 18 of the Sanhita, the consequential result of an act is not an offence if the following conditions are satisfied:

- (1) The person should have engaged in a lawful act.
- (2) He should have done it in a lawful manner by lawful means and with proper care and caution.
- (3) He should not have any criminal intention or knowledge.
- (4) The result of his act should be accident or misfortune.

Illustrations

- (1) A was working with a hatchet(light short-handed axe). The head flies off and kills a man who was standing near the place where A was working. If A was working with proper care and caution and without any criminal intention or knowledge, his act is excusable and he is not liable for any offence.

- (2) A is the driver of a passenger vehicle. He was driving the vehicle at a normal speed with proper care and caution. The front axle of the vehicle broke and the bus overturns. It caused death of several passengers. A is not liable for any offence since it is an accident or misfortune.
- (3) A and B were friends. They went to the forest for hunting. They took up certain positions and lay on wait for animals. 'A' heard a rustle(a light sound). He thought that it was of an animal and fired in the direction of the rustle. The shot hit B and caused B's death. A is not liable for any offence since B's death is an accident or misfortune.

Decided Cases

(1) Tunda v. State (AIR 1950 All 95)

A and B were friends. They agreed for a wrestling. During the wrestling B received injuries in his head while he was thrown down by A. As a result of the injuries B died.

The Court held that the injuries were accidental and not intentional and A was not liable for any offence. His act fell within s.80 of the Code(now under section 18 of the Sanhita).

(2) Jageshwar v. Emperor (1924 Oudh 228)

A was beating B with his fists. B's wife interfered taking her baby in her shoulder. A gave a blow to the woman and that struck the child on his head. The child died two days after this incident due to the effect of blow.

The Court held that A was not protected under s. 80 (now under section 18 of the Sanhita), because he was not doing lawful act in a lawful manner by lawful means.

Problem

- (1) 'A', a thief attempts to take out the purse of B, who has a loaded pistol in his pocket. As soon as the thief puts his hand into B's pocket, the pistol goes off, and B is shot dead. Is A guilty of causing B's death?

It is to be noted that the defence of accident is available only to a person who has done a lawful act in a lawful manner by lawful means with proper care and caution and without any criminal intention or knowledge. The act of thief is not lawful. However, he has no knowledge of existence of pistol in B's pocket. Moreover, he had no intention to cause the death of B. The death of B was pure accident. When a person engaged in the commission of an offence causes death by pure accident he shall suffer only the punishment of his offence, without any addition on account of such accidental death. Thus the thief is liable to be punished only for 'attempt to theft'.

Topic-XIV

NECESSITY

Section 19 of the Sanhita deals with the defence of compulsion by necessity. Section 19 permits the infliction of lesser evil in order to prevent greater evil.

By virtue of s.19 of the Sanhita, a harmful act is not an offence if it was done under the following circumstance;

- (1) The act should have been done in good faith.
- (2) The harmful act must be done for the purpose of preventing or avoiding other harm to person or property.

- (3) The person who has done the harmful act should not have criminal intention to cause harm.

If all the above conditions are satisfied, the person who has done the harmful act is not liable for his harmful act even though he had done it with knowledge that his act would result in harm.

Illustrations

- (1) The Captain of a ship finds himself in a peculiar situation. He is about to strike down a boat with 20 passengers. If he takes a sudden turn to the other side, in order to save 20 passengers, the ship will strike down a boat with two passengers. Here if he takes a turn in good faith to avoid danger to the 20 passengers in the first boat and causes death of 2 persons, he is not guilty of any offence.
- (2) A, in great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. A is not liable for any offence.
- (3) A prisoner escaped from a jail to avoid being burnt to death by fire caused by bombing. He is not guilty of escaping from lawful custody. He does not act with any criminal intention. He acted in good faith to prevent the loss of his life.

R. v. Dudley and Stephens (L.R. 14 Q.B.D 273)

D, S and a boy were on board a boat. The boat was cast away on the high seas about 100 miles from the seashore. On 20th day when they had no food for eight days and no water for 5 days, D and S killed the boy and ate the flesh of the boy for

four days. On the 4th day they were picked up by a passing vessel. They were tried for the murder of the boy.

They took the defence of necessity. The court held that the accused were liable for murder and observed that preserving one's life is not an absolute necessity justifying the killing of another human being. Nevertheless in this case a minor punishment was given.

The defence of necessity will fail under the following circumstances: (i) if offence committed is greater than the harm avoided, or (ii) if the harm could be avoided by other methods.

Problems

(1) **A and B were swimming in the sea after a ship wreck . They got hold of a plank. It was not large enough to support both. A then pushed off B who was drowned. Is 'A' guilty of any offence.?**

Lord Bacon in his commentary on the maxim about necessity illustrated the above facts as necessity justifying A's act as not an offence as B was left with a chance of getting another plank.

But this approach was not accepted in **R.v. Dudley & Stephens**. If the decision in r. v.Dudley and Stephens is followed, 'A is liable to be punished for culpable homicide. However, he may be punished with lesser punishment.

(2) **A starving man steals food to save life of himself and his family members. Is he liable for the offence of larceny(theft)?**

According to Lord Bacon, stealing of food to satisfy hunger is not larceny or theft.

According to Hobbes, a man may unlawfully take food in famine, if he cannot obtain it for money or from charity. He further qualifies that this excuse is not available when poverty is due to one's own conduct.

According to Hale, 'economic necessity is no defence for theft or larceny'. Blackstone also expressed the very same view.

The stealing food to save life of oneself and his family members may be a necessity justifying his act. But if the starvation was the result of his idleness, the theft cannot be justified on the ground of necessity.

(3) 'A' who was in possession of an unlicensed gun fired at an animal which was attacking his son 'B' to save his life. The shot accidentally hit on 'C', an innocent person and C died of the injury. Is A liable to be punished for murder ?

In the given problem 'A' fired at an attacking animal to save the life of his son. But the shot hit on 'C' accidentally. A's act is justified under sections 18(accident) and 19 (necessity) of the Code for the following reasons.

- (1) A has *no criminal intention* to kill C or any other person.
- (2) He fired at an animal *to save the life of his son B.*
- (3) The shot *accidentally hit on C.*
- (3) He has used an unlicensed gun. However *the defence of accident cannot be denied only for the want of licence.*

He is not liable to be punished for the offence of murder. His act of firing at an animal is not an unlawful act in the given occasion. He fired at animal to save life of his son. Hence his act is justified by necessity of the occasion. However, he may be punished for possessing unlicensed gun.

Topic - XV

INFANCY

Sections 20 and 21 of the Bharatiya Nyaya Sanhita deals with the defence of infancy. A child is not criminally liable for his acts if he is below 7 years of age. If he is above 7 years and below 12 years, the liability depends upon his mental maturity. If he has attained sufficient mental maturity to judge what is right or wrong, he is liable. If he has not attained the sufficient mental maturity to judge what is right or wrong, he is not liable. In the case of a child above 12 years, he is criminally liable.

By s . 20 of the Sanhita, an act done by a child under seven years of age is not an offence. It is a presumption that a person of such age is absolutely incapable of distinguishing between right and wrong. He is absolutely *doli incapax*. If a child is accused of an offence under the Code, proof of the fact that he was at that time below 7 years of age is *ipso facto* an answer to the prosecution. Thus there is an irrebuttable presumption of law that a child below seven years of age is not capable of committing a crime. Section 82 confers absolute immunity to a child below seven years from being punished for his wrongful acts.

By s. 21 of the Sanhita, an act done by a child above seven years of age and under 12 years is not an offence if he has not attained sufficient mental maturity to judge the nature and consequence of the conduct on that occasion. If the child above seven years of age and under 12 years has attained sufficient mental maturity to judge the nature and consequence of his conduct on that occasion, he or she is liable to be punished

for the crime. Section 21 of the Sanhita confers only a limited immunity to a child above seven years of age and under twelve from being punished for his wrongful acts.

Decided Cases

(1) Marsh v. Loader (1863) 14 CBNS 535

While stealing a piece of wood from the complainant's house a child was caught and given into custody. Since the child was under the age of 7 years, he was discharged.

(2) Marimuthu's Case (1909) 9 Cr. L.J.392 (Mad)

The accused, a girl of 10 years, a servant of the complainant picked up his silver button worth eight annas and gave it to her mother. She was convicted and sentenced to a month's imprisonment. But the High Court quashed the conviction and held that there was no finding by the Magistrate that the accused had attained sufficient maturity of understanding to judge the nature of her act.

English Law Relating to Infancy

In England, an infant below 10 years of age is presumed to be *doli incapax*. It is an irrebuttable presumption. A child of 10 years or above but under 14 years is presumed to be not capable of committing a crime. But this presumption can be rebutted by adducing evidence of "mischievous discretion" (knowledge that what was done was morally wrong).

In England, a boy under 14 years of age could not be convicted of rape. But the Sexual Offences Act 1993 (English) now provides for abolition of the presumption in criminal law that a boy under the age of 14 is incapable of sexual intercourse.

Problem

M, a boy of 6 1/2 years killed N with a knief. M stabbed N till N died. Can M be held guilty of any offence ? Will your answer be different, if M had told X that he would kill N?

By virtue of section 20 of the Sanhita, M is not liable to be punished for any offence. Section 21 of the Sanhita says that "nothing is an offence which is done by a child under seven years of age".

Topic- XVI

MENTAL ILLNESS (UNSOUND MIND OR INSANITY)

Section 22 of the Bharatiya Nyaya Sanhita deals with the law relating to insanity as a defence.

By s. 22 of the Sanhita an act done by a person is not an offence if the following conditions are satisfied:

- (1) At the time when he has done the act he should be of unsound mind.
- (2) Due to the unsoundness of mind-
 - (a) he should be incapable of knowing the nature of his act. Or
 - (b) he should be incapable of knowing that what he is doing is wrong. Or
 - (c) he should be incapable of knowing that what he is doing is contrary to law.

Unsoundness of mind is a very good defence to criminal responsibility. The basis of this defence is that a person of unsound mind does not know the nature of the act he is doing or what is either wrong or contrary to law.

Medical and Legal Insanity

It is to be noted that medical insanity is different from legal insanity. The defence available under the Sanhita is only with regard to the Legal Insanity. A man may be suffering from some form of insanity in the sense in which the term is used by the medical men. But that is not sufficient to get the protection of s.22. A person may be medically insane but may not be legally. There are various degrees of insanity known to medical men or psychiatrists. But the law does not recognise all kinds of insanity. Legal insanity arises out of unsoundness of mind and as a result of which person completely loses his cognitive faculties. A person is legally insane when he becomes incapable of knowing the nature of his act due to unsoundness of mind or when he is unable to distinguish right from wrong or whether his act is contrary to law.

In **R v. Daniel Mc Naughten**(1843) 10 Clark & Finnelly 200-214-(H.L) the accused, Daniel Mc Naughten was charged for murder of Edward Drummond(secretary to the Prime Minister, Sir Robert Peel) by shooting him in the back on 20th January 1843. The accused was suffering from morbid delusion and he believed that Sir Robert Peel had injured him. He mistook Drummond for Sir Robert and accordingly shot and killed him. The accused pleaded not guilty on the ground of insanity.

The House of Lords acquitted the accused on the ground that at the time when he fired shot he was suffering from insanity.

The court enunciated following principles which constitute the foundation of law of 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 to the satisfaction of the court.
- 2) To establish the defence of insanity, it must be clearly proved that, at the time of committing the act, the accused was labouring under such a defect of reason from disease of mind and not to know the nature and quality of the act he was doing or if he did know this not to know that what he was doing was wrong.

Section 22 of the Sanhita is drafted on the basis of the decision given in Mc Naughten's case.

Ashiruddin Ahmed v. The King (AIR 1949 Cal. 182)

The accused was tried for murder of his son. The defence was insanity. The accused in his dream was commanded by someone in paradise to sacrifice his own son aged five years. The next morning the accused took his son to a mosque and killed him by thrusting a knife in his throat. He then went to his uncle and told him the story. It was held that the accused was of unsound mind and acting under the delusion of dream. He sacrificed his son believing it to be right. He was therefore held entitled to the benefit of s. 22 of the Sanhita.

State of Madhya Pradesh v. Ahmadulla (AIR 1961 SC 998)

The Supreme Court held that the burden of proof of insanity is upon the accused. The accused should prove that he was suffering from unsoundness of mind at the time when he did the act.

Mohammed v. State of Maharashtra(AIR 1972 SC 2443)

The accused after killing his wife and daughter remained in the locked door and shouted "Save my wife, save my children, call the police.' When the door was opened by an axe from outside, he was found standing near the door with' a chopper in hand. His wife and daughter were lying on the ground with bleeding injuries. The Supreme Court rejected his plea of insanity and sentenced to imprisonment for life.

State of Kerala v. Ravi (1978 KLT 177)

The accused was a frustrated lover. He stabbed a young girl causing her death. The High Court rejected the plea of insanity and sentenced him to imprisonment for life.

Nivrutti v. State of Maharashtra (1985 Cr.L.J. 449)

The accused killed his own 2 months old son under an illusion that the child was a devil born to kill him. The Bombay High Court acquitted the accused on the ground of his insanity.

Kuttappan v. State of Kerala(1986 Cr.LJ 271)

The accused murdered his wife by chopping off her head and gone to the police station and placed her head in the station verandah. The appellant had a delusion that his wife was unchaste. The Kerala High Court acquitted the accused on the ground of insanity. The court held that a person is legally insane when he is incapable of knowing the nature of the act or that what he was doing was wrong or contrary to law.

T.N. Lakshmaiah v. State of Karnataka (2002) 1 SCC 219

The Supreme Court held that the accused who claims the exception under s. 84 has to prove by the standard of

preponderance of probabilities that at the time of commission of the crime his mental condition was as described by s.22 of the B.N.S . The accused who claims the benefit of the general exceptions in the Code has to prove the exceptional circumstances justifying his act.

In **Kumari Chandra v. State of Rajasthan** (2019 CrL J 163) it was held that it is not every mental derangement that exempts an accused person from criminal responsibility for his acts, but it must be such which impairs the cognitive faculties of understanding the nature of his act on the victim. There is no other possible test available to judge the mental condition of the accused at the particular point of time. Behaviour of the accused, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the incident, but not of the remote past in time.

In **Balaji Kishan Nagarwad v. State of Maharashtra** (2019 KHC 3809) the appellant committed murder. The appellant admittedly did not have enmity with the deceased. The appellant lynched the deceased only for the reason that the deceased refused to give him Pepsi for free. Evidence of witnesses showing that behaviour of the appellant was not normal. The appellant was kept under medical observation then was referred to Medical Hospital for psychological testing and final opinion. It was opined by the Medical Hospital that the appellant was unresponsive. Under such a circumstance the appellant was acquitted.

In **Mohd. Anwar v. State** (N.C.T. of Delhi) 2020 (7) SCC 391, it was held that inorder to successfully claim the defence of unsoundness under s. 2(48) of IPC, the accused must show by preponderance of probabilities that he/she suffered from a serious

enough mental disease or infirmity which would affect the individual's ability to distinguish right from wrong. Further, it must be established that the accused was afflicted by such disability at the time of crime and that but for such impairment , the crime would not have been committed.

In **Paul E.P @ Roy v. State of Kerala** (2021 (1) KLT SN 8), it was held that Mens rea of the accused has much relevance in a case when the benefit under section 22 B.N.S has been pleaded by an accused. Prosecution must prove motive behind the incident.. In the absence evidence to prove motive the accused is entitled to acquittal.

Topic -XVII

DRUNKENNESS

Sections 23 and 24 of the Bharatiya Nyaya Sanhita deal with the defence of drunkenness. By s. 85 of the Code, an act done by a person is not an offence if the following conditions are satisfied:

- 1) At the time when he has done the act he should be under the influence of intoxication
- 2) By reason of intoxication -
 - (a.) he should be incapable of knowing the nature of the act, or
 - (b.) he should be incapable of knowing that what he is doing is either wrong or contrary to law .
- 3) The thing which intoxicated him should be administered to him without his knowledge or against his will.

By virtue of ss. 23 and 24 of the Sanhita **voluntary drunkenness is not an excuse.**

Basudev v State of Pepsu (AIR 1956 SC 488)

The appellant was a retired military Jamadar. He was charged with murder of a young boy aged 15 years. Both of them attended a wedding and went to the house of the bride to take the lunch. The appellant along with other members of the wedding party boozed a lot of liquor and he became very drunk and intoxicated. After this, he came to the boy and wanted him to vacate the seat which the appellant had earlier occupied. But the boy refused to move. Then the appellant whipped out a pistol and shot the boy in the abdomen. The boy died as a result of the shot injury.

The appellant pleaded drunkenness as a defence. The Supreme Court rejected the defence and held that the appellant is not entitled to the benefit of ss. 23 and 24 of the B.N.S . The whole conduct of the accused before and after the commission of the crime show the intention to do the crime. Moreover the intoxication was voluntary.

Problem: B was a night watchman. At about 6.30 p.m. on a particular day when he was drunk he took a girl about 13 years of age and in his attempt to rape her placed one hand upon her mouth and his thump on her throat. She died of suffocation. The defence of B was that he was not able to know that what he was doing was likely to cause serious injury as he was drunk. Decide

The accused was intoxicated voluntarily. In order to treat drunkenness as a defence, it should be shown that at the time of committing the offence the accused was so drunk and due to that he was incapable of forming the intent to commit crime.

The facts of the problem is taken from the decided case **Director of Public Prosecutor v Beard** (1920 AC 479). In that case on similar facts it was held that the accused is guilty of murder.

Attorney General v Gallacher (1961 3 All. ER 299)

The accused killed his wife claimed the defence of drunkenness. The accused was convicted of murder. The Court held "he cannot rely on the self-induced drunkenness as a defence to a charge of murder".

By prolonged and habitual drinking there may be loss of the faculty of reasoning and is known as delirium tremens. If such a person commits a crime he may be excused of the crime. If a man is made to drink through the fraud of others he may also be excused of the crime committed by him.

Sahadevan v. State of Kerala (1987 (1) KLT SN. 69 P.50)

The Court held that in order to get the benefit of the general exception under s.23 of the B.N.S. it must be proved by accused that the intoxication was caused against his will. Voluntary intoxication is not a defence.

Topic -XVIII

CONSENT

Sections 25 to 30 of the Bharatiya Nyaya Sanhita deal with the defence of consent.

By virtue of **Section 25 of the Sanhita**, an act done by a person is not an offence if the following conditions are satisfied.

- (1) He should not have intended to cause death or grievous hurt.
- (2) The person to whom hurt is caused should have expressly or impliedly consented to suffer harm or to take the risk of any harm.
- (3) The person consented to take the risk should be above 18 years of age.

Example

A and Z agreed to fence with each other for amusement. A hurt Z while playing fairly. A commits no offence. It is because both of them had impliedly consented to suffer any harm which may be caused without foul play in the course of such fencing.

Section 25 protects persons engaged in the ordinary games such as fencing, boxing, football, cricket and the like. The game should be played fairly. There should not be any foul play.

By virtue of **Section 26 of the Sanhita**, an act done by a person is not an offence if the following conditions are satisfied:

- (1) He should not have intention to cause death.
- (2) He should have done the act in good faith for the benefit of the person who suffered harm.

(3) The person suffered harm should have given express or implied consent to suffer the harm or to take the risk of that harm.

Examples

a) A is a surgeon. Z is suffering from abdominal pain consented to an operation. The doctor has knowledge that the operation is likely to cause death of Z. However he performed the abdominal surgery in good faith for the benefit of Z. Z died. A is not liable for any offence.

In **Sukaroo Kobiraj v. The Empress** (14 Cal. 566), the court convicted a quack physician(a person who pretends to have special knowledge and skill in medicine) for having caused death of a patient by operating on him for internal piles by putting them out with ordinary knife. The accused was convicted for causing death by rash and negligent act.

b) A headmaster of a school inflicted moderate and reasonable corporeal punishment to correct an erring student. The headmaster is not liable for any offence since he acted in good faith for the benefit of the student. His act is protected under s. 88 of the I.P.C.(now under section 26 of the Sanhita). He as a delegate of the parent of the child can inflict moderate and reasonable punishment to correct a child who commits errors: (**R. v. Ghatge** (1948) 51 Bom LR 103).

Section 27 of the Sanhita exempts guardians from criminal liability when they give consent for minor under the age of 12 years or for persons of unsound mind. The guardian giving consent to suffer a harm to his child is not liable for any crime if he has consented in good faith for the benefit of the child.

Example

A is the father of a child. The child is suffering from a heart disease which will cause the death of the child. A consents to the doctor to do the surgery. The father and the surgeon are aware of the fact that the surgery may result in the death of the child. Both of them have not intended to cause the death of the child. The consent given by the father is in good faith to save the child and for the benefit of the child. The child dies in the operation. A and the Doctor are not liable for any offence. They are protected under s.27.

By virtue of **Section 28** consent given by a person is not valid if given under the following circumstances.

- (1). If he has given consent under fear of injury or under a misconception of fact.
- (2) If he is unable to understand the nature and consequence of his consent due to unsoundness of mind or because of intoxication.
- (3) If he is a minor under the age of 12 years.

Problem: A, a snake-chaser claimed magical powers of curing of snake-bites and asked for volunteer to be bitten by his poisonous cobra. B offered himself and died. Has A committed any offence?

B is said to have consented to be bitten by the snake. But it is purely on the basis of a misconception of fact. It was on the belief that A had the power to cure snake bites. 'A' is aware of the fact that B has consented in consequence of misconception. A is guilty of offences under s. 105 (culpable homicide) or 106 (death caused by rash and negligent act) of the I.P.C.

The facts of the problem are taken from the decided case **Queen v. Poonai Fattemah** (1869 12 W.R. (Cr)7. In that case the accused was held guilty of murder.

In **Denu P. Thampi v. Ms.X and Another** (2019 (2) KLT996) the prosecutrix gave consent to have sexual intercourse with a person with whom she is deeply in love, on a promise that he would marry her on a later date. He married the victim after a short period. It was held that when promise was not fraudulent, it cannot be said that the accused committed rape on the victim. Further it was held that the consent given cannot be said to be given under a misconception of fact. In such a case, prosecution of the accused for committing an offence of rape would be abse of the process of the court. The Kerala High Court quashed the proceedings.

In **Anurag Soni v. State of Chattisgarh** (AIR 2019 SC 1857) it was held that in a case where prosecutrix gave consent to have sexual intercourse on false promise to marry and such consent can be said to be given under misconception of fact and such a consent shall not excuse accused from the charge of rape offence under section 375 IPC(now under section 63 of the Sanhita).

Acts Done Without Consent

By s. 30 of the Sanhita , an act done in good faith for the benefit of a person without consent will not be an offence. In order to apply s.30 the following conditions should be satisfied:

- (1) The person done the act should have acted in good faith.
- (2) It should be intended for the benefit of the person who suffered harm.
- (3) The person to whom harm was caused should be incapable of giving consent due to minority, insanity or unconsciousness.

Example

A child met with an accident on Highway. Some persons took the child to the Hospital. The Doctor found that the injuries sustained by the child are so serious and if an operation was not immediately performed, the injury might result in the child's death. There was no time to apply to the child's guardian. A performed the operation in good faith for the benefit of the child. The child died . The doctor has not committed any offence.

Topic - XIX

COMPULSION

By virtue of s.32 of the Sanhita, when an offence is committed by a person under the following circumstances, he is exempted from criminal liability.

- (a) There should be threat of instant death to the person who has committed the crime. Fear of hurt or grievous hurt will not be sufficient.
- (b) Due to the threat of instant death he should have done the crime. At the time of the threat, there must be reasonable cause of apprehension that instant death to that person will otherwise be the consequence.
- (c) He should not have committed the offence of murder or offences against the State punishable by death.
- (d) He should not have joined a gang of dacoits knowing their character. However, if he was seized by a gang of dacoits and forced by threat of instant death to do a thing which is an offence, and if he has done such an offence, he is not liable for the offence.

Problem

A black smith was seized by a gang of dacoits and forced by threat of instant death to take his tools and open the door of a house for the dacoits to enter and plunder it. What offence the black smith has done?

Blacksmith is not liable for any offence since he acted under compulsion.

Topic - XX

TRIFLES

Trifles means negligible wrongs or offences of a trivial character. There is a well-known maxim "de minimis non curat lex". The maxim means that the law does not concern with offences of a trivial character.

Section 33 of the Sanhita deal with the defence of trifles. By virtue of s.33 , an act is not an offence if the harm is so slight that no person of ordinary sense and temper would complain of such a harm. The defence is available to the accused even though he has intended to inflict such a harm.

Veeda Menezes v. Yusuf Khan (AIR 1966 SC 1773)

At the end of a heated quarrel, the accused threw a file of papers which caused a scratch to the complainant. The lower court acquitted the accused since the harm is trivial. The Supreme Court confirmed this finding.

Narayanan v. State of Kerala (1987 Cr.LJ 741)

In a campaign by Sarvodaya workers to educate people about the evil of alcohol, liquor shops were picketed to prevent

people from going there. It was held that even though obstruction was caused, as the harm caused is slight, section 33 would apply. The High Court quashed the prosecution.

Anoop Krishan Sharma v. State of Maharashtra (1992 Cr.L.J.1861 (Bom)

The accused locked the complainant inside the factory by pulling down the shutter. It was held that the ingredients of the offence under section 127(2) (wrongfule confinement) were established. However the accused was acquitted as the complainant regained his freedom within a very short time and only a minimal harm was caused..

Abhijeet J.K v. State of Kerala (2020 (2) KLT 123)

Victim lady aged 39 was walking along a public road in the night. Accused who had no acquaintance with her, followed her and invited her to accompany him. Further the accused made sexual gestures to the victim lady with the middle finger of his hand. It was held that the intention of accused was to insult the modesty of victim lady punishable under section 509 IPC(now under section 79 of the Sanhita). The said act cannot be said as trivial in nature which would come within the purview of s.95 IPC.(now under section 33 of the Sanhita)

Topic-XXI

PRIVATE DEFENCE

The primary duty of every State is to protect the life and property of its subjects. It is a sad truism that state force is not available at all circumstances to protect the life and property of an individual. It is, therefore, the right of Private Defence is recognised by law. By virtue of right of private defence, an individual can protect his own life and property. So also he can protect the life and property of others.

Sections 34 to 44 of the Bharatiya Nyaya Sanhita, specify the circumstances in which, and the extent to which, the right of private defence can be exercised.

Rules of Right of Private Defence

- (1) An act done in the exercise of right of private defence is not an offence (s.34).**
- (2) The right of private defence is available only against an act which is an offence under the Sanhita.**
- (3) The right of private defence is a defensive right and not a punitive or retribution right.**

In **Manjeet Singh v. State of H.P.** (2014) 5 SCC 697, the Supreme Court held the exercise of right of private defence can be exercised only to defend unlawful action and not to retaliate.

- (4) The right of private defence is available to a person for defending his own body and the body of other persons(s.97).**

Dhawan Toli v. State (1873) 20 WR Cr. 36

'A' and his friend 'B' jointly caused grevious hurt on a trespasser who trespassed into A's house to have illicite intercourse with his wife. The Court held that none of them committed any offence.

Nurmiah v. State (1945) 50 CWN 169

The accused was attacked by a number of men armed with various weapons. He snatched away a weapon from one of them and struck him with the weapon. He died as a result of the injury. The Court held that the accused acted in self defence of body although the deceased was unarmed at that time.

Rose v. State (1884) 15 Cox 540

A son shot and killed his father under circumstance inducing the belief that he is cutting throat of his mother. The court held that the accused is not liable for any offence.

In **Kurian v. State** (2019 KHC 741) it was held that in order to make out a case of right of private defence the accused need not plead it in specific terms. The court can consider it even if the accused has not taken that plea, if the same is available to be considered from the materials on record.

In **Thomas v. State of Kerala** (2019 (3) KHC 148) it was held that a mere reasonable apprehension is enough for the accused to exercise his right of private defence. Accused need not even plead self defence. His evidence and the evicence of witnessed adduced before the court for prosecution if indicates towards possibility of a reasonable apprehension on the part of the accused that there is possibility of that he would sustain grevious hurt, he can defend his body by causing the death of the assailant.

- (5) The right of private defence is available to a person for defending his own property and the property of other persons (s.35).**
- (6) The right of private defence is available against all offenders including an unsound person, minor or an intoxicated person(s.36).**

Illustration

- (a) 'Z' under the influence of madness attempts to kill A. Z is not guilty of his offence by virtue of s. 22 of the Sanhita. A can exercise his right of private defence against Z. If A exercises right of private defence to save his life, A commits no offence.**
- (7) The right of private defence is not available against the acts of public servants done under the colour of their office and in good faith(s. 37). The right can be exercised against them when there is apprehension that their act would result in death or grievous hurt (s. 37).**

Gopi v. R (10. Pat. 821)

A sub-inspector of Police proposed a search to be made by him which was not in accordance with the provisions of Criminal Procedure Code. The accused pushed him inorder to prevent the search. The court held that the accused was not guilty of any offence since the sub-inspector has not acted in good faith.

Venkat Rao v. R (7 BHCR 50)

A subordinate police officer was deputed by the officer -in-charge of the police station to make a search. He entered a

house in search of property alleged to have been stolen without a search warrant. The accused resisted the search. The court held that even though the officer was not strictly justified in making a search of the house without a warrant, the inmates could not resist the policeman especially when they were charged with theft and he (policeman)] was acting in good faith and without malice. The resistance was held to be not justifiable as private defence.

Achru Ram v. State (7 Lah 104)

An income-tax officer entered the accused's factory for examination of their account books. The accused refused to show the account books. The I. T. O refused to leave the factory and sent for a Police Officer. The accused thereupon forcibly ejected him from the factory. The court held that the accused acted rightly in the exercise of his right of private defence as the proceedings of the I. T. O were wholly illegal and he was not acting in good faith under colour of his office.

Dwarika Prasad v. State of U. P (AIR 1993 SC 882)

A police constable caused certain injuries to the accused with lathi. The injuries were not serious. The accused caused serious injury to the Police Constable and he died. The accused pleaded the private defence. The court held that the accused had no private defence against the public officer where there is no apprehension that his act would result in death or grievous hurt.

State of U. P v. Niyamat (1987)3 SCC434

During moonlit night a group of villagers were trying to rescue a person illegally arrested and carried away by a police

party. One of the constables fired three shots one after other in order to scare them away. Thereupon the villagers launched an attack on police resulting in death of one of the constables. Held, there was reasonable apprehension of death or grievous hurt for invoking the aid of private defence.

- (8) **The right of private defence cannot be exercised when there is time to have recourse to the protection of public servants (s. 37).** When there is chance of getting police protection one cannot exercise right of private defence.
- (9) **The right of private defence shall not extend to the inflicting of more harm than necessary for the purpose of defence (Sec. 37).**

NahuKahar v. State (AIR 1971 SC 2143)

'A' inflicted minor injuries to N. N attacked A even after he had fallen down. As a consequence of the attack A died. Held N exceeded the right of private defence. The harm inflicted was more than necessary for the purpose of defence and hence N be liable to be punished for culpable homicide.

Yogendra Morarji v. State of Gujarat (AIR 1980 SC 660)

Two persons raised their hands signalling to the appellant to stop the vehicle. The appellant stoped the vehicle and at that time their companions also came close to the jeep. The people who gathered around were all labourers of the appellant. They demanded immediate payment of wages which were refused by the appellant. On this the appellant took out his revolver and fired three shots and resulted in the death of one of them. The Supreme Court rejected the plea of private defence and held that one must try first to avoid the attack by retreating,

otherwise one would not be entitled to get the benefit of private defence.

Problems

- (a) A found a thief entering his house by night through an entrance made in the side wall. A seized him while intruding his body. Then 'A' held him with his face downward to the ground to prevent his further entry. The thief died of suffocation. Is A liable for any offence?

A held down the thief only to prevent further entry into the house. A had not used any weapon. A had used only necessary force and not exceeded the limit. The harm caused by A is justifiable: (**Kurrim Bux's Case** 1865 3 WR (Cr.)12).

- (b) A watchman found a boy stealing wood from his master's land. He bound him to his horse's tail and beat him. The horse was frightened and ran away. The boy was dragged along the ground. His shoulders were broken and he died. What offence had the watchman done?

The watchman had exceeded the right of private defence. The harm inflicted is more than what is necessary for the purpose of defence. Watchman is not entitled to get the benefit of private defence. He is liable for culpable homicide: (**Halloway's Case** (1628)1 Eas PC 327).

- (10) The right of private defence of body commences as soon as a reasonable apprehension of danger to the body arises and it continues as long as the apprehension of danger to the body continues (s. 40)

Kala Singh v. State (34 Cr. LJ 1175) .

The deceased was a man of bad character. He had some quarrel with the accused. The villagers took him to his house. After some time he returned with a stick and entered the shop of the accused and threw the accused on the ground. He pressed his neck and hit on his hand and chest. Somehow the accused got relieved from the grip of the deceased and took a light hatchet and gave three blows on his head. The injuries resulted in his death after three days.

The court held that the whole conduct of the deceased was aggressive and though no grievous hurt was caused to the accused by the deceased, the circumstances were sufficient to raise a strong apprehension in his mind that he would be killed unless he succeeded in disabling him and hence he did not go beyond his right of private defence.

(11) The right of private defence of body can be extended to causing of death of the assailant or offender under the following circumstances.

- a) If the assault of the assailant or offender caused reasonable apprehension of death, or
- b) If the assault of the assailant or offender caused reasonable apprehension of grievous hurt, or
- c) If the assault of the assailant or offender is with the intention of committing rape, or
- d) If the assault of the offender is with intention of gratifying unnatural lust, or
- e) If the assault of the offender is with the intention of kidnapping or abduction or

- f) If the assault of the offender is with the intention of wrongfully confining a person and if that causes reasonable apprehension that he will be unable to have recourse to the public authorities for his release (s. 100).

By section 38(g) of the Sanhita, one cause death of a person if he throws or administers acid or attempts to throw or administer acid and that causes a reasonable apprehension that grievous hurt will otherwise be the consequence of such act.

Illustrative Cases

Amjad Khan v. State (AIR 1952 SC 165)

A communal riot broke out between some Sindhi refugees and the local muslim in a town. The appellant began to close his shop. A mob looted the shop of the appellant's brother and began to beat the doors of his shop with lathis. Thereupon the appellant fired two shots from his gun. It resulted in death of one of the members of the mob.

The court held that the circumstances in which the appellant was placed were sufficient to give him the right of private defence of the body even to the extent of causing death.

Viswanath v. State of U. P (AIR 1960 SC 67)

The appellant's sister and her husband were in strained relationship. She was living with her father. One day her husband tried to abduct her from her father's house. There was an assault on her. She was drawn out of the house by using force. The appellant resisted his act by stabbing him to death. The Court held that the appellant had the right of private defence of the body of his sister against an assault with the intention of

abducting her by force. Such a right in the circumstances extended to the causing of death.

(12) The right of private defence of body can be extended to the causing of harm other than death if the assailant's act does not fall in anyone of the six circumstances mentioned in Sec. 38 (s. 44).

(13) The right of private defence against assault causing apprehension of death can be exercised even if there is the risk of harm to some innocent person. (s. 44).

Illustration

A is attacked by a mob who attempted to murder him. He cannot effectively exercise his right of private defence without firing on the mob. If he fires it will cause harm to innocent young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

Private Defence of Property

(14) The right of private defence of property is available against any of the following offences or an attempt to commit such an offence.

- i) Theft
- ii) Robbery
- iii) Mischief
- iv) Criminal Trespass.

(15)(i) The right of private defence of Property commences when a reasonable apprehension of danger to the property commences.

- (ii) The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained or the property has been recovered.
- (iii) The right or private defence of property against robbery continues so long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or of instant personal restraint continues.
- (iv) In case of criminal trespass, the right of private defence continues so long as the offender continues in the commission of criminal trespass. In the case of mischief, it will continue as long as mischief lasts.
- (v) The right of private defence against house breaking by night continues as long as the house trespass which has been begun by such house breaking continues.

Problem

A, who had lost his cycle four days previously, found it in the possession of B. He gave B a beating in order to take away the bicycle from him. Discuss whether A was lawfully exercising the right of private defence of property.

The right of private defence of property against theft continues till the property has been recovered. A has the right of private defence of property against theft and during the time when the right continues he exercised the right. Thus he has lawfully exercised his right.

16) The right of private defence of property can be extended to the causing of death of the offender under the following circumstances.

- i) If he commits or attempts to commit robbery
- ii) If he commits or attempts to commit house breaking by night
- iii) If he commits or attempts to commit mischief by fire on any building, tent or vessel which is used as a human dwelling or as a place for storing of property
- iv) If he commits theft, mischief or house trespass under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence if such right of private defence is not exercised (s. 41).

Problem

'X', a thief, has done an attempt to commit theft in the house of Y. Since Y had awoken X ran away. Y chased X and killed him on the high way. Whether Y is entitled to claim private defence?

The private defence of property commences when there is reasonable apprehension of danger to the property commences. The right of private defence against theft continues till the offender has effected his retreat with the property or either the assistance of public authorities is obtained or the property has been recovered.

In the given problem it is made clear that 'X' the thief had not stolen any article from the house of Y. He ran away when

Y had awoken. Y chased X and killed X on the high way. Y has exceeded the limits and is not entitled to claim private defence.

(17) **The right of private defence of property can be extended to the causing of any harm other than death if the act of the wrongdoer does not fall under any one of the categories mentioned in s. 41 (s. 42).**

Topic-XXII

ABETMENT

Sections 45 to 60 of the Sanhita deals with the offence of Abetment.

A person is liable to be punished for abetment if -

- (a) he **instigates** any person to do an offence, or
- (b) he engages with one or more other person or persons in any **conspiracy** for committing an offence, or
- (c) he intentionally **aids** the commission of an offence.

This may be by doing an act or making an illegal omission.

The person who abets the commission of an offence is known as '**abettor**'.

In **Faguna Kant Nath v. State of Assam** (AIR 1959 SC 673), the Supreme Court held that the offence of Abetment may be committed in any one of the following three ways:

- 1) By **instigating** the commission of an offence.
- 2) By engaging in a **conspiracy** to commit an offence.

3) By intentionally **aiding** the commission of an offence.

In **Queen v. Mohit**(3 NWP 316) it was held that the persons who followed a woman preparing herself for *sati* to the pyre and cried "Ram Ram", were guilty of abetment by instigation to lead that woman to commit suicide.

Punishment for Abetment

By s. 49 of the Sanhita, a person who abets the commission of an offence shall be punished with the punishment provided for the offence if the act abetted is committed in consequence of the abetment.

Example

A and B conspire to poison Z. A procures the poison and delivers it to B. B administers the poison to Z in A's absence and Z dies. B is guilty for murder. A is guilty of abetting the offence by conspiracy and aid and is liable to the punishment for murder.

By s.51 of the Sanhita , if an act is abetted and a different act is done, the abettor is liable for the act done in the same manner and to the same extent as if he had directly abetted it. However, the act done should be a **probable consequence of the abetment**.

Examples

- (i) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft because the theft was a distinct act and not a probable consequence of the burning.

- (ii) X instigated A and B to break into an inhabited house at midnight for the purpose of robbery and provided them with arms for that purpose. A and B broke into the house and being resisted by Z, one of the inmates, murdered Z. The murder is the probable consequence of the abetment and X is liable for abetting robbery and murder.
- (iii) A instigated a child to put poison into the food of Z and gave him poison for that purpose. The child by mistake put the poison into the food of Y and Y died. The act of the child is a probable consequence of the abetment and A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

By s.54 of the Sanhita , if the abettor is present when the abetted act or offence is done, he shall be deemed to have committed such act or offence.

By s. 57 of the Sanhita , if a person abets the commission of an offence by the public generally or by any number or class of persons **exceeding ten**, he shall be punished with imprisonment of either description for a term which may extend to seven years or with fine or with both.

Example

A affixed in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place for the purpose of attacking the members of an adverse sect while engaged in a procession. A has abetted the public to commit the offence and is punishable with imprisonment for a term which may extend to three years or with fine or with both.

Abetment of an Abetment

By Explanation 4 to s. 46 , the abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Topic -XXIII

CRIMINAL CONSPIRACY

Section 61 of the Sanhita deals with the offence of Criminal Conspiracy.

Section 61 (1) defines 'Criminal Conspiracy' and 61(2) prescribes punishment for Criminal Conspiracy.

If the following conditions are satisfied, the offence of Criminal Conspiracy is complete and the parties to it are liable to be punished:

- (1) There should be an agreement between two or more persons.
- (2) The agreement should be to do an illegal act or to do a legal act by illegal means. It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

In **Hussain Umar v. Dalipainghji** (AIR 1970 SC 45) the Supreme Court held that the offence of Criminal Conspiracy is an agreement by two or more persons to do an illegal act or to do a legal act by illegal means. The agreement is the gist of the offence.

If there is an agreement to commit a crime the parties to such an agreement are punishable even though they have not done any positive act towards the accomplishment of their object. No overt act is necessary to punish the parties to a criminal conspiracy.

In **Yakub Abdul Razak Memon v. State of Maharashtra** (2013) 13 SCC 1, it was held that conspiracy is an agreement between two or

more persons to do an illegal act or an act which is not illegal by illegal means. To bring home the charge of conspiracy within the ambit of section 120 B, (now under section 61(2) of the Sanhita) it is necessary to establish that there was an agreement between parties for doing an unlawful act. It is difficult to establish conspiracy by direct evidence. The prosecution need not prove that the conspirators expressly agreed to do an illegal act. The agreement may be proved by necessary implication. It is also not necessary that each member of the conspiracy should know all the details of the conspiracy. The offence can be proved largely from the inferences drawn from the acts or illegal omissions committed by the conspirators in pursuance of a common design. Conspiracy is a continuing offence. Thus if any act or omission which constitute an offence is done in India or outside its territory, the conspirators continue to be the parties to the conspiracy. An unlawful agreement is the gist / essence of the crime of conspiracy. Conspiracy being a distinct offence, all conspirators are liable for the acts of each other of the crime or crimes which have been committed as a result of the conspiracy. That is, each conspirator can be attributed each other's actions in a conspiracy.

In **R. Shaji v. State of Kerala** (2013) 14 SCC 266 : (2013) 1 KLT 493, it was held that a conspiracy is generally hatched in secrecy, owing to which, direct evidence is difficult to obtain. The offence can, therefore, be proved either by adducing circumstantial evidence, or by way of necessary implication. In order to constitute the offence of conspiracy, it is not necessary that the person involved has knowledge of all the stages of action.

Punishment (s.61(2))

If a person is a party to a Criminal Conspiracy to commit an offence punishable with death, imprisonment for life or

rigourous imprisonment for a term of two years or upwards, he shall be punished in the same manner as if he had abetted such offence.

If a person is a party to a Criminal Conspiracy to commit an offence punishable with imprisonment for a term below two years or with fine or with both, he shall be punished with imprisonment for a term not exceeding six months or with fine or with both.

Topic - XXIV

ATTEMPT TO COMMIT OFFENCES

Section 62 of the Sanhita prescribes punishment for attempting to commit offences punishable with imprisonment for life or imprisonment for a specific period.

In order to apply this section following conditions should be satisfied:

- 1) There must be an attempt to commit an offence or an attempt to abet its commission.
- 2) There shall not have express provision in the Bharatiya Nyaya Sanhita,2023 prescribing punishment for such attempt.
- 3) The offence attempted to commit should be one punishable with imprisonment for life or imprisonment for a specific period. If the offence attempted to commit is punishable with death only this section does not apply.

If all the above conditions are satisfied, a person who attempts to commit an offence is punishable with imprisonment

for a term which may extend to one half of the imprisonment for life or one-half of the term provided for that offence, or such fine as is provided for that 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 he 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 the pocket. A is guilty under this section.

Topic - XXV

INCHOATE OFFENCES

Inchoate Offences refer to those which are incomplete though begun. In English law, incitement, conspiracy and attempt are treated as inchoate crimes.

A person may be guilty if he does an act which is more than merely preparatory to the commission of an attempt to commit a crime. There can be the guilt for aiding and abetting. Attempt, conspiracy and abetment can be included in the above given general heading.

Topic -XXXVI

RAPE

The offence of rape is dealt under **Chapter V** “offences against woman and child” in the **Bharatiya Nyaya Sanhita, 2023**.

Sections 63 and 64 deal with the offence of rape and punishment for rape. Section 69 deals with sexual intercourse by employing deceitful means.

Section 63 defines the offence of rape. A man is liable to be punished for the offence of rape if the following conditions are satisfied.

- (1) He should have done any of the following acts.
 - (a) He penetrated his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or made her to do so with him or any other person.
 - (b) He inserted to any extent, any object or a part of the body, not being the penis, into the vagina, urethra or anus of a woman or made her to do so with him or any other person.
 - (c) He manipulated 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 made her to do so with him or any other person.
 - (d) He applied his mouth to the vagina, anus, urethra of a woman or made her to do so with him or any other person.

(2) He should have done any of the above stated acts under any of the following seven descriptions:

- (i) Against her will
- (ii) Without her consent.
- (iii) 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.
- (iv) 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 lawfully married to him.
- (v) 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.
- (vi) With or without her consent, when she is under eighteen years of age.
- (vii) When she is unable to communicate consent.

Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates her willingness to participate in the specific sexual act. A woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exceptions

- 1) A medical procedure or intervention shall not constitute rape.
- 2) Sexual intercourse or sexual acts by a man with his own wife, the wife not being under 18 years of age, is not rape. Thus sexual intercourse by a man with his own wife is rape, if the wife is under the age of 18 years. It gives legislative effect to the Supreme Court judgement in **Independent Thought v. Union of India case (2017)**.

In **Independent Thought v. Union of India**, the Supreme Court of India ruled that sexual intercourse between a man and his wife under the age of 18 is rape.

Section 2(19) of the Sanhita defines the word 'man'. A 'man' is any male human being of any age. Thus a boy above 12 years of age is capable of committing rape. A boy below 12 but above 7 years of age enjoys a qualified immunity.

If a person does sexual intercourse with a woman who is below the age of 18 years, with or without her consent, it is rape.

In **Young v. R** (14 Cox CC 114), the accused had the sexual intercourse with a woman when she was asleep. It was held that the accused committed rape against her will.

In **Tukaram v. State of Maharashtra** (AIR 1979 SC 185) (This case is popularly known as the "Mathura Case"), Mathura, a Harijan girl aged 18 years was detained in a police station. It was in connection with the enquiry of a complaint filed by her brother. He made a report regarding the abduction of his sister by one Ashok with whom she was in love. The girl in custody

was taken to a toilet and was raped by one Ganpat, a constable. Another constable - Tukaram - tried to rape her, but he could not succeed to rape her as he was too drunk. The two accused were found not guilty by the trial judge. The Bombay High Court reversed the finding and held that the accused were guilty of the offence as there was no 'consent but only 'passive submission' due to the fear and helplessness. The accused preferred an appeal against the High Court judgment. The Supreme Court acquitted both the appellants for the following reasons:

- (1) The girl was not subject to any fear of death or hurt which may have led her to submit to the act.
- (2) There were no marks of injury on her person which showed that the whole affair was a peaceful one and that the story of stiff resistance was totally false.
- (3) The girl was not alone. She could have resisted and appealed to her brother. The fact that she followed the constable to the toilet and allowed him to have his way with her to the extent of satisfying his lust in full shows that she consented and the said act cannot be said to be a mere 'passive submission'.

The decision was subjected to severe criticism. The attempt to re-open the case also failed.

In **Rafique v. State of UP** (1980 4 SCC 262) a middle aged 9 Baisevika was raped when she was sleeping in a girl's school. The next day she narrated the incident to the Mukhyasevika. The appellant was convicted even in the absence of injuries on the person of the victim. Thus the Supreme Court in a way

modified the approach adopted in the Mathura case. Justice Krishna Iyer observed: "Rape for a woman is death-less shame and must be dealt with as the gravest crime against human dignity".

The decision in the **Mathura Case** resulted in amendment to the Indian Evidence Act,1872 and the Indian Penal Code in the year 1983 (now Bharatiya Nyaya Sanhita, 2023.)m. Before the amendment in 1983, the prosecution had to prove that (i) *there was sexual intercourse* and (ii) *it was without the consent of the woman*. After the amendment of the Indian Evidence Act in 1983(now Bharatiya Sakshya Adhiniyam) , in a prosecution for rape, if sexual intercourse is proved and the woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent (s.114 A)(now under section 120 of the Bharatiya Sakshya Adhiniyam). Thus, if the woman who is the victim of the rape states in the court that she did not consent, the accused has to prove that she consented for sexual intercourse. If the accused fails to prove the consent, he will be held guilty of the offence.

Bhubender Prakash v. State (1986 Cr. U 9 (Delhi H.C)

The accused taken a school going girl of tender years to another city and kept there for a long period of about four months and she was repeatedly subjected to rape. She was rescued by the police party and the accused was charged with the offence of abduction and rape. The defence was consent. The court held that the absence of fresh injury to her private parts does not establish consent. There is no possibility of fresh injury after the lapse of such a long period. She was below 16 years of age when she was taken away by the accused and

subjected to rape. If at all she consented, her consent is wholly irrelevant since she is below 16 years of age. The accused was convicted for the offence of rape.

Prabha v. State of Kerala (1992 (2) KLT 892

It was held that to constitute rape even slightest penetration of penis into the vagina would be sufficient and that could even be without rupturing the hymen.

Punishment for Rape

Section 64 of the Sanhita prescribes punishment for rape.

By s.64(1) a person who commits rape shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

By section 64(2) a rape committed under any of the following circumstances is made punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

1. If a police officer commits rape within the limits of the police station to which he is appointed.
2. If a police officer commits rape on a woman in the premises of a station house whether or not situated in the police station to which he is appointed.
3. If a police officer commits rape on a woman in his custody or in the custody of a police officer subordinate to him.

4. If a public servant commits rape on a woman in his custody or in the custody of one subordinate to him.
5. If a member of the armed forces commits rape in an area to which he is deployed by the Central or State Government
6. If a person who is on the management or on the staff of a jail, remand home or other place of custody or of a woman's or children's institution commits rape on any inmate of such institution.
7. If a person who is on the management of a hospital or on the staff of a hospital commits rape on a woman in that hospital.
8. If a person who is a relative, guardian or teacher of a woman commits rape on such woman.
9. If a person commits rape during communal or sectarian violence.
10. If a person commits rape on a woman knowing her to be pregnant.
11. If a person commits rape on a woman incapable of giving consent.
12. If a person who is in a position of control or dominance over a woman commits rape on such woman.
13. If a person commits rape on a woman suffering from mental or physical disability.
14. If a person while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman.
15. If a person commits rape repeatedly on the same woman.

Punishment for committing rape on a woman under sixteen years of age

By section 65(1) of the Sanhita , whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Punishment for committing rape on a woman under twelve years of age

By section 65(2) of the Sanhita, whoever commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death.

Punishment for causing death or resulting in persistent vegetative state of victim

By section 66 of the Sanhita, whoever commits rape and in the course by e of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life.

Sexual intercourse by employing deceitful means, etc.(section 69)

By section 69, Whoever, by deceitful means or by making a promise to marry a woman without any intention of fulfilling that

promise, engages in sexual intercourse with her where such intercourse not amounting to the offence of rape.

Whoever commits such offence shall be punished with imprisonment of either description for a term that may extend to ten years and shall also be liable to a fine.

By this provision "**Deceitful means**" and includes making false promises of marriage without the intention of fulfilling them.

It also extends to inducements such as false promises of employment or promotion.

Marrying someone while suppressing one's true identity is also included under this section.

Gang rape (section 70)

By section 70(1), where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

The fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim. Any fine imposed under this section shall be paid to the victim.

By section 70(2), Where a woman under 18 years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the

remainder of that person's natural life, and with fine, or with death. The fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim. Any fine imposed under this section shall be paid to the victim.

Topic - XXXVII

ATTEMPT TO COMMIT RAPE

Outraging Modesty of a Woman(Indecent Assault on Woman) & Intentional Insult to the Modesty of a Woman

Attempt to Commit Rape

There is no specific provision in the Sanhita providing punishment for 'attempt to commit rape'.

Section 62 of the Sanhita prescribes punishment for 'attempt to commit offences' punishable with imprisonment for life or imprisonment for a specific period.

In order to apply this section following conditions should be satisfied:

- 1) There must be an attempt to commit an offence or an attempt to abet its commission
- 2) There shall not have express provision in the Bharatiya Nyaya Sanhita prescribing punishment for such attempt.
- 3) The offence attempted to commit should be one punishable with imprisonment for life or imprisonment for a specific period. If the offence attempted to commit is punishable with death only this section does not apply.

If all the above conditions are satisfied, a person who attempts to commit an offence is punishable with imprisonment for a term which may extend to one half of the imprisonment for life or one-half of the term provided for that offence or such fine as is provided for that offence, or with both.

Thus an 'attempt to commit rape is punishable under section 65 read with 62 of the Sanhita'.

In **Madan Lal v. State of Jammu and Kashmir** (1997 (2) KILT SN 29), it was held that in a case of attempt to commit rape, the prosecution has to prove that the accused has gone beyond the stage of preparation. In this case the accused stripped a girl naked and made her flat on the ground. He undressed himself and then forcibly rubbed his erected penis on the private part of the girl. He failed to penetrate the penis into vagina, as on such rubbing itself ejaculated himself. The Court held that the accused was liable to be punished for attempt to commit rape under s.376/511 IPC (now under sections 65/62 of the Sanhita). (It is to be noted that if the above said acts are done now it may amount to rape as defined in section 65 of the Sanhita).

Outraging Modesty of a Woman or 'Indecent Assault on Woman'

Section 74 of the Sanhita defines the offence of "Outraging the Modesty of a Woman" and prescribes punishment for the same.

A person is liable to be punished for the offence of outraging the modesty of a woman, if the following conditions are satisfied:

- (i) He should have assaulted or used criminal force to a woman.
 - (ii) He should have intention to outrage the modesty of that woman'
- or
- (iii) He should have knowledge that the assault or criminal force is likely that he will thereby outrage her modesty.

A person who is guilty of outraging modesty of a woman or indecent assault is liable to be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

The Sanhita does not define the terms "modesty of a woman". What constitute outraging modesty of a woman depends upon the facts and circumstances of each case.

Ajesh v. State of Kerala (2025 KER 13165)

This case arose from an incident where three accused persons blocked a motorcycle on which a woman was traveling as a pillion rider with her husband. First accused removed the bike's ignition key and slapped the husband, while the second accused caught hold of the woman's hand and later pressed her breast with lustful intention, and the third accused kicked the husband when he tried to intervene.

Honourable Kerala High Court considered the question whether the principle of joint liability under S.34 (now under section 3(5) of the Sanhita) can be applied to hold all accused liable for the offence under S.354 (now under section 74 of the Sanhita) when only one accused physically committed the act of outraging modesty of

woman It was held, principle of joint liability applies when accused persons blocked victim's movement, restrained her and shared common intention though only one physically outraged her modesty.

In Pradeep Kumar V. L. v. State of Kerala (2025 KLT OnLine 1314)

In this case the Kerala High court held that ,in order to attract an offence under S.354 of IPC,(now under section 74 of the Sanhita) it is sine qua non that,

- i) there must be an assault or use of criminal force to any woman by a men.
- ii) intention to outrage or knowing it to be likely that he will thereby outrage her modesty.

The word 'modesty' has to be judged as a quality or state of being modest, which is characterised by humility, restraint, simplicity, and good taste.

The act ofoutraging the modesty of a woman, refers to the virtue that attaches to a female owing to her gender and is an attribute associated with females in general. It is a sense of shame or bashfulness that a woman feels when faced with any act that is intended to outrage her modesty.

In Biju Abraham v. State of Kerala(2025 KHC OnLine 105)

In this case court cosidered the question, whether, the offence of outraging the modesty of a woman is limited to physical acts of violence. It was held that the offence of outraging the modesty of a woman is not limited to physical acts of violence but also includes any verbal or non-verbal conduct that is intended within the ambit of assault or use of criminal force.

Modesty is not only limited to physical modesty but it also includes moral and psychological modesty. The moral modesty of a woman is said to be the sense of shame or bashfulness that a woman feels when faced with any act that is intended to outrage her modesty. The psychological modesty of a woman is said to be her innate sense of self-respect and dignity. Thus, the modesty of a woman is sublime and any sort of intrusion or intercession is to be dealt with resolutely and soberly.

In Naresh Aneja @ Naresh Kumar Aneja v. State of Uttar Pradesh (AIR 2025 SC 582), the Supreme Court held that, in order to establish a *prima facie* case under S.354, the prosecution must establish that criminal force was applied against a woman with the specific intent to outrage her modesty, requiring more than vague statements to demonstrate mens rea .

In Nizar v. State of Kerala(2024 (7) KHC 572)

The ultimate test for ascertaining whether modesty has been outraged, is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman. Modesty of a woman is her sex, it is a virtue which attaches to a female owing to her sex. The offence of outraging the modesty is committed when a person assaults or uses criminal force to a woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty.'[Vijayan v. State of Kerala [2020 KHC 803]

In State of Punjab v. Major Singh (AIR 1967 SC 63), the accused had caused injuries to the vagina of a seven and a half month old child by fingering. The Court held that the accused was liable for outraging the modesty of the child under s.354 of the Code(now under section 74 of the Sanhita). The court held that the essence of a woman's modesty is her sex. Every

woman, young or old, intelligent or imbecile (person with abnormally low intelligence or fool), awake or sleeping, possesses a modesty capable of being outraged.

In **Baldeo Prasad Singh v. State of Orissa** (1984 Cr.LJ (NOG) 122 (Orissa)), the complainant was cooking her meal inside her house along with her companion B. The accused entered into the house, caught hold of her and embraced her and squeezed her breasts. When they shouted, neighbours arrived at the spot. The accused ran away. He was punished for outraging modesty of a woman under s.354 of the Code(now under section 74 of the Sanhita).

In **Rupan D Bajaj v. K.P.S. Gill** (1995 (6) SCC 194), K.P.S Gill slapped R.D. Bajaj on her posterior at a party in the presence of several persons. The court held that the act of Gill was with intention to outrage her modesty and he is liable to be punished for offence under s.354 IPC(now under section 74 of the Sanhita). If the action of the offender is one which is capable of shocking the sense of decency of a woman, the offender is guilty of outraging her modesty.

In **Jai Chand v. State** (1996 Cr. L.J 2039 (Delhi)), the accused forcibly laid the prosecutrix on bed and broke the string of her pyjama and tore her underwear but did not undress himself. It was held that he is liable to be punished for outraging modesty of a woman under s.354 IPC (now under section 74 of the Sanhita) and not for the offence of attempt to commit rape.

In **Damodar v. State of Orissa** (1996 Cr. L.J 346 (Orissa)), the accused persons caught hold of a woman and removed the "saree" from her person but ran away on seeing some one approaching . The court held that the accused is liable to be punished under s.354 (now under section 74 of the Sanhita).

Sexual Harassment

By section 75 of the Sanhita , a man committing any of the following acts shall be guilty of the offence of sexual harassment.

(i) Physical contact and advances involving unwelcome and explicit sexual overtures

(ii) A demand or request for sexual favours

(iii) Showing pornography against the will of a woman

(iv) Making sexually coloured remarks

Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine or with both.

Any man who commits the offence specified in clause (iv) shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both.

In Ramachandran Nair R. v. State of Kerala (2025 KER 356)

In this case ,while the complainant was working at the Electrical Section of KSEB, the accused made sexually colored remarks about her body structure with the intention to outrage her modesty. Subsequently, on multiple dates, the accused allegedly sent messages containing sexual overtures to the complainant's mobile number.

It was held that It has been specifically provided in the provision, that if a man commits an act of physical contact and advances involving unwelcome and explicit sexual overtures, the same is an offence under S.354A(1)(i) of IPC(now under section 75 (1) (i) of the

Sanhita). When a man commits an act and makes a demand or request for sexual favour, the same is an offence under S.354A(1)(ii) of IPC(now under section 75 (1) (ii) of the Sanhita). Similarly, when a man commits an act showing pornography against the will of a woman, the same also is an offence under S.354A(1)(iii) of IPC(now under section 75 (1) (iii) of the Sanhita). Coming to S.354A(1)(iv) of IPC(now under section 75 (1) (iv) of the Sanhita), any man making sexually coloured remarks to a woman is guilty of the offence of sexual harassment.

Assault or use of Criminal force to women with intent to disrobe

By section 76 of the Sanhita, **Whoever**, assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

By the Bharatiya Nyaya Sanhita ,2023 this offence was redefined to make it gender-neutral by adding the word '**Whoever**'. Thus it can charge any person of any gender with this offence but here the victim can only be women.

Voyeurism

By section 77 of the Sanhita, **Whoever**, watches, or captures the image of a **woman** engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to

fine. He shall be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

This has also became a gender- neutral provision where, irrespective of gender the offender, the offence can be charged.

Stalking

By section 78 of the Sanhita, any man who commits the following acts shall be punished for the offence of stalking.

- (i) Follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman.
- (ii) Monitors the use by a woman of the internet, email or any other form of electronic communication.

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

Intentional Insult to the Modesty of a Woman by Words, Sound, Gestures or Exhibition of any Object

Section 79 of the Sanhita prescribes punishment for intentional insult to the modesty of a woman by words, sound, gestures or exhibition of objects.

A person is liable to be punished for insult to the modesty of a woman by words, sound, gestures or exhibition of any object, if the following conditions are satisfied:

- (i) He should have intention to insult the modesty of a woman. He should have uttered any word, or made any sound or gesture, or exhibited any object.
- (ii) He should have uttered the words, or made the sound or gesture, or exhibited any object with the intention that such words or sound should be heard, or gesture or object should be seen, by such woman.
or
- (iv) He should have uttered the words, or made the sound or gesture, or exhibited any object with the intention that such words, sound, gesture or object should intrude upon the privacy of such woman.

If the above conditions are satisfied, the accused shall be punished with simple imprisonment for a term which may extend to three years and also with fine.

Topic - XXVIII

DOWRY DEATH (BRIDE BURNING)

Section 80 of the Sanhita defines the offence of dowry death and prescribes punishment for dowry death. If the following conditions are to be satisfied, death of a woman shall be treated as "dowry death".

- (i) The death of a woman should be caused by any burns or bodily injury or occurs otherwise than under normal circumstances.
- (ii) The death should have occurred within seven years of her marriage.
- (iii) It should be shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) The cruelty or harassment should be for or in connection with any demand for dowry.

The persons who are guilty of dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Topic - XXIX

OFFENCES RELATING TO MARRIAGE

The offences relating to marriage can be classified under four head, namely-

- (a) Mock marriages
- (b) Bigamy
- (c) Elopement

(1) Mock Marriages (Not Genuine)

Sections 81 and 83 of the Sanhita deals with mock marriages.

By s. 81 , a man is liable to be punished with imprisonment for a term which may extend to ten years and fine if he 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.

Thus in order to punish a man under s. 81 , two conditions are to be satisfied.

- (1) The man should have by deceit created a false belief of lawful marriage.
- (2) There should be cohabitation or sexual intercourse in pursuance of such belief with the person inducing such belief.

Without sexual intercourse the offence under s.81 would not be complete and that offender cannot be punished. Thus mock marriage is not punishable under s. 81 if there is no cohabitation or sexual intercourse. It is therefore s.83 provides

punishment for mock marriages even without cohabitation or sexual intercourse.

By virtue of s. 83 , a person is liable to be punished if he fraudulently or with a fraudulent intention goes through the ceremony of marriage knowing that he is not thereby lawfully married. The punishment for an offence under s. 83 is imprisonment for a period of 7 years and fine. Section 83 punishes a man who goes through marriage ceremony fraudulently. The object of this type of mock marriage may not be sexual intercourse but may be the money or ornaments of the woman.

(2) Bigamy

By virtue of s. 82(1) of the Sanhita , a man or a woman is liable to be punished for bigamy if the following conditions are satisfied.

- (1) He or she should have already married. The spouse should be living.**
- (2) He or she should have married second time during the life time of his or her spouse and during the subsistence of the first marriage.**
- (3) The second marriage should be void because of the existence of the first marriage.**

By virtue of s. 82(2) of the Sanhita A person who commits the offence under sub section (1) of section 82 having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall also be liable for punishment .

Illustration

A and B have married and they are living as husband and wife. During the subsistence of this marriage, A again marries C. The second marriage of A with C is void because of the existence of the first marriage. A is liable for bigamy under s. 82.

Punishment

The punishment for bigamy is 7 years imprisonment and fine (s. 82(1)). If the first marriage is concealed from the person with whom the second marriage is contracted a punishment upto 10 years and fine can be given (s. 82(2)).

Exceptions

Under the following circumstances, the second marriage will not be an offence.

- (1) If the previous marriage was declared void by a competent court.
- (2) If the former husband or wife has been continuously absent for 7 years.
- (3) If the first marriage was dissolved by a decree of divorce by a competent court.
- (4) If the husband in the first marriage is a male Muslim. A Muslim male may have four wives at a time according to his personal law.

Problem

- (1) A is a Hindu male, He is married to B, another Hindu female, as per Hindu Marriage Act. During the subsistence of this

marriage A converted to Islam and marries C, a muslim female as per Muslim law. Wheter A is liable for any offence?

A conversion does not dissolve a Hindu, Chirstain or Parsi marriage. A second marriage gone through after conversion by a Hindu, Chirstain or Parsi will be bigamous.

A conversion of Muslim male to another religion *ipso facto* dissolves his marriage under the Muslim law and after conversion he can marry second time, which will not result in bigamy.

(3) Criminal Elopement (Seduction)

Section 84 of the Sanhita defines the offence of criminal elopement (seduction).

A person is liable to be punished for criminal elopement if the following conditions are satisfied:

- (a) He should have enticed away or taken away a woman from her husband or any other person having the care of her on behalf of the husband.
- (b) He should be aware of the fact that the woman is the wife of another person.
- (c) The accused should have detained or concealed such a woman with intent that she might have illicit intercourse with any person.

It is to be noted that the consent of the wife is immaterial.

A person who commits the offence of criminal elopement is liable for imprisonment for a term which may extend to two years or with fine or with both (s. 84).

Topic -XXX

CULPABLE HOMICIDE AND MURDER

Section 100 of the Sanhita defines the offence of Culpable Homicide. Section 101 defines Murder.

Culpable Homicide means death through human agency punishable at law. The word homicide comes from latin words 'homo' and 'cido': 'Homo' means 'man' and 'cidō' means 'I cut'. Thus homicide is the causing of death of a human being by a human being. The word culpable means punishable. All murder is culpable homicide but all culpable homicide is not murder.

There are two branches of Culpable Homicide. They are:

- (i) Culpable homicide amounting to murder, known as simply 'murder' (section 101)
- (ii) Culpable homicide not amounting to murder (s. 100 and exceptions to s.101).

The causing of death is common in both the branches. There is necessary criminal intention or knowledge in both. The difference does not lie in quantity. The differences lie in degree of criminality disclosed by act. In murder, there is greater intention or knowledge than in culpable homicide.

I. Culpable Homicide

A person is liable to be punished for culpable homicide if the following conditions are satisfied :-

- (1) He should have caused death of another person.
- (2) He should have done an act which resulted in another's death.

(3) The act must have been done —

- (a) with the intention to cause death; or
- (b) with the intention to cause bodily injury as is likely to cause death; or
- (c) with the knowledge that the act is likely to cause death.

(1) Causing of Death

In order to be liable for culpable homicide, the accused should have caused death of a human being.

The causing of death of a child in the mother's womb is not homicide but it may amount to culpable homicide if any part of that child has been brought forth, though the child may not have breathed or even completely born.

It is not necessary that the offender should intend to kill any particular person. It is enough if he causes the death of any one by doing an act.

If death is caused by bodily injury, the person who causes such bodily injury is liable for culpable homicide although by resorting to proper remedies and skillful treatment the death might have been prevented. To a criminal charge of culpable homicide it would be no defence to plead that there was no proper medical treatment.

If a person who causes bodily injury to another who is labouring under a disease, disorder, or bodily infirmity and if that accelerates the death of that other, he is liable for culpable homicide.

(2) Doing of an Act or Omission

In order to be liable for culpable homicide the accused should have done an act. The term 'act' comprises one or more acts or one or more illegal omissions.

(3) Mental Element - Mens Rea

In order to hold the accused liable for culpable homicide the prosecution shall have to prove either the element of intention to cause death or intention to cause bodily injury which is likely to cause death or knowledge of the accused that he is likely to cause death by his act.

Illustrations

- (a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm treads on it falls in and killed. A has committed the offence of culpable homicide.
- (b) A knows Z to be behind a bush. B does not know it. A intending to cause, or knowing it to be likely to cause Z's death induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence but A has committed the offence of culpable homicide.
- (c) A shoots at a fowl with intent to kill and steal it. The shot kills B who is behind a bush. The presence of B was not known to A. Here although A was doing an unlawful act he was not guilty of culpable homicide. He did not intent to kill B or he had no knowledge that his act is likely to cause the death of B.

Decided Cases

(1) Jagrup Singh v. State of Haryana (AIR 1981 SC 1552)

In this case, the Supreme Court observed that the nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death. Causing serious injury on a vital part of the body of the deceased with a dangerous weapon must necessarily lead to the inference that the accused intended to kill.

(2) Joginder Singh and another v. State of Punjab (AIR 1979 SC 1876)

One 'P' was running away from scene of occurrence towards a field. A and B, accused persons, were chasing him. Victim jumped into a well in order to save himself. Victim's head hit on a hard substance with the result that he lost consciousness and thereafter died of the injury. Held, death of the victim was not caused by any act of A and B with intention or knowledge as specified in s. 299(now under section 100 of the Sanhita). A and B were not liable to be convicted for offence of murder or culpable homicide.

(3) Ajmer Singh v. State (AIR 1955 Punjab 13)

There was altercation between parties of A and B. A fired his gun in the air to scare away the opposite party and in that one stray bullet caused gun shot wound to B, which resulted in B's death. A had no motive to cause death of B or any other person. Held, A caused death of B without any intention to cause death but with the knowledge that it was likely to cause death. Therefore A has committed the offences of culpable homicide.

(4) Ramesh Kumar v. State of Bihar (AIR 1993 SC 2317)

Two accused persons attacked the deceased with kicks and fist blows. The death resulted due to shock, haemorrhage and strangulation. The accused did not use lathi, knife or fire arm which they possessed at the time of incident. Held, the accused had knowledge that by their acts they were likely to cause death of the deceased though they had no intention to cause death. Thus accused are liable for culpable homicide and not for murder.

(5) Suklal v. State (54 Cr. LJ 1815)

There was bitter enmity between the accused and the deceased. The accused inflicted 17 injuries on the deceased out of which 8 were on the head. Though the accused was armed with a hatchet, he only used the blunt side of it. None of the injuries individually was fatal. In fact all of the injuries were simple. Death was due to shock and intracranial haemorrhage. Held, the offence committed was culpable homicide and not murder.

(6) Reg v. Govinda (ILR1 Bom 342)

The accused knocked his wife down put one knee on her chest, struck her two or three violent blows on the face with a closed fist causing extravasation of blood resulting in her death. Held, the accused was guilty of culpable homicide and not of murder.

(7) State v. Bhairu Sattu (AIR 1956 Bom 609)

A stuffed cloth into the mouth of B in order to silence him, not with intention to kill him. B died due to suffocation. Held, it could be presumed that A knew that he was likely to cause

death of B in so doing, so liable for culpable homicide.

Punishment for Culpable Homicide not amounting to Murder

By s. 105 of the Sanhita , whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life or imprisonment of either description for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine .

if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death.

If the act is done with the knowledge that it is likely to cause death but without intention to cause death, or to cause such bodily injury as is likely to cause death, the accused is punishable with imprisonment of either description for a term which may extend to ten years and with fine..

II Murder

Section 101 of the Sanhita defines the offence of 'Murder'. Section 103 prescribes the punishment for murder.

A culpable homicide is murder if it satisfied all the conditions mentioned in s. 101. A person is liable to be punished for murder if the following conditions are satisfied:

- (i) He should have done a culpable homicide.
- (ii) He should have done an act which resulted in the death-
 - (a) with the intention of causing death (see illustration (a) below), or

- (b) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused (see illustrations (b) and (c) below), or
- (c) 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 (see illustration (d) below), or
- (d) with knowledge that the act is so imminently dangerous, that it must, in all probability, cause death or such bodily injury as is likely to cause death and the offender commits such act without any excuse for incurring the risk of causing death or injury (see illustration (e) below).

Illustrations

- (a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.
- (b) A knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder.
- (c) A not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health. Z dies as a consequence. A is not liable for murder, though he may intend to cause bodily injury, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death. He may be liable for culpable homicide.

- (d) A intentionally gives Z a sword cut or club wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.
- (e) A, without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a pre-meditated design to kill any particular individual.

Decided Cases

(1) Jagpal Singh v. State of Punjab (AIR 1986 SC 683)

The accused had administered a stab wound on the chest of the deceased on back side. Moreover, he inflicted a knife blow in the groin of the deceased which caused a wound 8cm deep piercing both the femoral blood vessels. When the prosecution witness tried to intervene, the accused inflicted two slab wounds on him also. Those two stab wounds were of identical pattern namely, one on the back of the chest and one in the groin region but fortunately those injuries did not prove fatal.

Held, the accused was clearly guilty of murder as he had intentionally caused the vital injuries to the deceased.

(2) B. N. Srikantish v. Mysore State (AIR 1982 SC 672)

The accused was having knowledge that the deceased was suffering from an enlarged spleen. He caused a hurt on the deceased. The hurt accelerated and caused death. The court held that the accused is liable for murder even though the hurt may not have been sufficient in the ordinary course of nature

to cause death. The knowledge of the accused makes the offender liable for murder.

If the offender had no such knowledge of enlarged spleen of which deceased was suffering, offender would only be liable for culpable homicide.

(3) Pyara Singh v. State of Rajasthan (1976 WIN 729)

The accused inflicted shot injury with a 12 bore gun fired from a short range. The injury was inflicted intentionally. The doctor opined that the injury was sufficient in the ordinary course of nature to cause death. Held, the accused is liable for murder.

(4) State of M.P. v. Ram Prasad (AIR 1968 SC 881)

The accused set fire to the clothes of the deceased. The death resulted from burn injuries. It was held that the accused was liable to be punished for murder as no special knowledge is needed to know that one may cause death by burning if he sets fire to the clothes of a person. The accused must have known that he was taking the risk of causing the death of the victim.

In **Priyan v. State of Kerala** (2021 Cri L J 445) the accused came armed with knief and inflicted injury to the witness initially and when his father came there on hearing alarm he turned towards father and inflicted fatal injury on his vital part (below left chest and on back of left shoulder) Post mortem report indicating that the death of father was due to the the injury to lungs. It was held that infliction of such penetrating injury upon vital parts of body resulting in instantaneous death is a clear case of murder.

Culpable Homicide not amounting to Murder (Exceptions to Murder)

Under the following five circumstances the offence of murder will be reduced to culpable homicide not amounting to murder.

- (i) Grave and sudden provocation
- (ii) Exceeding the right of private defence
- (iii) Exceeding lawful exercise of power
- (iv) Sudden fight
- (v) Death by consent

(1) Grave and Sudden Provocation

A person is liable for culpable homicide not amounting to murder if he caused death of another while deprived of the power of self control by grave and sudden provocation. He should have caused the death of the person who gave the provocation or any other person by mistake or accident.

The following conditions are necessary before grave and sudden provocation can reduce an offence of murder into that of culpable homicide not amounting to murder.

- (a) The provocation must not be voluntarily created.

Example

A called B a coward in the presence of several persons and challenged him to strike A if he could. B then struck him. A drew a pistol and fired at B and thereby caused B's death. Here provocation being voluntarily created , A is guilty of murder and the plea of grave and sudden provocation cannot be accepted.

(b) Provocation must not be caused by anything done in obedience to the law or by a public servant in the lawful exercise of his powers.

Example

A is arrested by Z, an amin of a court, in the lawful exercise of his powers. A is excited to sudden and violent passion by the arrest and kills Z. A is liable for murder since the sudden provocation is caused when Z was doing a lawful act within his powers.

(c) The provocation must not be caused by anything done in the lawful exercise of the right of private defence.

Example

A attempted to cut Z's nose. Z in the exercise of the right of private defence held A to prevent him from doing so. That gave sudden provocation to A and he killed Z. This is murder because sudden provocation was given by a thing done in the exercise of right of private defence.

Illustrations

(1) 'Y1 gives grave and sudden provocation to A. On this provocation A fires a pistol at Y. The shot hit Z who was standing near Y. Z was out of sight of A. He never inteded to kill Z. He had no knowledge that the shot is likely to cause death of Z. A has not committed murder, but merely culpable homicide.

(2) 'A' under the influence of passion excited by a provocation given by B intentionally kills C, B's child. This is murder as the death was not caused by accident or misfortune in doing an act caused by the provocation.

- (3) 'A' appeared as a witness before Z, a magistrate. Z said that he did not believe a word of A's deposition. That provoked A and he killed Z. This is murder.
- (4) Z struck B. That provoked B and he was excited to violent rage. A, a by-stander intending to take advantage of B's rage, and to cause him to kill Z, put a knife into B's hand for that purpose. B stabbed Z with the knife and killed Z. Here B is liable for culpable homicide not amounting to murder but A is guilty of murder.

K. M. Nanavathi v. State of Maharashtra (AIR 1962 SC 604)

The accused was a Naval Officer. His wife Sylvia was admittedly having illicit intimacy with the deceased Ahuja, a businessman in Bombay. Sylvia herself confessed to Nanavathi of her illicit relationship. He then went to his ship and took a revolver on a false pretext and loaded it with six rounds. He did some official work there. Thereafter he drove his car to the flat of Ahuja and entered his bedroom and shoot him dead. Thereafter he surrendered himself to the police.

He was charged with murder. His defence was that the whole thing happened due to the sudden provocation. He went to the flat of Ahuja and asked whether Ahuja would marry Sylvia. Then the deceased posed a question. "Am I to marry every women with whom I sleep?". This provoked the accused to lead to the struggle and finally he shot the deceased.

The defence was not accepted by the Supreme Court. He was sentenced to imprisonment for life.

(2) Exceeding the Right of Private Defence

The offence of murder will be reduced to culpable homicide if the following conditions are satisfied:

- (i) The act must be done in exercise of the right of private defence of person or property.
- (ii) The act must be done in good faith
- (iii) The person doing the act must have exceeded his right given to him by law and have thereby caused death.
- (iv) The act must have been done without premeditation and without any intention of causing more harm than was necessary in private defence.

Rafiq v. State of Maharashtra (AIR 1977 SC 1179)

'K' attacked 'R' with stick. R then took a knife and stabbed 'K' causing grievous injury to K's heart resulting in death of K. Held, 'R' was acting in exercise of his right of private defence but exceeded that right by stabbing K in heart. R is liable for culpable homicide not amounting to murder.

Ghansham Das v. State (AIR 1979 SC 44)

Deceased committed criminal trespass. He was not armed. Accused attacked the deceased with a dangerous weapon and caused two injuries which cut the heart and lung and resulted in his death. Held, the accused exceeded his right of private defence of property by using dangerous weapon. Hence he was guilty of culpable homicide not amounting to murder.

(3) Exceeding Lawful Exercise of Power

The offence of murder will be reduced to culpable homicide not amounting to murder if the following conditions are satisfied:

- (i) A person should have caused death of another.
- (ii) The person who caused death should be a public servant or a person aiding a public servant.
- (iii) He should be acting for advancement of public justice
- (iv) Power should have been given to him and he should have exceeded the power
- (v) He should have believed in good faith that causing death would be lawful and necessary for the due discharge of his duty
- (vi) He should have caused death without ill-will towards the person whose death is caused.

Dakhi Singh v. State (AIR ,955 All 379)

A suspected thief was arrested by a police Officer. He escaped by jumping down from the train from its off-side. The police officer was not in a position to arrest him. He shot at him but the bullet hit the fireman and he died. Held, the accused is guilty of culpable homicide not amounting to murder.

(4) Sudden Fight

The offence of murder will be reduced to culpable homicide not amounting to murder if the following conditions are satisfied:

- (i) The death caused should be without pre-meditation.

- (ii) It should be in a sudden fight in the heat of passion upon a sudden quarrel
- (iii) The offender should not have taken undue advantage or acted in a cruel or unusual manner

In such cases it is immaterial which party offers the provocation or commits the first assault.

Jagrup Singh v State of Haryana (AIR 1981 SC 1552)

The accused in the heat of passion without premeditation gave a single blow on the head of the deceased by the blunt side of *gandhala* which caused the death. Held, the offence committed by the accused is not murder but culpable homicide not amounting to murder.

Babulal v. State of Rajasthan (1976 WIN 333)

The quarrel arose all of a sudden. The accused caused only one injury with a pair of scissors which resulted in death. The accused did not take any undue advantage or not acted in a cruel or unusual manner. Held, the death was caused in the heat of passion and thus the offence was culpable homicide not amounting to murder.

Raghvan Nair v. T.C.State (AIR 1956 SC 99)

There was a fight between Raghavan Nair and the son-in-law of the deceased. The deceased had no hand in it. He did not even try to separate them. All that he did was to ask his son-in-law to stop fighting and said that he would settle their dispute. There was not even any threatening gesture. The accused stabbed the deceased causing injury resulting in death. Held, the accused had taken undue advantage. The accused stabbed

an unarmed person. The person killed was not a party to the fight. Hence the accused is liable for murder. He is not entitled to the benefit of this exception.

(5) Death by Consent

The offence of murder will be reduced to culpable homicide if the following conditions are satisfied:

- (1) The person killed should be above the age of 18 years.
- (ii) He should have consented to take the risk of his own death.

Illustrations

- (1) Z was wife of A. She was 21 years old. She was suffering from cancer and has no hope of recovery. She directed her husband A to kill her to avoid pain and suffering . A killed her. Here A is guilty of culpable homicide not amounting to murder.
- (2) A,by instigation, voluntarily causes Z, a person under 18 years of age, to commit suicide. Here on account of Z's youth, he is incapable of giving consent to his own death. A has, therefore, abetted murder.

Punishment for Murder

Whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine, (s.103).

In **Bachan Singh v. State of Punjab** (AIR 1980 SC 898), the Supreme Court considered the constitutional validity of death sentence. It was declared to be constitutionally valid and decided to retain the death sentence. However it is to be used

only in the "rarest of rare cases". In the case of sentence of death, the special reasons for such sentence should be specified.

Edige Annamma v. State of A.P (1974 4 SCC 443)

The accused was a married woman of 24 years. The relationship with her husband was strained and she was living with her parents with her only child. She developed an illicit relationship with a middle aged widower who simultaneously had an affair with another young woman. She killed the young woman and the little baby of the deceased with a chisel. The face of the deceased was disfigured by burn injuries. The body of the baby was found buried. The accused later confessed her guilt. Her statement to the police led to the discovery of the child's dead body, a bundle of burnt clothes and the chisel. The accused was tried for the offences under sections 302 and 201 of the Indian Penal Code. She was found guilty by the lower court and sentenced to death. The death sentence was confirmed by the High Court. In appeal, the Supreme Court reduced the sentence to life imprisonment.

Mob lynching

Section 103(2) of the Bharatiya Nyaya Sahita (BNS), 2023 establishes punishment for murder committed by a group of five or more individuals .

The murder must be committed based on factors such as race, caste, community, sex, place of birth, language, personal belief, or any other similar ground

Every member of the group shall be punished with either the death penalty or life imprisonment and shall also be liable to fine

Differences between Murder and Culpable Homicide

Section 100 of the Sanhita defines Culpable homicide.

Section 101 of the Sanhita defines Murder.

Causing of death is common in both the offences. There is criminal intention, or Knowledge in both the offence. Nevertheless there are differences between these offences. The difference between these offences lies in degree of *mens rea* and of the probability of the consequences. If the death is the most probable result of the act of the accused, the offence is murder. If the death is the probable result of the act of the accused, it is culpable homicide.

An offence cannot fall within the definition of murder unless it falls within the definition of culpable homicide. An offence may amount to culpable homicide without amounting to murder. Culpable homicide can be treated as a less serious offence than murder since the *mens rea* involved in culpable homicide is less than the *mens rea* in murder. Culpable homicide is punishable with imprisonment for life while murder can be punished with death or imprisonment for life. Murder is an aggravated form of culpable homicide.

In *State of U.P. v. R.S.Yadev* (AIR 1985 SC 417) the Supreme Court, expressed the view that except in cases covered by the five exceptions mentioned in Sec. 300 of the Penal Code (now under section 101 of the Sanhita), culpable homicide is murder if the act by which the death is caused is done with the *mens rea* mentioned in any one of the 4 clauses of sec. 300.

In *R v. Govinda*, (ILR 1 Bom 342) the accused knocked his wife down, put one knee on her chest, struck her two -three

violent blows on the face with a closed fist causing extravasation of blood resulting in her death. The issue was whether the offence disclosed by the facts was murder as there was no intention to cause death and bodily injury was not sufficient in the ordinary course of nature to cause death.

According to the court if there is an intention to kill, the offence is always murder. Whether the offence is culpable homicide or murder depends upon the degree of risk to human life. If death is likely (probable) result, it is culpable homicide; if it is the most probable result, it is murder.

Topic - XXXI

DOCTRINE OF TRANSFERRED MALICE

Or

DOCTRINE OF TRANSFER OF MALICE

Or

DOCTRINE OF TRANSMIGRATION OF MOTIVE

Section 102 of the Sanhita deals with 'doctrine of transfer of malice'.

By virtue of section 102 of the Sanhita , If a person has done an act with intention to cause death of a person, and his act has resulted in the death of another person whose death he has not intended, the accused is liable to be punished for culpable homicide or murder as if he has intended the death of that person. This principle is known as 'transfer of malice'.

Example

A intends to kill B, but as a consequence of his act C dies.

A has never intended to cause the death of C. Nevertheless, A will be liable to be punished for culpable homicide or murder. This principle is embodied in s.102 of the Sanhita .

In Ashok Saxena v. State of Uttarakhand(2025 KHC 6104)

In 1992, a dispute arose when two individuals were learning typing at a center, leading to an altercation between them. Following threats and heated exchanges, the accused , armed with a knife, and another accused with a hockey stick, entered the complainant's house with the intention to cause harm/injury, which eventually led to a death punishable under S.302 of the Indian Penal Code (now under section 103 of the Sanhita). When the complainant's wife intervened to protect her husband, the appellant stabbed her in the abdomen while the co-accused held her hands, resulting in her death.

The question that arose for consideration was, whether the case warranted a conviction under S.302 IPC (murder) or could be reduced to S.304Part-I IPC (culpable homicide not amounting to murder), considering the doctrine of transfer of malice under S.301 IPC.

As per the doctrine of Transferred Malice (Section 301 IPC) .If a person intends to kill someone but ends up causing the death of another person (whether visible or not), the law attributes the intention to kill the actual victim.In this case, even if the accused did not intend to kill the deceased (wife), under Section 301, the intention is transferred, making him liable.

But when considering the Exception 4 to Section 300 IPC, this exception applies when a death occurs in a sudden fight without premeditation, in the heat of passion, and without acting cruelly or unusually.The Court found that the altercation arose from a sudden

and heated dispute (genesis of the incident), thus bringing the case under Exception 4 of Section 300.

Given the circumstances, the Supreme Court modified the conviction from murder (S.302) to culpable homicide not amounting to murder (S.304 Part-I). This reflects the Court's view that the accused did not have the specific intent to commit murder but acted in the heat of the moment. A death resulting from a sudden fight where the original intent was to assault someone else can be treated as culpable homicide not amounting to murder rather than murder.

In **Suryanarayana Moorthy v. State** (1912 MWN 136), the accused with the intention of killing A, on whose life he had effected insurance, gave him some poisoned sweetmeat. A ate a portion of it and threw the rest away which was picked up by the daughter of the accused's brother -in- law, aged eight years, without the knowledge of the accused. She ate it and gave some to another little child. The two children died from the effect of the poison. But A eventually recovered. It was held that the accused was guilty of murder.

In **Padmanabhan v. State of Kerala** (1988 Cr. L.J 591 Ker.), the accused intended to kill a particular person by his lorry but another person came before it and happened to be killed. The court held that the accused is liable to be punished for murder, under s. 302 (now under section 103 of the Sanhita)read with s.301 (now under section 102 of the Sanhita).

Topic-XXXII

DEATH BY RASH AND NEGLIGENT ACT

Section 106 deals with death caused by rash and negligent act. This section is included in order to cover cases of death by rash and negligent acts which would be out of the range of Sections 100 and 101.

A person is liable to be punished under s.106 , if the following conditions are satisfied:

- i) He should have caused the death of another person.
- ii) The death should have been caused by doing any rash and negligent act.
- iii) The act should not amount to culpable homicide.

This section applies to cases where there is no intention to cause death and no knowledge that the act done in all probability would cause death.

Rash and negligent act is an act done not intentionally or knowingly. A rash act is primarily an over-hasty act. Negligence is the breach of duty to take care.

In **Sulaiman Rahiman v. State of Maharashtra** (AIR 1968 SC 829),the Supreme Court laid down the principle that there must be proof that the rash or negligent act of the accused was the proximate cause of the death. There must be a *direct nexus between death of a person and the rash and negligent act of the accused*.

Tapti Prasad v. Emperor (15 ALJ 590)

Tapti Prasad was an Assistant Station Master at a railway

station called Bharwari. There was a collision of trains caused by the wrong signalling of Tapti Prasad. He gave the clear to a passenger train to leave the next station from Bharwari while on the same lines stood goods train. There were many deaths from the collision. On these facts the accused was convicted under Sec 304 A (now under section 106 of the Sanhita) for causing death by a rash and negligent act.

Bhimabhai Kalbhai v. State of Gujarat (1992 Cr. L.J 2585 (Guj))

The accused constructed a water tank for the use of village people. The tank was filled with water but it collapsed and caused death of seven villagers. The tank collapsed because it could not bear the pressure of water as the material used in construction was low quality. The accused was convicted for causing death by rash and negligent act.

Punishment(s.106)

Whoever causes the death of any person by doing any rash or negligent act shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

If any rash or negligent act is done by a registered medical practitioner while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine. For the purposes of this section, registered medical practitioner means a medical practitioner who possesses any medical qualification recognised under the National Medical Commission Act, 2019 and whose name has been entered in the National Medical Register or a State Medical Register under that Act.

Hit-and-Run cases

By section 106(2) whoever causes death of any person by rash and negligent driving of vehicle not amounting to culpable homicide, and escapes without reporting it to a police officer or a Magistrate soon after the incident, shall be punished with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine. This subsection will only be applicable from 1st July 2024.

Topic - XXXII

ATTEMPT TO COMMIT MURDER OR CULPABLE HOMICIDE

Section 109 of the Sanhita defines the offence of 'attempt to commit murder' and also provides for punishment for it.

An attempt to commit murder consists in doing an act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of murder.

The punishment for attempt to commit murder is imprisonment for a term which may extend to ten years and shall also be liable to fine. If hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is herein before mentioned.

If the offender is under sentence of imprisonment for life which shall mean the remainder of that person's natural life, he may, if hurt is caused, be punished with death.

Illustrations

- (1) A shoots at Z with intention to kill him. The bullet hit him but not resulted in his death. If death was resulted, A would

be liable for murder. Thus A is liable for attempt to commit murder.

- (2) A with the intention of causing the death of a child of tender years exposed it in a desert place. A has committed offence under ss.,109 and 93 of B.N.S .
- (3) A intending to murder Z buys a gun and loads it. A has not committed any offence. A fires the gun at Z. He has committed the offence under s. 109 eventhough the bullet did not hit him.
- (4) A intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping. A has not yet committed the offence under s.109 . A places it on Z's table. A has committed the offence under s.109.

Section 110 of the Sanhita prescribes punishment for "attempt to commit culpable homicide". If a person attempts to commit culpable homicide, he shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. If hurt is caused to any person by his act, he shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Topic -XXXIII

ABETMENT OF SUICIDE

Sections 107 and 108 of the Sanhita deals with abetment of suicide.

By s. 107 of the Sanhita, if a minor (i.e, a person under 18 years in age), a lunatic, an idiot, a delirious or intoxicated person commits suicide, whoever abets the commission of such suicide shall be punished with death or imprisonment of either description upto 10 years, and shall also be liable to fine.

By s.108 of the Sanhita , if any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Ayyub v. State of Uttar Pradesh(2025 KHC 8120)In this case the Apex Court reiterated the principles laid down through various landmark decisions .

That in order to makeout an offence under S.306 IPC(now under section 108 of the Sanhita), specific abetment as contemplated by S.107 IPC (now under section 45 of the Sanhita)on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. It has been furtherheld that the intention of the accused to aid or instigate or to abet the deceasedto commit suicide is a must for attracting S.306 IPC [**Madan Mohan Singh v.State of Gujarat and Another, 2010 KHC 4581**

Further,the alleged harassment meted out should have left the victim with no other alternative but to put an endto her life and that in cases of abetment of suicide there must be proof of direct or indirect

acts of incitement to commit suicide [Amalendu Pal alias Jhantu v.State of West Bengal, 2010 KHC 6052

In **Queen v. Mohit** (3 NWPR 316) the court held that when a woman prepared herself to be a sati, those who followed her to the pyre crying "Ram, Ram" were guilty of abetment of suicide.

In **Wazir Chand v. State of Haryana** (AIR 1989 SC 378) the Supreme Court held that before any person can be convicted of abetting the suicide of any other person, it must be established that such other person committed suicide.

Topic - XXXIV

ORGANISED CRIME

By Section 111(1) of the Sanhita defines the offence of '**Organised Crime**' and also provides for punishment for it .

Any continuing unlawful activity, including offenses such as **kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offenses, cyber-crimes, trafficking of persons, drugs, weapons, or illicit goods or services**, as well as **human trafficking for prostitution or ransom**, shall constitute organised crime if committed by any person or a group of persons acting together.

Such acts must be carried out either as a member of an organised crime syndicate or on behalf of such a syndicate, using violence, threats, intimidation, coercion, or any other unlawful means to obtain direct or indirect material benefits, including financial gain.

Explanations given under section 111:-

(i) Organised Crime Syndicate :- A group of two or more persons who, acting together as a syndicate or gang, engage in any continuing unlawful activity.

(ii) Continuing Unlawful Activity:-

- (a)** An activity prohibited by law that is a cognizable offence punishable with imprisonment of three years or more.
- (b)** It must have been undertaken by a person, either alone or as part of an organised crime syndicate.
- (c)** More than one charge sheet must have been filed in a competent court within the preceding ten years, and the court must have taken cognizance of the offense.
- (d)** It includes economic offenses.

(iii) Economic Offense:-

Includes offenses such as:

- a) Criminal breach of trust**
- b) Forgery**
- c) Counterfeiting of currency notes, banknotes, and government stamps**
- d) Hawala transactions**
- e) Mass-marketing fraud**
- f) Running fraudulent schemes to deceive multiple people**
- g) Engaging in any activity intended to defraud banks, financial institutions, or other organizations for monetary gain.**

In Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra & Anr (2005)

In this landmark case the Supreme Court examined the applicability of the Maharashtra Control of Organised Crime Act (MCOCA). The judgment provided clarity on the definitions and scope of organized crime under MCOCA, influencing subsequent interpretations and applications of the law.

Punishment

If the organised crime results in the death of any person, the offender shall be punished with death or imprisonment for life. In addition, the offender shall be liable to pay a fine of not less than ten lakh rupees.

If the offence does not result in death, the offender shall be punished with imprisonment for a term not less than five years, which may extend to imprisonment for life. The offender shall also be liable to a fine of not less than five lakh rupees.

Any person who abets, attempts, conspires, or knowingly facilitates the commission of an organised crime, or engages in preparatory acts, shall be punished with imprisonment for a term not less than five years, which may extend to imprisonment for life. Such a person shall also be liable to a fine of not less than five lakh rupees.

Any person who is a member of an organised crime syndicate shall be punished with imprisonment for a term not less than five years, which may extend to imprisonment for life. The offender shall also be liable to a fine of not less than five lakh rupees.

Any person who intentionally harbours or conceals someone who has committed an organised crime shall be punished with imprisonment for a term not less than three years, which may extend to imprisonment for life. The offender shall also be liable to a fine of not less than five lakh rupees. This provision is that it does not apply if the concealment or harbouring is done by the spouse of the offender.

Any person who possesses property obtained through organised crime or its proceeds shall be punishable with imprisonment for a term not less than three years, which may extend to imprisonment for life. The offender shall also be liable to a fine of not less than two lakh rupees.

Punishment for Unaccounted Possession of Property on Behalf of an Organised Crime Syndicate

If a person is found in possession of movable or immovable property on behalf of a member of an organised crime syndicate and cannot satisfactorily account for it, they shall be punishable with imprisonment for a term not less than three years, which may extend to ten years. The offender shall also be liable to a fine of not less than one lakh rupees.

Topic - XXXV

PETTY ORGANISED CRIME

By section 112 of the Sanhita Petty Organised Crime means "Any act of the counterfeiting, cheating, unauthorised selling of tickets, unauthorised trading or gambling, or selling of public examination question papers, or any other similar criminal act, is considered petty organised crime".

Under section 112 "theft" means and includes:

- a) **Trick theft** – Deceiving someone to steal their belongings.
- b) **Theft from a vehicle** – Stealing valuables from parked or moving vehicles.
- c) **Theft from a dwelling house or business premises** – Breaking into homes or commercial spaces to commit theft.
- d) **Cargo theft** – Stealing goods being transported by road, ship, rail, or air.
- e) **Pickpocketing** – Stealing from a person's pockets or bag without their knowledge.
- f) **Theft through card skimming** – Illegally copying card information from ATMs or payment terminals.
- g) **Shoplifting** – Stealing goods from a store without paying.
- h) **Theft of Automated Teller Machine (ATM)** – Stealing cash by breaking into an ATM.

Punishment

By section 112(2), any person who commits a petty organised crime shall be punished with imprisonment for a term of not less than one year, which may extend up to seven years. In addition to imprisonment, the offender shall also be liable to a fine.

Topic - XXXVII

TERRORIST ACTS

Whoever commits any act with the intent to threaten or is likely to threaten the unity, integrity, sovereignty, security, or economic security of India, or with the intent to strike terror or is likely to strike terror in the people of India, any section of the people in India, or in any foreign country, shall be considered to have committed a terrorist act.

Modes of a Terrorist Act

(a) By using weapons, explosives, or hazardous substances

If the act is committed using bombs, dynamite, explosives, inflammable substances, firearms, lethal weapons, poisonous or noxious gases, chemicals, or any other hazardous substances (whether biological, radioactive, nuclear, or otherwise), or by any other means, to cause or is likely to cause:

- i) Death or injury to any person or group of persons.**
- ii) Loss, damage, or destruction of property.**
- iii) Disruption of essential supplies or services critical to the life of the community in India or any foreign country.**
- iv) Harm to India's monetary stability by producing, smuggling, or circulating counterfeit Indian currency, coins, or any other material.**
- v) Damage or destruction of property in India or a foreign country that is used or intended for the defence of India**

or related to the Government of India, any State Government, or their agencies

(b) By using criminal force against public functionaries

If a person **uses criminal force, threatens with criminal force, or attempts to do so**, causing the death or attempted death of any **public functionary**, it shall be considered a terrorist act.

(c) By kidnapping, abduction, or coercion

If a person **detains, kidnaps, or abducts any individual and threatens to kill or injure them, or commits any act with the intent to compel**:

- i) **The Government of India, any State Government, or the Government of a foreign country.**
- ii) **An international or inter-governmental organisation.**
- iii) **Any other person to do or abstain from doing any act.**

Such an act shall also be considered a terrorist act.

Punishment

Whoever **organizes or causes to organize any camp for imparting training in terrorist acts, or recruits or causes the recruitment of any person or persons for the commission of a terrorist act**, shall be punished with:

Imprisonment for a term not less than five years, but which may extend to imprisonment for life, and shall also be liable to a fine.

Any person who is a member of an organization involved in terrorist acts shall be punished with:

Imprisonment for a term which may extend to imprisonment for life, and shall also be liable to a fine.

Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person has committed a terrorist act, shall be punished with:

Imprisonment for a term not less than three years, but which may extend to imprisonment for life, and shall also be liable to a fine. This provision does not apply if the harbour or concealment is done by the spouse of the offender.

Whoever, knowingly possesses any property derived or obtained from the commission of any terrorist act, or acquired through the commission of a terrorist act, shall be punished with:

Imprisonment for a term which may extend to imprisonment for life, and shall also be liable to a fine.

Topic -XXXVIII

HURT AND GRIEVOUS HURT

Hurt

Section 114 of the Sanhita defines the offence of hurt. A person is liable to be punished for the offence of hurt, if he has caused bodily pain, or disease, or infirmity to any person.

The pain caused must be to the body and not to the mind. The hurt caused must be the direct result of the act.

In the case of causing of disease or infirmity, it may be caused indirectly. Infirmity means inability of an organ to perform its normal functions, temporarily or permanently.

Hurt may be (i) simple or (ii) grievous. The classification is based on the nature of injury received.

Grievous Hurt

By s. 116 of the Sanhita, a hurt of any of the following eight kinds is grievous:

- (a) Emasculation. (This refers to an operation depriving a man of his masculine power).
- (b) Permanent privation of the sight of either eye.
- (c) Permanent privation of the hearing of either ear.
- (d) Privation of any member or joint.
- (e) Destruction or permanent impairing of the powers of the member or joint.
- (f) Permanent disfiguration of the head or face.
- (g) Fracture or dislocation of a bone or tooth.

(h) Any hurt which endangers life or any hurt which causes the sufferer to be in severe bodily pain during the space of 15(fifteen) days or unable to follow his ordinary pursuits during that period.

If hurt falls within any one of the 8 categories mentioned in s. 116 it becomes grievous hurt. Otherwise it will be simple hurt.

Voluntarily Causing Hurt (s. 115(1))

If a person does an act with the intention of causing hurt to any person or with the knowledge that his act is likely to cause hurt to any person, he is liable to be punished for voluntarily causing hurt.

Punishment for Voluntarily Causing Hurt

Section 115(2) prescribes punishment for voluntarily causing hurt. It is imprisonment of either description for a term which may extend to one year or with fine which may extend to ten thousand rupees or with both.

If hurt was caused voluntarily by dangerous weapons or by means of animals, the punishment is imprisonment for a term which may extend to three years or with finewhich may extend to twenty thousand rupees or with both (s. 118(1)).

Voluntarily Causing Grievous Hurt (s. 117(1))

If a person does an act with the intention of causing grievous hurt to any person or with the knowledge that his act is likely to cause grievous hurt to any person, he is liable to be punished for voluntarily causing grievous hurt.

Punishment for Voluntarily Causing Grievous Hurt.

A person who voluntarily causing grievous hurt is liable to be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine. (s. 117(2).

Whoever commits an offence under sub -section (1)of section 117 and in the course of such commission causes any hurt to a person which causes that person to be in permanent disability or in persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life.

When a group of five or more persons acting in concert, causes grievous hurt to a person on the ground of his race, caste or community, sex, place of birth, language, personal belief or any other similar ground, each member of such group shall be guilty of the offence of causing grievous hurt, and shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A person who voluntarily causing grievous hurt by dangerous weapons or by means of animals shall be liable to be punished with imprisonment for life or with imprisonment of either description for a term which shall not be less than one year but may extend to ten years, and shall also be liable to fine (s.118(2).

By section 124 (1) , one who voluntarily causes grievous hurt by use of acid is liable to be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine.

By section 124 (2), one who attempts to cause grievous hurt by use of acid shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Topic - XXXIX

WRONGFUL RESTRAINT

AND

WRONGFUL CONFINEMENT

Wrongful Restraint

Section 126(1) of the Sanhita defines Wrongful Restraint. A person is liable to be punished for the offence of wrongful restraint if the following conditions are satisfied:

- 1) He should have voluntarily obstructed a person.
- 2) The obstruction must be to prevent that person from proceeding in any direction in which he has the right to proceed.

Exception

The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct is not an offence within the meaning of this section.

Illustrations

- (i) A obstructs a path along which Z has a right to pass, ;A not believing in good faith that has a right to stop the

path. Z is thereby prevented from passing. A wrongfully restrains Z.

- (ii) A builds a wall across a path along which Z has a right to pass. Z is thereby prevented from passing. A wrongfully restrains Z.
- (iii) A illegally omits to take proper care with a furious buffalo, which is in his possession and thus voluntarily deters Z from passing along a road, along which Z has a right to pass. A wrongfully restrains Z.

In **Arumuga Nadar v. R** (1910) MWN 727) when the occupants of a house were out, the accused locked the outer door and thus obstructed them from getting into the house. Held that the accused was guilty of wrongful restraint.

Punishment for Wrongful Restraint

Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand , or with both (s. 127(2)).

Wrongful Confinement

Section 127(1) of the Sanhita defines the offence of Wrongful Confinement. A person is liable to be punished for the offence of wrongful confinement, if the following conditions are satisfied:

- 1) He should have caused wrongful restraint to a person.
- 2) Such restraint must prevent that person from proceeding beyond certain circumscribing limits.

Jay Engineering Works v. State of W. B. (AIR 1968 Cal. 407)

In wrongful confinement, a person is kept within the limits out of which he wishes to go and has a right to go. In order to constitute wrongful confinement, there should be a total restraint of the personal liberty of a person. He will have no choice of movement. "Gherao" was held to be wrongful restraint and wrongful confinement.

In wrongful confinement a person is restrained from proceeding to all directions beyond a certain area. The restraint will be total.

In wrongful restraint, a person is restrained from proceeding in some particular direction only. He will be free to move in other directions. The restraint will be partial.

Punishment for Wrongful Confinement

Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend five thousand rupees, or with both (s. 127).

Aggravated Forms

1. Wrongful confinement for 3 or more days. Imprisonment up to 3 years, or fine which may extend ten thousand rupees or with both.
2. Wrongful confinement for 10 or more days. Imprisonment which may extend to ten years and fine which shall not be less than ten thousand rupees .
3. Wrongful confinement of a person knowing that a writ for his liberation has been issued. Additional imprisonment for 2 years and shall also be liable to fine.

4. Confinement is secret. It is for the purpose of not making it known to any interested person or to a public servant. Additional imprisonment of 3 years and shall also be liable to fine.
5. To extort property or valuable security or constrain to illegal act. Imprisonment for 3 years and shall also be liable to fine.
6. To extort confession or information which may lead to the detection of any offence. Imprisonment for 3 years and shall also be liable to fine.

Topic-XL

CRIMINAL FORCE AND ASSAULT

Meaning of Force

Section 128 defines Force. A person is said to use force to another in the following circumstances:

- i) if he causes motion, change of motion or cessation of motion to that other, or
- ii) 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 that other is wearing or carrying, or
 - c) with anything so situated that such contact affects that other's sense of feeling.

The above said act is to be done in one of the following ways:

- a) By his own bodily power.
- b) By disposing of any substance in such a manner that the motion or chance or cessation of motion takes place without any further act on his part, or on the part of any other person.
- c) By inducing any animal to move or change its motion or to cease to move.

Criminal Force (Battery)

By s.129 of the B.N.S, a person is said to have used 'criminal force' to another, if the following conditions are satisfied: .

- i) He should have intentionally used force to the other person
- ii) The force should be used without consent of that person
- iii) The force should be used for committing any offence, or to cause injury, fear, or annoyance to the person to whom the force is used.

Illustrations

- (a) Z is sitting in a moored boat on a river. A unfastens the moorings and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other action on any person's part. A has thereby intentionally used force

to Z, and if he has done so without Z's consent, in order to committing any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

- (b) Z is riding in a Chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has, therefore, used force to Z and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.
- (c). Z is riding in palanquin. A intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z, and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.
- (d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.
- (e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone

produces the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z, and if he did so without Z's consent, intending thereby to injure, frighten, or annoy Z, he had used criminal force to Z.

- (f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.
- (g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

Assault

By s. 130 of the Sanhita , a person is liable to be punished for assault if the following conditions are satisfied:

- 1) He should have made any gesture or any preparation.
- 2) The gesture or preparation should be made with intention to apprehend any person that he is about to use criminal force to that person, or
- 3) He should have knowledge that the gesture or preparation is likely to cause apprehension to any person that he is about to use criminal force to that person.

Mere words will not be sufficient to constitute the offence of assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparation amount to an assault.

Illustration

- (i) A shakes his fist at Z intending it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.
- (ii) A takes up a stick, saying to Z, "I will give you a beating". The gesture explained by the words may amount to an assault.
- (iii) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

Comparison of Assault with Criminal Force

Assault is less than the cause of criminal force. Assault is something more than a threat of violence. It exhibits an intention to use criminal force accompanied with the present ability to effect that purpose. When force is applied it becomes criminal force. That is why it is usually said that "popular assault begins where legal assault ends". It is also said that an assault is included in every use of criminal force. In assault, there is reasonable fear of criminal force by means of threat, gesture or preparation. In criminal force the offender actually does something to the victim on whom force is used.

Punishment for Assault and Criminal force

Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both (s. 131).

Topic-XLI

KIDNAPPING AND ABDUCTION

Kidnapping

Kidnapping means carrying of a person by illegal force. Kidnapping is of two kinds. They are

- (i) "Kidnapping from India"(s. 137(1)(a)) and
- (ii) "Kidnapping from Lawful Guardianship"(s. 137(1)(b)).

Section 2 (3) of B.N.S defines child as any person below the age of eighteen years.

Kidnapping from India

By virtue of section 137(1)(a) of the Sanhita , a person is liable to be punished for kidnapping from India, if the following conditions are satisfied:

- (i) He should have conveyed any person beyond the limits of India.
- (ii) It should be done without the consent of that person or of some person legally authorised to consent on behalf of that person.

The offence of kidnapping from India may be committed against a grown up person or a child.

Kidnapping from lawful guardianship (s. 137(1)(b)).

By s. 137(1)(b) of the Sanhita, a person is liable to be punished for 'kidnapping from lawful guardianship'. If a person takes or entices any child or a person of unsound mind out of the keeping of the lawful guardian of such child or person of unsound mind without the consent of such guardian.

The words **lawful guardian** in this sub- section include any person lawfully entrusted with the care or custody of such child or other person

Exception.

This sub- section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

S. Varadarajan v. State of Madras (AIR 1965 SC 942)

Savitri, the daughter of one Natarajan, an Assistant Secretary to the Government of Madras and the appellant were residing in nearby houses. They used to speak each other from the respective houses.

At that time Savitri was a minor studying in Ethiraj College. On knowing that Savitri was establishing a love affair with the appellant she was taken to a relative's house and kept there. On information from Savitri the appellant took her to a Sub-registrar's office and registered a marriage. Then they left the

place. On a complaint received from the father the police found the appellant at Tanjore. The appellant was charged with the offence of kidnapping a minor girl.

The question before the Supreme Court was whether the appellant was guilty of the offence by taking a minor girl from the keeping of her lawful guardian. It was found that the girl left her father's protection knowing and having full capacity of knowing all aspects of what she was doing. She joined her lover and induced him to take her wherever he liked. She married him of her own accord. In these circumstances, the accused cannot be deemed to have "taken" her away from her lawful guardianship. The appellant was acquitted.

In the Halsbury's Laws of England it is stated thus: "If a girl leaves her father of her own accord, the defendant, taking no active part in the matter and not persuading or advising her to leave, cannot be convicted of this offence. Even though he failed to advise her not to come or to return and afterwards harboured her". The Supreme Court cited this passage with approval.

If the guilty party had laid the foundation by inducement, allurement or threat, etc which might have influenced a minor girl for leaving her guardian's custody or for going to the guilty party, the accused cannot plead innocence.

In **Thakorai v. State of Gujarat** (1973 2 SCC 413) it was held that the person who entices by inducement or allurement by giving rise to hope or desire in the mind of a minor girl with an intention to seduce her to illicit intercourse was liable under s. 366. In this case a rich industrialist induced a girl of 14 years age to leave her home to have illicit intercourse with him in his garage.

Punishment for Kidnapping

Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine (s. 137(2)).

Sections 140 to 142 deals with aggravated forms of the offence of Kidnapping.

Abduction

Section 138 of the Sanhita defines the wrong of abduction. A person is said to have abducted another under the following circumstances:

- (i) He should have by force compelled another person to go from a place,
- (ii) He should have by deceitful means induced another person to go from a place.

It is to be noted that abduction as such is not an offence. In other words there is no section in the Code prescribing punishment for abduction alone. But ss. 140 (1), 140 (3), 87, 140 (4), 142, 97 prescribe punishments for *kidnapping* or *abduction* in order to do some other offences or for some purposes. The following are some of such sections in the Bharatiya Nyaya Sanhita.

- (1) **Section 140(1)** - If a person kidnaps or abducts another person in order that such person may be murdered, he shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

- (2) **Section 140(2)** - If a person *kidnaps* or *abducts* a person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person in order to compel the Government or any foreign state or international inter-governmental organisation or any other person to do or to abstain from doing any act or to pay a ransom, he shall be punishable with death, or imprisonment for life, and shall also be liable to fine.
- (3) **Section 140(3)** - If a person *kidnaps* or *abducts* any person with intent to cause that person to be secretly and wrongfully confined, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
- (4) **Section 140(4)** - If a person kidnaps or abducts a person in order that such person may be subjected to grievous hurt or slavery or to the unnatural lust of any person, he shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
- (5) **Section 87** - If a person kidnaps or abducts a woman to compel her to marry any person against her will, he shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Difference between Kidnapping and Abduction

1. The offence of 'Kidnapping from Lawful Guardianship' can be committed only against a child or an unsound person. The child or unsound person should be in the lawful guardianship of another person. The offender should have

taken or enticed the child or unsound person out of the keeping of the lawful guardian of such child or unsound person.

The wrong of abduction can be committed against any person irrespective of his or her age. It is because if a child who is not in the lawful guardianship of a person is taken by another there is no kidnapping, but only abduction.

2. In order to constitute the offence of kidnapping from lawful guardianship, the offender should take or entice a child or unsound person out of the keeping of the lawful guardianship of a person.

In order to constitute the offence of abduction, the offender should use force or deceitful means to compel or induce a person to go from a place.

3. Kidnapping is a substantive offence. So also it is not a continuing offence. Abduction is not a substantive offence. It becomes punishable when done with one or other intention mentioned in Sec.140(1) onwards. It is a continuing offence.

Topic - XLII

WAGING WAR AGAINST THE GOVERNMENT OF INDIA (TREASON)

By virtue of section 147 of the Bharatiya Nyaya Sanhita, a person is liable to be punished with death, or imprisonment for life, and shall also be liable to fine under the following circumstances:

- (a) If he *wages war* against the Government of India, or
- (b) If he *attempts to wage war* against the Government of India, or
- (c) If he *abets the waging war* against the Government of India.

Section 147 of the Sanhita is enacted with the object of self-preservation. Section 147 applies to everyone, whether an Indian citizen or a foreigner.

In **Umayyathangathu Puthen Veetil Kunjhi Kadir v. Emperor (1923 MWN 71(Moaplah Rebellion in Malabar) 1921)** it was held that when the object of the mob was not mere resistance to a District Magistrate or to any isolated action or for a particular purpose but *the total subversion of the British power and the establishment of the Khalifat Government*, anyone who was in the mob and took part in it was guilty of waging war.

Conspiracy to Wage War

By virtue of section 148, a person is liable to be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine under the following circumstances:

- (1) If he conspires within or without India to commit any of the offences punishable by s. of 147 the Sanhita.
- (2) If he conspires to overawe (threaten) by means of criminal force or show of criminal force, the Central Government or any State Government.

An agreement of two or more persons to wage war against Government of India is sufficient to constitute offence under s. 148 . An agreement to overawe the Central Government or State Government by means of criminal force or show of criminal force is also punishable. No overt act or illegal omission is necessary to punish the offender under this section.

Preparation to Wage War

Section 149 of the Sanhita prescribes punishment for mere preparation to wage war by collecting arms or ammunition. If a person collects men, arms, or ammunition or otherwise prepares with intention to wage war against the Government of India he shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years and shall also be liable to fine.

Concealment of Design to Wage War

A person who has not participated in wage war or in the conspiracy to wage war or preparation to wage war may still be liable for concealing the existence of a design to wage war.

By s. 150 of the Sanhita , if a person by any act or by any illegal omission conceals the existence of a design to wage war against the Government of India, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, he shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

TopicXLIII

ACT ENDANGERING SOVEREIGNTY, UNITY AND INTEGRITY OF INDIA

Section 152 of the Bharatiya Nyaya Sanhita reads as follows :-

Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or **endangers sovereignty or unity and integrity of India**; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine.

Explanation.--Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.

A new offence relating to act of endangering sovereignty, unity and integrity of India has been added under section 152 in the new criminal law.

The most important aspect of the BNS is the complete repeal of the "sedition law". However, the provisions within the sedition law that are suggested for "removal are somehow retained in section 152 in mild form addressing actions that "jeopardize the sovereignty, unity, and integrity of India".

Under the sedition law, as per section 124A of the IPC, individuals found guilty of promoting discontent or disaffection towards the Government could face life imprisonment and a possible

fine. This broadly covers various acts such as spoken or written words, signs, or gestures that express hatred or contempt towards the state or excite disaffection against it.

The section 152 of the "BNS, 2023 maintains concerns for national integrity and sovereignty but rephrases the offence. Instead of using "sedition" the new clause terms the act as "endangering sovereignty, unity, and integrity of India".

The Central Government deleted the term 'sedition' from criminal law by rephrasing it without compromising the security of the state this is a very progressive development.

Topic-XLIV

UNLAWFUL ASSEMBLY

Section 189 of the Bharatiya Nyaya Sanhita defines an unlawful Assembly. If the following conditions are satisfied, an assembly of persons becomes unlawful assembly :-

- (a) It should be an assembly of *five or more persons*.
- (b) The assembly should have a *common object*.
- (b) The *common object* of the assembly should be any one or all of the following -
 - (1) To overawe (cause to feel a great deal of fear) the Central Government by criminal force or show of criminal force ;or
 - (2) To overawe any State Government by criminal force or show of criminal force;or

- (3) To overawe the Parliament by criminal force or show of criminal force; or
- (4) To overawe the Legislature of any State by criminal force or show of criminal force; or
- (5) To overawe any public servant *in the exercise of the lawful power of such public servant* by criminal force or show of criminal force; or
- (6) To resist the execution of any law, or of any legal process; or
- (7) To commit any mischief or criminal trespass, or other offence; or
- (8) To take or obtain possession of any property from any person; or
- (9) To deprive any person of enjoyment of a right of way of which he is in enjoyment by means of criminal force or show of criminal force; or
- (10) To deprive any person of enjoyment of the use of water of which he is in enjoyment by means of criminal force or show of criminal force; or
- (11) To deprive any person of enjoyment of other incorporeal right of which he is in enjoyment by means of criminal force or show of criminal force ; or
- (12) To compel any person to do what he is not legally bound to do by means of criminal force or show of criminal force; or
- (13) To compel any person to omit to do what he is legally entitled to do by means of criminal force or show of criminal force.

An assembly, which was not unlawful when it assembled might subsequently become an unlawful assembly (Explanation to s.189(1)).

Being Member of Unlawful Assembly (Section 189(2))

Section 189(2) of the Sanhita says the essential condition to treat a person as a member of unlawful assembly. A person can be treated as a member of unlawful assembly if the following conditions are satisfied:

1. He should have either intentionally joined or continued in the unlawful assembly.
2. He should have joined or continued in the unlawful assembly with the knowledge of facts which render the assembly an unlawful assembly.

Mere presence of a person in an assembly does not make him a member of an unlawful assembly. He can be treated as a member of unlawful assembly only if he joined or continued in the unlawful assembly with the knowledge of facts which render the assembly an unlawful assembly. He should have shared the common object of the unlawful assembly.

Punishment

A member of an ulawful assembly shall be punished with imprisonment for a term which may extend to six months or with fine or with both (s. 189(2)).

A person who joins an unlawful assembly armed with deadly weapon shall be punished with imprisonment for a term which may extend to two years or with fine or with both.(s. 189 (4)).

Joining or Continuing in Unlawful Assembly, knowing it has been Commanded to Disperse

By virtue of section 189(3) whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Sections 148 to 151 of the Bharatiya Nagarik Suraksha Sanhita, 2023 deal with powers of police officers and executive magistrates to command an unlawful assembly to disperse, and to use force for dispersing an unlawful assembly.

Topic -XLV

JOINT LIABILITY OF MEMBERS OF AN UNLAWFUL ASSEMBLY

Section 190 of the Sanhita fixes **Joint Liability or Constructive Liability** of members of unlawful assembly. If an offence is committed by a member of an unlawful assembly in *prosecution of the common object* of that assembly, all members of that assembly are guilty of that offence.

In order to invoke section 190, the following conditions are to be satisfied:

- (a) There should be an unlawful assembly.
- (b) An offence should be committed by a member of that unlawful assembly.
- (c) The offence should be committed in prosecution of the common object of the unlawful assembly, or

(d) The offence must be such as the members of the unlawful assembly knew it to be likely to be committed in prosecution of the common object.

Example

12 persons assembled in front of a police station to obtain release of a person from police custody by criminal force or show of criminal force. They have thrown stones against policemen. They used criminal force or violence. They are guilty of rioting. If a member of the unlawful assembly stabs to death a police constable during violence, all the members of the unlawful assembly are liable to be punished for murder. In such a case sections 189(2), 189(4), 191(2), 191(3), 265 (rescue or attempting to rescue a person from lawful custody) 103 (murder) and 190 of the Bharatiya Nyaya Sanhita can be invoked. All the members of the unlawful assembly shall be guilty of offences under these sections.

Comparison with Section 3(5) of the Bharatiya Nyaya Sanhita

By s. 3(5) of the Sanhita, when two or more persons jointly commit a crime in *furtherance of the common intention* of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

By s. 190 of the Sanhita, if an offence is committed by a member of an unlawful assembly in *prosecution of the common object* of that assembly, all members of that assembly are guilty of that offence.

Section 3(5) can be invoked when there is 'common intention' to commit a crime. 'Common intention' implies a prior concert and a common meeting of minds before the crime is

actually committed. In order to invoke section 190, there should be an unlawful assembly as defined in s. 189(1) and a crime should be committed by a member of the unlawful assembly. Further, the crime should be committed in prosecution of the 'common object' of that unlawful assembly. 'Common object' does not require a prior concert and a common meeting of minds before the crime is committed.

The above position is clearly illustrated by the decision of the Supreme Court in **Chittarmal v. State of Rajasthan** (AIR 2003 SC 796).

Topic -XLVI

RIOTING

Section 191(1) defines the offence of rioting. If force or violence is used by an unlawful assembly or by any member of an unlawful assembly in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

The following are essential conditions to invoke section 191 (1) of the Bharatiya Nyaya Sahita

- (i) There must be an unlawful assembly.
- (ii) Force or violence must be used by the unlawful assembly or any member of the unlawful assembly.
- (iii) The force or violence must be used in prosecution of the common object of such assembly.

If all the above conditions are satisfied, every member of such assembly is guilty of the offence of rioting.

Example 1

Five persons joined to disposses 'X' from a building. One of the members of the unlawful assembly pulled out 'X' from the building by using force. The members of the unlawful assembly are liable to be punished for rioting.

A person who is guilty of rioting shall be punished with imprisonment for a term which may extend to two years or with fine or with both (s. 191(2)).

If the person who is guilty of rioting is armed with deadly weapon, he shall be punished with imprisonment for a term which may extend to three years or with fine or with both (s. 191(3)).

The offence of 'waging war' is different from 'rioting'.

In **Mathew v. T.C. State (AIR 1956 SC 241) (Edappally Police Station Riot Case)** the accused were said to be communists. Two of them were confined in the Edappally Police lock-up. Other 29 accused entered into a conspiracy to release their comrades and in pursuance of conspiracy, attacked the Police Station at about 2 a.m. on 21-2-1950 with deadly weapons such as choppers, knives, bamboo and other sticks and a dagger. Two police constables, Mathew and Velayudhan were killed in the object of the course of raid. They were held to be guilty of riot and murder. The common object was not to subserve the government in power or the act was not armed insurrection against government in power. Hence the accused were not liable to be punished for waging war.

Topic -XLVII

AFFRAY

Section 194(1) of the Bharatiya Nyaya Sanhita defines the offence of Affray. - When two or more persons, by fighting in a public place, disturb the public peace, they are said to commit an affray.

If two or more persons disturb the public peace by fighting in a public place they are guilty of affray.

Section 194 (2) of the Sanhita prescribes punishment for affray. Whoever commits the offence of affray shall be punished with imprisonment for a term which may extend to one month, or with fine of Rs. 1000(one thousand), or with both.

In order to convict a person for the offence of affray three conditions are to be satisfied -

- (1) There must be a fight between two or more persons.**
- (2) The fight must be in a public place. The expression public place is not defined in the Code. It may be a public omnibus, a railway platform or a public urinal,**
- (3) The fight must have disturbed the public peace.**

Topic -XLVIII

ATTEMPT TO COMMIT SUICIDE TO COMPEL OR RESTRAIN EXERCISE OF LAWFUL POWER

By section 226 of the Sanhita , anyone who attempts to commit suicide with the intention of forcing or preventing a public servant from performing their official duty will face legal consequences.

The punishment for this act includes simple imprisonment for up to one year, a fine, or both. The offender may also be required to perform community service.

Topic -XLIX

GIVING FALSE EVIDENCE (PERJURY) AND FABRICATING FALSE EVIDENCE

Sections 227 to 237 of the Bharatiya Nyaya Sanhita deal with the offences of Giving False Evidence and Fabricating False Evidence.

Giving False Evidence(Perjury)

By s. 227 of the Sanhita , a person is liable to be punished for the offence of giving false evidence if the following conditions are satisfied:

- (1) He should have made a false statement.
- (2) The false statement should have been made with the knowledge that it is false.
- (3) He should be legally bound to state truth by an oath or by an express provision of law.

In **K.G. Pethani v. State of Gujarat** (2014) 13 SCC 539, the Supreme Court held that perjury is an obstruction of justice. Deliberately making false statements which are material to the case, and that too under oath, amounts to crime of perjury. Perjury strikes at the root of judicial system itself and disturbs accuracy of findings recorded by court. Therefore, any person found guilty of causing perjury, has to be dealt with seriously, as it is necessary for working of court as well as for benefit of public at large.

Fabricating False Evidence

By s. 228 of the Sanhita , a person is liable to be punished for fabricating false evidence if the following conditions are satisfied:

- (1) He should have caused any circumstance to exist or made any false entry in any book or record or electronic record or made any document or electronic record containing false statement.
- (2) He should have done the above stated activities with the intention that such circumstance or false entry or false statement may appear in evidence in a judicial proceeding or in a proceeding before a public servant or before an arbitrator and may cause an erroneous opinion in the mind of the judge or public servant or the arbitrator.

Example

'X 'puts jewels into a box belonging to 'Z' with the intention that they may be found in that box and that this circumstance may cause Z to be convicted for the offence of theft. X has fabricated false evidence.

Punishment :

By s. 229 of the Sanhita , a person who intentionally gives false evidence in a judicial proceedings or fabricating false evidence for the purpose of using in any judicial proceeding shall be punished with imprisonment for a term which may extentd to seven years and shall also be liable to fine which may extend to ten thousand ruppes.

Meaning of 'Document'

Section 2(8) of the Sanhita defines the term "document". It denotes any matter expressed or described upon any substance by means of letters, figures, marks, or by more than one of those means, and includes electronic record , intended to be used, or which may be used, as evidence of that matter.

Illustrations

- (i) A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.
- (ii) A cheque upon a banker is a document.
- (iii) A power-of- attorney is a document.
- (iv) A map or plan which is intended to be used as evidence is a document.

Topic - L

OFFENCES AFFECTING DECENTY AND MORALS

OR

SALE, DISTRIBUTION, ETC., OF OBSCENE BOOKS

OR

OBSCENITY

Section 294 of the Sanhita prescribes punishment for sale, distribution, etc., of **obscene** books, pamphlet, paper, drawing, painting, etc. A book, pamphlet, paper, writing, picture, article, etc., shall be deemed to be obscene-

- (i) if it is lascivious;
- (ii) if it appeals to the prurient interest; and
- (iii) it tends to deprave and corrupt persons who are likely to read, see or hear the matter contained in it.

By section 294 (2) a person is liable to be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to five thousand rupees. In the event of a second or subsequent conviction, a person is liable to be punished with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to ten thousand rupees.

In **Gita Ram v. State of H.P** (2013) 2 SCC 694, the appellants were arrested when they were showing blue film to young men who were about fifteen in number. Compact Disc (CD) of another blue film, ticket book and posters also recovered

from spot. These articles suggesting that display of blue films was a commercial activity undertaken by appellants. The appellants were held liable to be punished under section 294 read with s.3(5) B.N.S.

Topic -LI

OFFENCES RELATING TO RELIGION

Under Bharatiya Nyaya Sanhita , sections 298 to 302 deals with offences relating to religion.

i) Injuring or Defiling Places of Worship:

Anyone who destroys, damages, or defiles a place of worship or a sacred object with the intent to insult the religion of any group, or knowing that such actions are likely to be seen as insulting, can be punished with up to two years in prison, a fine, or both.

ii) Deliberately and Maliciously, Outraging Religious Feelings,:

Anyone who deliberately and maliciously insults or attempts to insult the religion or religious beliefs of any group, whether through spoken or written words, signs, visible representations, electronic means, or other methods, can face up to three years in prison, a fine, or both.

iii) Disturbing Religious Assemblies:

Anyone who voluntarily disrupts a gathering engaged in religious worship or ceremonies can be punished with up to one year in prison, a fine, or both.

iv) Trespassing or Insulting at Religious Sites:

Anyone who, with the intent of insulting a person's religion or wounding their feelings, trespasses at a place of worship, a burial site, or a place for funeral rites, or shows disrespect to a human corpse or disturbs funeral ceremonies, can face up to one year imprisonment, a fine, or both.

v) Intentionally Offending Religious Feelings:

Anyone who deliberately uses words, sounds, gestures, or objects to offend someone's religious feelings can be punished with up to one year in prison, a fine, or both.

Topic -LII

THEFT

Sections 303 to 307 of the Sanhita deal with theft. Section 303 of the Sanhita defines the offence of theft. A person is liable to be punished for the offence of theft, if the following conditions are satisfied.

- (I) He should have taken with dishonest intention any movable property out of the possession of another person without that person's consent;

or

- (ii) He should have moved the movable property with dishonest intention to take it out of the possession of another.

Illustrations

- a) A finds a ring belonging to Z on a table in the house which Z occupies. A dishonestly removes it without Z's consent. A commits theft since he removes it out of the possession of Z without his consent.
- b) A cuts down a tree on Z's ground with the intention of dishonestly taking the tree out of Z's possession without Z's consent. As soon as A has severed the tree in order to such taking he has committed theft.
- c) A puts a bait (bread) for dogs in his pocket and thus induces Z's dog to follow him. Here if A's intention was to dishonestly take the dog out of Z's possession without Z's consent, A committed theft as soon as Z's dog has begun to follow A.
- d) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction in order to take the treasure dishonestly. As soon as the bullock begins to move A has committed theft of the treasure.
- e) A sees a ring belonging to 'Z' lying on a table in Z's house. With dishonest intention to take it in future he hides the ring in a secret place in Z's house itself. A feared that if he commits theft he would be caught. Here A commits theft when he first moved the ring.
- f) A delivers his watch to Z, a watch repairer, for regulating it. Z repaired the watch. A failed to pay the repairing charges. Z retained the watch as a security for his lawful charges. A took the watch out of the possession of Z without his consent. A has committed theft since he had taken it dishonestly.

- g) A and Z are friends. A goes into Z's library and takes a book from there without Z's consent for the purpose of merely reading it and with the intention of returning it. A has not committed theft.
- h) A is a paramour of Z's wife. She gives a valuable property to A which belongs to her husband. A was aware of the fact that Z had not given authority to the wife to gift that property. If A takes the property dishonestly he commits theft.
- i) A, in good faith believed a movable property belonging to Z to be his own and takes it out of Z's possession. Here as A does not take dishonestly he does not commit theft.

It is clear from the definition and illustrations that:

- (1) The offence of theft can only be committed against movable property.
- (2) Dishonest intention to take the property should be present at the time of taking it.
- (3) The movable property should have been taken out of the possession of another person or it must have been moved in order to facilitate such taking.
- (4) The movable property should have been taken or moved without the consent of the possessor of the movable property.
- (5) A person may be punished for theft of his own article (see illustration -f above).

In **K.N. Mehra v. State of Rajasthan** (AIR1957 SC 369) the Supreme Court explained the essential ingredients of the offence of theft. In this case the allegation was that an Aircraft belonged to the Indian Air Force Academy was stolen by Mehra and Phillip. The accused persons were cadets on training in the Indian Air Force Academy at Jodhpur. Phillip was discharged from the Academy on 13th May 1952 for misconduct.

On 14th May 1952, he was due to leave Jodhpur by train. His friend Mehra was due for flight in a Dakota as part of his training along with one Omprakash, a flying cadet. The authorised time to take off flight was between 6AM and 6.30 AM. on the morning of 14th May. Mehra and Phillip took off a Harvard-T22 before the prescribed time at 5AM without authorisation and without observing any of the formalities which are pre-requisites for an aircraft flight. On the forenoon of the same day they landed at a place in Pakistan about 100 miles away from Indo Pakistan border. On the 16th May at 7AM, both of them met the Indian High Commissioner in Pakistan at Karachi and informed him that they had lost their way and force-landed in a field and they left the plane there. The Indian High Commissioner arranged for their return to India and they were arrested and prosecuted for the offence of theft in India.

The Court convicted the accused for theft. It was held that in order to constitute the offence of theft, the dishonest intention at the commencement of their journey was sufficient

Punishment

By s. 303(2) of the Sanhita , whoever commits theft shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

In case of second or subsequent conviction of any person under this section, he shall be punished with rigorous imprisonment for a term which shall not be less than one year but which may extend to five years and with fine.

In cases of theft where the value of the stolen property is less than five thousand rupees, and a person is convicted for the first time, shall upon return of the value of property or restoration of the stolen property, shall be punished with community service.

Snatching.

By s. 304(1) of the Sanhita , a Theft is snatching if, in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any movable property.

By section 2(21) movable property includes property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

Punishment

Whoever commits snatching, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Theft in Dwelling House

By s. 305 of the Sanhita, whoever commits theft;

a) In any building, tent or vessel, which is used as a human dwelling, or used for the custody of property.

(b) of any means of transport used for the transport of goods or passengers; or

- (c) of any article or goods from any means of transport used for the transport of goods or passengers; or
- (d) of idol or icon in any place of worship; or
- (e) of any property of the Government or of a local authority.

Punishment

Whoever commits the above mentioned offences shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for Theft by Clerk or Servant

By s. 306 of the Sanhita, whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for Theft after Preparation to Cause Death

By s. 307 of the Sanhita, whoever commits theft after making preparation for causing death or hurt to any person in order to the committing of such theft or in order to the effecting of his escape after the committing of such theft or in order to the retaining of property taken by such theft shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Topic -LIII

EXTORTION

Sections 308 of the Sanhita deal with the offence of extortion. Section 308 (1) of the Sanhita defines "extortion".

A person is liable to be punished for the offence of extortion, if the following conditions are satisfied.

- ① (a) He should have put another person in fear.
- (b) The fear caused by him to the person must be a fear of injury either to that other person or to some other person in whom the person so put in fear is interested.
- (c) He must have caused the fear intentionally.
- (d) As a result of the fear so caused, the person so put in fear should have been induced to deliver any property or any valuable security or anything signed or sealed to any person which is capable of being converted into valuable security.
- (e) He should have acted with intention to cause wrongful gain or wrongful loss.

Examples

- (1) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.
- (2) A threatens that he will keep Z's child in wrongful confinement unless Z will sign and deliver to A a promissory note binding Z to pay a certain sum of money to A. Z signs and delivers the note. A has committed extortion.

(3) A by putting Z in fear of grievous hurt dishonestly induces Z to sign a blank paper and deliver it to A. Z signs and delivers the paper to A. Here as the paper so signed may be converted into a valuable security A has committed extortion.

Punishment for Extortion

By s. 308(2) of the Sanhita, whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to Seven years, or with fine, or with both.

Distinction Between Theft and Extortion

1. In theft, the offender takes the property without consent of the possessor. Extortion is committed by wrongfully obtaining the consent.
2. Theft can be committed in respect of movable property only. Extortion can be committed in respect of movable or immovable property.
3. In theft, the element of force does not exists. So also element of fear does not exist. In extortion, the property is obtained by intentionally putting a person or any other to fear of injury and thereby dishonestly inducing him to deliver property.

Topic - LIV

ROBBERY

Section 309 of the Sanhita defines the offence of 'robbery'.

Robbery is an aggravated form of either theft or extortion.

Theft when becomes Robbery

The theft will become robbery if the following conditions are satisfied.

- (1) The offender should have voluntarily
 - a) caused or attempted to cause death, or
 - b) caused instant fear of death, or
 - c) caused or attempted to cause hurt, or
 - d) caused fear of instant hurt, or
 - e) caused or attempted to cause wrongful restraint, or
 - f) caused instant fear of wrongful restraint of any person.
- 2) The above stated acts of violence should have been done for the following four ends.
 - a) In order to commit theft, or
 - b) In committing theft, or
 - c) In carrying away stolen property or
 - d) In attempting to carry away stolen property.

In short we can say that :

Robbery = Theft + Violence or fear of instant violence.

Example

- 1) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes without Z' consent. Here A has in committing the offence of theft caused wrongful restraint to Z. A has therefore committed robbery.
- 2) A is a thief. He snatches away by force a bag which another is carrying, although he uses violence but since he does not cause hurt, or wrongful restraint or fear of hurt or wrongful restraint, his act is simple theft and not robbery.

Extortion when becomes Robbery

An extortion will become robbery if the following conditions are satisfied:

- (i) At the time of committing the extortion, the offender should be in the presence of the person put in fear
- (ii) The offender should have committed extortion by putting that person in fear of instant death, or of instant hurt, or instant wrongful restraint to that person or to some other person,
- (iii) The person so put in fear should have delivered the thing extorted then and there.

In short, we can say that :

Robbery = Extortion + Presence of the offender + fear of instant violence + immediate delivery.

Examples

- (1) 'A' meets Z on the high road, shows a pistol and demands 'Z's purse. Z in consequence surrenders his purse. Here,

'A has extorted the purse from 'Z' by putting him in fear of instant hurt, and therefore 'A has committed robbery.

- (2) 'A meets Z and Z's child on the high road. A takes Z's child and threatens Z' that if he fails to deliver his purse the child will be killed instantly. 'Z' delivers the purse. 'A has committed robbery.

Punishment for Robbery

By s. 309(4) of the Sanhita, whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine.

If the robbery is committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Punishment for Attempt to Commit Robbery

By s. 309(5) of the Sanhita, whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily Causing Hurt in Committing Robbery

By s. 309(6) of the Sanhita , if any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Topic -LV

Dacoity

Section 310 (1) defines Dacoity. When five or more persons conjointly commit or attempt to commit robbery, it becomes dacoity. In order to constitute the offence of dacoity, the following conditions are to be satisfied:

- (i) There should be actual robbery or an attempt to commit robbery.
- (ii) The offence of robbery or attempt to commit robbery should be committed by five or more persons conjointly.

or

The persons actually engaged in the commission of robbery or attempt to commit robbery and *persons present and aiding* such commission or attempt together should amount to five or more.

If the persons actually committed robbery or attempted to commit robbery and the 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. Thus, in order to constitute the offence of dacoity, all the five persons need not actually commit the robbery or attempt to commit robbery. However five persons should be present at the place of occurrence. If the persons actually engaged in the commission of robbery and persons present and aiding such commission together amount to five or more, there is dacoity.

Punishment for Dacoity

Section 310(2) of the Sanhita prescribes punishment for the offence of dacoity. Whoever commits dacoity shall be

punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for Dacoity with Murder

By s.310(3) of the Sanhita, if any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which shall not be less than ten years, and shall also be liable to fine.

Punishment for RobberyPunishment for Making Preparation to Commit Dacoity

By s. 310(4) of the Sanhita, whoever makes any preparation for committing dacoity shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for Assembling for the purpose of committing dacoity

By s. 310(5) of the Sanhita, a person who is one of five or more persons assembled for the purpose of committing dacoity shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Punishment for belonging to Gang of Dacoits

By s. 310 (6) of the Sanhita, a person who belongs to a gang of persons associated for the purpose of habitually committing dacoity shall be punished with imprisonment for life or with rigorous imprisonment for a term which may extend

to ten years, and shall also be liable to fine. or Dacoity with attempt to Cause Death or Grievous Hurt

By s. 311 of the Sanhita, if, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Punishment for Attempt to Commit Robbery or Dacoity when Armed with Deadly Weapon

By s. 312 of the Sanhita , if at the time of attempting to commit robbery or dacoity, the offender is armed with deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Punishment for belonging to Gang of Thieves

By s. 313 of the Sanhita, a person who belongs to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery (and not being a gang of *thug* or *dacoits*) shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Topic -LVI

CRIMINAL MISAPPROPRIATION OF PROPERTY

Section 314 of the Sanhita defines criminal misappropriation of property and prescribes punishment.

Criminal misappropriation means dishonest misappropriation or conversion of movable property which is already in the possession of the offender. In the case of criminal misappropriation the offender gets the possession of the movable property innocently but subsequently uses that property dishonestly for his own benefit.

Examples

- (1) A and B are friends. A goes to B's library and takes a book for reading. He takes it in good faith of returning it after use. A is not guilty of theft. A afterwards sells the book for his own benefit. He is guilty of criminal misappropriation.
- (2) A and B are joint owners of a horse. A takes the horse out of B's possession for a riding. As 'A' has a right to use the horse he has not committed any offence. But if 'A' sells the horse and appropriates the whole sale proceeds to his own use without B's consent he is guilty of criminal misappropriation.

Problem

A finds a letter on the road containing a cash cheque signed by the account holder. From the directions and contents of the letter he learns the real owner's name and address. He without taking any step to find out the real owner, appropriates it for himself. What offence he has done?

A person who finds property not in the possession of any other person can take it for protecting it or for restoring it to the real owner. So long as he is not dishonestly appropriating it, he is not liable for any offence.

If such a person has any chance to discover the real owner he should take all reasonable steps to discover the real owner. He should give notice to the real owner if his name is known to him and he has to keep the property for a reasonable time to enable the owner to claim it.

If such a person appropriates to his own use without taking all reasonable steps to find out the real owner, he is liable for criminal misappropriation.

Examples

- (1) A finds 100 rupees on the high road, not knowing to whom the rupee belongs. A picks up the rupee and appropriates it for his own use. He has not committed criminal misappropriation.
- (2) A finds a purse with money, not knowing to whom it belongs. He afterwards discovers that it belongs to Z. He appropriates it to his own use. A is liable for criminal misappropriation.
- (3) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of criminal misappropriation.

In order to constitute the offence of criminal misappropriation a dishonest misappropriation for a time only is enough.

Example

A finds a ring on high road and he picks it up. A comes to know that the ring belongs to Z. He pledges it with a bank as a security for a loan, intending at a future time to restore it to Z. A has committed criminal misappropriation.

Punishment for Criminal Misappropriation

By s. 314 of the Sanhita ,whoever dishonestly misappropriates or converts to his own use any movable property shall be punished with imprisonment of either description for a term which shall not be less than six months but which may extend to two years,or with fine or with both.

Punishment for Dishonest Misappropriation of Property Possessed by Deceased Person at the time of his Death

By s. 315 of the Sanhita , if a person dishonestly misappropriates or converts to his own use any property which was in the possession of a deceased person at the time of that person's death and before it comes into the possession of any person legally entitled to such possession, he shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. If the offender at the time of such person's death was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Example

Z dies in possession of furniture and money. His servant A, before the money comes into possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined under s.315 of the Sanhita .

Topic -LVII

CRIMINAL BREACH OF TRUST

Section 316 of the Sanhita defines Criminal Breach of Trust.

A person is liable to be punished for criminal breach of trust, if the following conditions are satisfied:

- 1) He should have been entrusted with property or with any dominion over property.
- 2) He should have dishonestly misappropriated or converted the property so entrusted to his own use; or
- 3) He should have used or disposed of that property in violation of any direction of law prescribing the mode in which trust was to be discharged or of any legal contract.

Examples

- 1) A is a warehouse keeper. Z going on a journey entrusts his furniture to A, under a contract that it shall be returned on payment of stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.
- 2) A is a revenue officer. He is entrusted with the duty of collecting revenue and is directed to remit the money into a certain treasury. A dishonestly appropriates the money for his own use. A has committed criminal breach of trust.

Punishment for Criminal Breach of Trust

By s. 316(2) of the Sanhita, whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Topic- LVIII

CHEATING

Section 318 of the Sanhita defines the offence of cheating. A person is liable to be punished for the offence of cheating, if the following conditions are satisfied:

- 1 He should have deceived any person.
- 2 He should have fraudulently or dishonestly induced the person so deceived:
 - (a) to deliver any property to any person, or
 - (b) to consent that any person shall retain any property; or
- 3 He should have intentionally induced any person so deceived to do or omit to do anything and that act or omission caused damage or harm to that person in body or mind, reputation or property.

Illustrations

- (1) A sells an estate to B. Subsequently he mortgages the very same property to Z without disclosing the fact of the previous sale to B. He receives mortgage money from Z. A commits the offence of cheating.
- (2) A pledges diamonds to Z which he knows are not diamonds and thereby dishonestly induces Z to lend him money. A does not intend to repay the money. A commits the offence of cheating.

Punishment for Cheating

By s. 318(2) of the Sanhita , a person who is guilty of cheating is liable to be punished with imprisonment of either

description for a term which may extend to three years, or with fine, or both.

Cheating and dishonestly inducing delivery of property (sec 318(4))

Whoever cheats, and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security.

Punishment for Cheating and dishonestly inducing delivery of property.

Whoever cheats, and dishonestly induces to deliver property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cheating by Personation

Section 319(1) of the Sanhita defines cheating by personation.

When a person cheats by pretending to be some other person, or by substituting one person for another, or representing that he or any other person is a person than he or such other person really is, he commits cheating by impersonation.

Illustration

A cheats by pretending to B, a person who is deceased. A cheats by personation.

Punishment for Cheating by Personation

By s. 319(2) of the Sanhita, whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Topic -LIX

MISCHIEF

Section 324(1) of the Sanhita defines the offence of "mischief. A person is liable to be punished for mischief, if the following conditions are satisfied:

- 1 He should have caused destruction of some property or any change in it or in its situation.
- 2 The destruction or change must have destroyed or diminished the property's value.
- 3 The destruction or change should have been done with the intention or knowledge to cause wrongful loss or damage to the public or to any person.

Illustrations

- (i) A voluntarily burns a promissory note belonging to Z intending to cause wrongful loss to Z. A has committed mischief
- (ii) A voluntarily throws into river a ring belonging to Z with the intention of thereby causing loss to Z. A has committed mischief
- (iii) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects with intention of thereby preventing Z. A has committed mischief.
- (iv) A has insured a ship. He voluntarily caused the same to be cast away with intention of causing damage to Z. A has committed mischief.

- (v) A and Z are joint owners of a horse. A shoots the horse intending thereby to cause wrongful loss to Z. A has committed mischief.
- (vi) A causes cattle to enter upon a field belonging to Z intending to cause damage to Z's crops. A has committed mischief.

Punishment

- (1) Mischief - Imprisonment of either description extend upto six months months or fine or both(s. 324(2)).
- (2) Mischief by loss or damage to any property including the property of Government or Local Authority shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both. (s. 324(3)).
- (3) Mischief causes loss or damage to the amount of twenty thousand rupees and more but less than one lakh rupees shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.(s. 324(4)).
- (4) By mischeif causes loss or damage to the amount of one lakh rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.(s. 324(5)).
- (5) **By mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.(s. 324(6)).**

Mischief by killing or maiming animal.

Mischief by killing, poisoning, maiming or rendering useless any animal shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.(s.325).

Mischief by injury, inundation, fire or explosive substance, etc.

- (1) Mischief by doing any act which causes, or which he knows to be likely to cause, diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. (s.326(a))
- (2) Mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. (s.326(b))
- (3) Mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both (s.326(c)).
- (4) Mischief by destroying or moving any sign or signal used for navigation of rail, aircraft or ship or other thing placed as a guide for navigators, or by any act which renders any such sign or signal less useful as a guide for navigators, shall be punished

with imprisonment of either description for a term which may extend to seven years, or with fine, or with both (s.326(d)).

- (5) Mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both (s.326(e)).
- (6) Mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property including agricultural produce, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.(s.326(f))
- (7) Mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with 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(s.326(g))

Mischief with intent to destroy or make unsafe a rail, aircraft, decked vessel or one of twenty tons burden.

Mischief to any rail, aircraft, or a decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that rail, aircraft or vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in sub-section (1) of section 327, shall be punished with 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.

Whoever, intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. (Section 328)

Topic -LX

CRIMINAL TRESPASS

Section 329 (1) of the Sanhita defines the offence of Criminal Trespass. A person is liable to be punished for criminal trespass, if the following conditions are satisfied:

(a) He should have entered into or upon the property of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or

(b) He should have lawfully entered into or upon the property of another and unlawfully remained there with intent to intimidate, insult or annoy such person or with intent to commit an offence.

Punishment for Criminal Trespass

Imprisonment of either description for a term which may extent to three years or with fine which may extend to five thousand rupees or with both (s. 329 (3)).

Topic - LXI

HOUSE-TRESPASS & HOUSE BREAKING

a) House -Trespass

Section 329(2) of the Sanhita defines the offence of House-Trespass. If the following conditions are satisfied, a person will be liable to be punished for house-trespass.

- (1) He should have committed criminal trespass.
- (2) The criminal trespass should be by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship or as a place for the custody of property.

The introduction of any part of the criminal trespasser's body is sufficient to constitute house-trespass.

Punishment for house-trespass

Imprisonment of either description for a term which may extend to one year, or with fine which may extend to five thousand rupees or with both (s. 329(4)).

If the house trespass is for committing an offence punishable with death, the punishment is Imprisonment for life or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine (s. 332(a)).

If the house trespass is for committing an offence punishable with imprisonment for life, the punishment is imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine (s. 332(b)).

By s.330 of the Sanhita , whoever commits 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 house , building, tent or vessel which is the subject of the trespass, commits " lurking house-trespass".

By s. 331(1) of the Sanhita , Whoever commits lurking house-trespass or house-breaking, shall be punishedwith imprisonment of either description for a term which may extend to two years, and shallalso be liable to fine.

Josy T. J. v. State of Kerala (2025 KHC 192)

In this case the Kerala High Court answered the follwing qiestions;

i) What is the primary ingredient to find criminal trespass, house trespass and lurking house trespass?

It was held, entering into or upon the property in possession of another is the primary ingredient to find criminal trespass, house' trespass and lurking house trespass.

ii) What is meant by criminal trespass ?

It was held that ,criminal trespass is defined in S.441 (now under section 229 of the Sanhita) as entering into or upon property in possession of another with intent to commit an offence or tointimidate, insult or annoy any person in possession of such property . So, the aim or dominant intention of the accused for committing an offence or intimidation, insult or annoyance must be proved.

iii) What is meant by house trespass and lurking house trespass?

It was held that, committing criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit house trespass.

Similarly, lurking house trespass means committing house trespass having taken 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 matter of the trespass.

b) House-Breaking

Section 330(1) of the Sanhita defines the offence of "house-breaking".

A person is liable for house-breaking if he commits house trespass by effecting his entrance into the house in any one of the following six ways.

- (1) Through a passage made by himself in order to commit the house-trespass.
- (2) Through a passage not intended for human entrance.
- (3) Through a passage to which he has obtained access by climbing over any wall or building.
- (4) Through a passage which he has opened by removing any lock.
- (5) If he effected his entrance by using criminal force or committing an assault.

- (6) If he entered through any passage which was fastened by unfastening it by himself.

By s. 331(1) of the Sanhita , 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.

House-Trespass & House breaking by night

Whoever commits lurking house trespass after sun set and before sun rise is said to commit' house-trespass by night.

Whoever commits house-breaking after sun-set and before sun-rise is said to commit "house-breaking by night".

Punishment

By s. 331(2) of the Sanhita , whoever commits lurking house-trespass or house-breaking after sunset and before sunrise, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Topic - LXII

FORGERY

Section 336(1) defines the offence of "forgery". A person is liable to be punished for forgery, if the following conditions are satisfied:

- (i) He should have made any false document or electronic record or part of a document or electronic record,
- (ii) The intention of such making may be any one of the following :

- (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.

Making a False Document or Electronic Record

By s. 335 of the Sanhita , a person is said to make a “false document” or “electronic record” under the following circumstances.

- (1) If he makes, signs, seals or executes a document or part of a document with dishonest or fraudulent intention.
- (2) If he makes or transmits any electronic record or part of any electronic record with dishonest or fraudulent intention.
- (3) If he affixes any digital signature on any electronic record with dishonest or fraudulent intention.
- (4) If he makes any mark denoting the execution of a document or the authenticity of the digital signature with dishonest or fraudulent intention.

The above said acts should be done with the intention of causing to be believed that such document or electronic record was made, signed, sealed, executed, transmitted or affixed by the person in whose name it is made, signed, sealed, executed, transmitted or affixed.

The following acts can also be treated as making false document or electronic record

- (1) Alteration of a document or an electronic record in any material part of it after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration. This should be done without lawful authority and done with dishonest or fraudulent intention.
- (2) Causing any person to sign, seal, execute or alter any document or an electronic record or to affix his digital signature on any electronic record knowing that such person does not know the contents of the document or electronic record due to his unsoundness of mind or intoxication or by reason of deception practised upon him. This should also be done with dishonest or fraudulent intention.

Illustrations

- (a) 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.
- (b) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorises 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.
- (c) 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.

- (d) A sells and conveys an estate to Z. 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.
- (e) 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,
- (f) A without B's authority writes a letter and signs it in B's name certifying 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 of service.

A man's signature of his own name may amount to forgery

The 1st Explanation to s.335 of the Sanhita specifically says that a man's signature of his own name may amount to forgery.

Illustration

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.

Making of a False Document in the name of a Fictitious Person is Forgery

The second explanation to s.335 says that the making of a false document in the name of a fictitious person, intending 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.

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.

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 (s. 336(2)).

Topic- LXIII

DEFAMATION

Sections 356 of the Sanhita deal with the offence of defamation. Defamation is a Crime as well as a Tort.

A person's reputation is considered to be his valuable asset. An injury to the reputation is made punishable under the Bharatiya Nyaya Sanhita,2023.

A man's opinion of himself cannot be called his reputation. The reputation of a person is the opinion of other persons about him. An injury to the reputation is the most harmful of all injuries. The law cannot allow it. All system of Juirsprudence have recognised reputation as one of the four cardinal rights of man, the other three are rights relating to person, property and liberty.

Defamation is an offence against reputation. Defamation is an accusation made by one person so as to lower another person in the estimation or opinion of others.

A person is liable for defamation if the following conditions are satisfied:

- (1) He had made or published any imputation concerning any person.
- (2) The imputation should be made or published by words, spoken or written, or by signs, or by visible representations.
- (3) He should have intended to harm the reputation of another person.

To make an imputation concerning a dead person will be treated as defamation, if that will harm the reputation of the near relatives of the deceased who are alive.

To make an imputation concerning a company or an association or collection of persons as such may amount to defamation.

An imputation in the form of an alternative or expressed ironically may also amount to defamation.

Illustrations

- (1) A draws a picture of Y running away with B's watch, intending it to be believed that Y has stolen B's watch . This is defamation.
- (2) A says, Y is an honest man and he has not stolen B's watch, intending to cause it to believe that Y has stolen B's watch.

This is defamation.

Exceptions

Section 356 provides ten exceptions. When the accused person's act comes within any one of the ten exceptions he is not liable for defamation. They are:

- (1) If the imputation made is true in substance and in fact, and if, it is made for the public good, the imputation made or published is not defamation and the accused is not liable for any offence.
- (2) If the accused had expressed in good faith his opinion about the conduct of public servants in the discharge of their public function, he is not liable for defamation. If the imputation is referring to his character it should confine to the character appearing from the conduct and not any further. Thus the imputation should be fair criticism of public servants in good faith.
- (3). If the accused expressed in good faith his opinion respecting the conduct of a person touching any public question, he is not liable for defamation.

Illustration

'Z' canvassed votes for a particular candidate. 'A' made in good faith an opinion about the Z's conduct. A's comment being in good faith is not a defamation.

- (4) If a person publishes a true report of the proceedings of court or of the result of such proceeding, he is not liable for defamation. The publication should be substantially true report.

- (5) If a person expresses in good faith, any opinion on the merits of a case decided in court or on the conduct of a witness, he is not liable for defamation.

Example

'X' gave evidence in the court as a witness. Y expresses an opinion that X has made contradictory statements and he must be stupid and dishonest. Y is not liable for defamation, if he has expressed the opinion in good faith.

- (6) If a person has expressed in good faith opinion on the merits of any performance of an author, he is not liable for defamation, if the author has submitted his performance to the judgement of the public.

Example

X published a book. Y expressed in good faith an opinion that X's book is indecent and thus he must be a man of impure mind. Y is not liable for defamation.

- (7) If a person has passed censure in good faith, he is not liable for defamation where the person who passed censure had lawful authority over the other.

Examples

- a) A judge censuring in good faith the conduct of a witness or of an officer of the Court is not liable for defamation.
- b) A head of the department censuring in good faith those who are under his orders is not liable for defamation.
- c) A parent censuring in good faith a child in the presence of other children is not liable for defamation.

- d) A school master censuring in good faith a pupil in the presence of other pupils is not liable for defamation.
- (8) If a person has preferred an accusation in good faith against another to an authorised person, he is not liable for defamation.

Examples

- (1) A in good faith made a complaint against Z before a magistrate. A is not liable for defamation.
- (2) A in good faith made a complaint of the conduct of Z, a servant, to Z's master. A is not liable for defamation.
- (9) If a person has made an imputation in good faith for the protection of his interest or another's interest, he is not liable for defamation.

Examples

- (a) A is a shopkeeper. He says to B who manages his business "sell nothing to Z unless he pays ready money for I have no opinion of his honesty". A is not liable for defamation since his statement is to protect his interest.
- (10) If a person had conveyed a caution to another person for the good of that other person or for the public good, he is not liable for defamation.

Punishment

The punishment for defamation is simple imprisonment up to two years or fine or both or community service .

In *Jaldeep Bose v. M/s. Bid and Hammer Auctioneers Private Limited(2025 SCC OnLine SC 348)*

The Supreme court of India considered the question whether an Editorial Director or other supervisory personnel in a publication can be presumed liable for defamatory content under the statutory presumption applicable to editors. It was held that statutory presumption under S.7 of the Press and Registration of Books Act, 1867 applies only to the named Editor, who is legally responsible for selecting content for publication. Other roles such as Editorial Directors and supervisory personnel are not automatically responsible for defamatory publication unless there is a specific allegation detailing their direct involvement in publishing defamatory material and in content selection. It also held that, a statement will become defamatory only if it demonstrably lowers a person's reputation in the public's view; self-perception of harm is insufficient.

Topic - LXIV

CRIMINAL INTIMIDATION

Section 351 of the Sanhita defines the offence of Criminal Intimidation. A person is liable to be punished for criminal intimidation, if the following conditions are satisfied:

- 1) He should have threatened another with any injury to his person, property, or reputation.
- 2) The threat of injury must be made with intent to cause harm 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 he is legally entitled to do.

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.

Punishment

The punishment for Criminal Intimidation is imprisonment for a period of two years or fine or both.

If the threat is to cause (1) death or grievous hurt, or (2) the destruction of any property by fire, or (3) an offence punishable with death, imprisonment up to seven years, or (4) to impute unchastity to a woman, the imprisonment will be increased to 7 years or fine or with both.

Topic - LXV

DEFINITION OF PUBLIC SERVANT

OR

DISCUSS VARIOUS OFFENCES BY OR AGAINST PUBLIC SERVANTS PUNISHABLE UNDER THE BHARATIYA NYAYA SANHITA, 2023

Bharatiya Nyaya Sanhita,2023 prescribes punishments for some offences committed by or against public servants.

The expression 'Public Servant' is defined in section 2. (28) of the Bharatiya Nyaya Sanhita,2023. A person falling under any of the following descriptions is a public servant.

(a) Every Commissioned Officer in the Military, Naval or

Air Forces of India

(b) Every Judge including any person empowered by law to discharge any adjudicatory functions.

(c) Every Officer of a Court of Justice (including a liquidator, receiver or commissioner) who is under a duty-

- (i) to investigate or report on any matter of law or fact, or
 - (ii) to make, authenticate, or keep any document, or
 - (iii) to take charge or dispose of any property, or
 - (iv) to execute any judicial process, or
 - (v) to administer any oath, or
 - (vi) to interpret, or
 - (vii) to preserve order in the court, and
 - (viii) every person specially authorised by a court of justice to perform any of such duties.
- (d) Every juryman, assessors, or member of a panchayat assisting a Court of Justice or public servant.
- (e) Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority.
- (f) Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement.
- (g) Every officer of the Government who is under a duty to prevent offences, to give information of offences, to bring offenders to justice, or to protect public health, safety or convenience.
- (h) Every Officer who is under a duty to take, receive, keep or expend any property on behalf of the Government or to make any survey assessment or

contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government.

- (i) Every person who is empowered to prepare, publish, maintain or revise an electoral roll or conduct an election for the purpose of selecting members of any legislative, municipal or other public authority.
- (J) Every person in the service or pay of a local authority or a corporation established by or under a Central or State Act or a Government Company.

In **M. Karunanidhi v. Union of India**, (1979 Cr. LJ 773 SC) it was held that Ministers are public servants because:

- (1) they receive pay,
- (2) they are appointed by the Governor, and
- (3) they perform public function.

In **R.S Nayak v. A.R. Antulay** (AIR 1984 SC 684) it was held that a Member of the Legislative Assembly is not a public servant within the meaning of section 2(28) of the Bharatiya Nyaya Sanhita, 2023.

The following **Chapters and sections** of the Bharatiya Nyaya Sanhita deal with offences by or against the public servants prescribes punishments.

Section 59 - Public servant concealing a design to commit offence which it is the duty of the public servant to prevent.

If the offence is committed - Imprisonment extending to half of the longest term provided for the offence, or fine or both.

If the offence be punishable with death or imprisonment for life - Imprisonment for 10 years.

If the offence is not committed - Imprisonment extending to a quarter part of the longest term provided for the offence, or fine, or both.

Section 156 - If a public servant voluntarily allows prisoner of State or War to escape, he is liable to be punished with imprisonment for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 157 - If a public servant negligently suffers prisoner to escape from any place of confinement, he shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Chapter XII - sections 198 , 199 , 200 ,201, 202 , 203 ,204 & 205
- This chapter deals with various offences by public servants.

Chapter XIII - section 206 to 225 - This chapter deals with contempt of lawful authority of public servants and prescribes punishment.

Section 255 - prescribes punishment for disobeying direction of law with intent to save person from punishment or property from forfeiture.

Section 256 - prescribes punishment for framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

Section 257 - prescribes punishment for corruptly making report contrary to law in judicial proceeding.

The list is not exhaustive.

Solved Problems

(1) A keeps poisons halua in his house, wishing to kill B whom he invited to a party and to whom he wishes to give it. Unknown to A, his only son takes the halua and dies. Discuss what offence A has committed.

Attempt to murder B is not made out as the act does not pass beyond stage of preparation. There are four stage of a crime. They are:

- a) Intention to commit it
- b) Preparation
- c) Attempt
- d) Commission.

Intention is a mental element. Intention alone is punishable only in the offence of criminal conspiracy (Sections 61 (1) and 61(2)).

Preparation is not punishable except -

- a) Under s.149 (collecting arms etc. with intention of waging war against the Government of India)
- b) Under s. 154 (preparation to commit depredation on the territories of a friendly power).
- c) Under s.310(4) (preparation to commit dacoity).

An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts which would be the actual commission if it were not interrupted. Attempt to commit crime is made punishable under various sections of the Bharatiya Nyaya Sanhita. Sec.62 is a residuary

section which applies when there is no express provisions punishing an attempt. An attempt to commit the offence is a direct movement towards the commission of offence. An attempt is an act done in part execution of a criminal design amounting to more than mere preparation.

Examples

- (a) A intending to murder Z by means of a spring gun, purchases such a gun. A has not committed the offence as defined in s. 109 . It is only a preparation.
- (b) A intending to murder Z by poison, purchases poison, and mixes the same with food which remains in As keeping. A has not yet committed the offence defined in s.109. A places it on Z's table. A has committed the offence defined under s.109 .
- (c) A buys a revolver and cartridges to shoot B. There is ample evidence of his purpose but he does nothing further. The intention does not go beyond the stage of preparation so as to be translated into attempt. Preparation to commit murder is not an offence.

In the given problem A has only made preparation to commit the murder of B. An attempt to commit murder is made punishable under s.109 . A is not liable for attempt to commit murder.

However he is liable under S.106 for causing the death of his son by criminal negligence.

(2) A, a thief, puts his hand in the pocket of B, to pick the purse. But B's pocket is empty. Is A guilty of any offence?

Hint - A is guilty of attempt to commit theft as defined in s. 62 of the Sanhita. He is liable to be punished under s. 303(2) read with 62 of the Sanhita (Read Topic-LII,XXIV) .

- (3) 'O' pulls the nose of P. P shoots O. P, when prosecuted, defends that he has exercised his right of private defence. - Decide.**

Hint- 'P' has exceeded his right of private defence. By s. 37 of the Sanhita , the right of private defence shall not extend to the inflicting of more harm than necessary for the purpose of defence (Read Topic). If O has died of the injuries, P is liable to be punished for culpable homicide not amounting to murder (Read Topic-XXX).

- (4) P believing she was not validly married to Q, deserts him and marries C. Has she committed bigamy?**

Hint - P is liable to be punished for bigamy under s.82 of the Sanhita (Read Topic -XXIX). Her defence that she believed the marriage with Q was not valid can not be accepted as a good defence.

- (5) X meets Y and his child on the river bridge. X takes the child and threatens to fling it down to the river, unless Y delivers his purse. Y in consequence delivers his purse. Is X guilty of any offence? If so give reasons.**

Hint - X is liable to be punished for the offence of robbery under s. 309 (4) of the Sanhita . (Read Topic-LIV). You may write the entire topic in the examination.

- (6) Z, along with eight others went to a near village to beat some of his enemies. In this fight Z was injured. The members of the opposite party ran away. Thereafter Z's friends followed**

the opponents and killed one of them. Discuss the liability of Z and his companions.

Hint- Z and his companions are liable to be punished for the murder. As there are eight persons joined for the commission of a crime, there is an unlawful assembly as defined in s. 189 of the Sanhita. By virtue of s. 190 when a member of an unlawful assembly commits a crime in prosecution of their common object, each member is liable to be punished for the same. (**Read topics-VII,XLIV,XLV**).

(7) X places men with fire arms at the outlets of a building, and tells Y that he will fire at Y, if Y attempts to leave the building. What type of offence X has committed against Y?

Hint - X has committed the offence of 'wrongful confinement' as defined in s. 127 and is liable to be punished under s. 127(2) of the Sanhita . (**Read Topic -XXXIX**).

(8) M threatens to publish a defamatory libel concerning N unless N gives Rs.1 lakh. M induces N to give money. What type of crime M committed against N?

Hint - M has committed the offence of 'extortion' as defined in s. 383 and is liable to be punished under s. 384 of the Code. (**Read Topic - LIII**)

(9) A an uneducated in matters of surgery operated on a man for internal piles by cutting them out with an ordinary knife. The man died of haemorrhage. What offence has A committed?

Hint - In **Sukaroo Kobiraj v. The Empress** (14 Cal. 566), the court convicted a quack physician(a person who pretends to have special knowledge and skill in medicine) for having caused

death of a patient by operating on him for internal piles by putting them out with ordinary knife. The accused was convicted for causing death by rash and negligent act.

In the given problem, A, an uneducated in matters of surgery, has performed operation on a patient for internal piles by putting them out with ordinary knife and caused death. If he has knowledge that his act is likely to result in death of a person, he can be convicted for the offence of murder as defined in s. 101 and is liable to be punished under s. 103 of the Sanhita . However, since there is 'consent on the part of the patient he may be convicted under s.105 of the Sanhita for culpable homicide not amounting to murder (exception to murder). (Read Topics -XVIII,XXX,XXXII). (When this type of problem is asked in the examination, you are expected to discuss all the relevant topics. Hence you have to discuss briefly all the relevant topics. You have to substantiate your answer).

(10) A happens to see Q, his brother fighting with R. In fact they were only playing. At a point when P thought that Q was to be felled by R, he kicked R to death. On being charged with murder P pleads right of private defence. Decide.

Hint - The right of private defence is available to a person for defending his own body and the body of other persons (s.35). The right of private defence of body commences as soon as a reasonable apprehension of danger to the body arises and continues as long as the apprehension of danger to the body continues(s.40). The right of private defence shall not extend to the inflicting of more harm than necessary for the purpose of defence (s.37). The right of private defence of body can be extended to causing of death of the assailant or offender if the

assault of the offender caused reasonable apprehension of death.(s.38).

In the given problem 'A' exercised his right of private defence to protect the body of his brother Q. He exercised his right of private defence under a mistake of fact. He was under the belief that R and Q were fighting. He is justified in exercising his right of private defence. However, his kick resulted in death of R. There was no circumstance justifying the causing of death of R. A has exceeded his right of private defence as he has inflicted more harm than necessary for the purpose of defence. However he is liable to be punished only for culpable homicide not amounting to murder dealt under s.105. (Read Topics XXI ,XXX)

(11) A finds a diamond ring, not knowing to whom it belongs. He sells it immediately to a jeweller. What offence, if any, is committed by A ?

Hint - A is guilty of Criminal Misappropriation as defined in s.314 (Read Topic -LVI

(12) A fighting takes place between X and Y at Ernakulam Railway Station platform at a time when no train is due except a goods train. Can X and Y be charged for committing an offence, if any ?

Hint - Section 194 of the Bharatiya Nyaya Sanhita defines the offence of Affray. When two or more persons, by fighting in a public place, disturb the public peace, they are said to commit an affray.

If two or more persons disturb the public peace by fighting in a public place they are guilty of affray.

Section 194(2) of the Sanhita prescribes punishment for affray. Whoever commits the offence of affray shall be punished with imprisonment for a term which may extend to one month, or with fine of Rs. 1000/-, or with both.

In order to convict a person for the offence of affray three conditions are to be satisfied-

- (1) There must be a fight between two or more persons.
- (2) The fight must be in a public place. The expression public place is not defined in the Sanhita . It may be a public omnibus, a railway platform or a public urinal
- (3) The fight must have disturbed the public peace.

In the given problem, X and Y fought at Ernakulam Railway Station platform. The fight was at a public place. In order to constitute the offence of affray the fight should have disturbed public peace. If the fight was at a time when there was no passenger on the platform, they are not guilty of the offence of affray. If there were passengers waiting for a train, they are guilty of affray.

(13) A has in his possession a bottle of poisonous lotion for external application and a bottle of medicine for internal use. A in a drunken condition gives to his child an ounce of the poisonous lotion to drink as result of which the child died.

Is A guilty of any offence?

Hint - A is guilty of 'death caused by rash and negligent act' as defined in S.106 of the Sanhita . He is not liable to be punished under s. 103 (murder) or 105 (culpable homicide) as his act would not result in 'culpable homicide' or 'murder' as defined in ss.100 and 101 respectively. A cannot take

'drunkenness' as a defence because voluntary drunkenness is not a defence under ss.23 and 24 of the Sanhita . (Read Topics XXXII - and XVII).

(14) A intentionally to cause the death of B gives him poisoned milk, but B passes it on to his son C who dies by drinking it. Discuss the liability of B.

Hint - B is not liable to be punished for any offence as he had no intention to kill C. He had no knowledge that his act is likely to cause death of C. Thus he has no *mens rea* to cause death of C. But A is liable to be punished for the murder. A had the intention to kill B. He had given poisoned milk to B. B had passed it on to his son C and C died by drinking it. Here the doctrine of transfer of malice as contemplated in s.102 of the Sanhita is applicable and A can be convicted for murder of C though he had no intention to kill C. (Read Topics III and XXXI)

(15) B an officer of a court being ordered by the court to arrest A after due enquiry believing C to be A arrests C. Examine the criminal liability of B?

Hint - B is not liable to be punished for any offence. His act comes within the general exception "Mistake of Fact" under ss.14 and 17 of the Sanhita . (Read Topic- XI)

(16) A, B, C and D plan to rob the house of E. In the course of the robbery A stabs and kills E. Examine the liability of B, C, and D.

Hint - B, C and D are liable to be punished for murder. By virtue of section 3(5) of the Bharatiya Nyaya Sanhita , "when a criminal act is done by several persons in furtherance of the common intention of all each of such persons is liable for that act in the same manner as if it were done by him alone".

Section 3(5) of the Sanhita embodies the principle of joint liability. If two or more persons intentionally do a criminal act jointly it will be treated that each of them had done it individually. Once it is found that a criminal act was done by several persons "***in furtherance of the common intention*** of all, each of such person is liable for the criminal act as if it were done by him alone (**Read Topic - VII**).

(17) A mixes sugar, thinking that it was poison in the tea meant for B with an intention to cause his death. What offence, if any, has been committed by A?

Hint - A is not liable to be punished for any offence. 'A' has done only preparation for the commission of crime. There are four stage of a crime. They are:

- a) Intention to commit it.
- b) Preparation.
- c) Attempt.
- d) Commission.

Intention is a mental element. Intention alone is punishable only in the offence of criminal conspiracy (Sections 61 and 61(2))

Preparation is not punishable except-

- a) Under s. 149 collecting arms etc. with intention of waging war against the Government of India).
- b) Under s.154 (preparation to commit depredation on the territories of a friendly power).
- c) Under s.310 (4) (preparation to commit dacoity).

The act of A does not amount to attempt. So he is not liable to be punished for any offence.

(18) S promises P, a woman that he would marry her if she consents to sexual intercourse. She consented and becomes pregnant. When told of her pregnancy S refuses to marry her. What offence has he committed?

Hint - S is not liable to be punished for rape (as defined in s.63) or any other offence. P has validly consented to have sexual intercourse. By virtue of Section 28 consent given by a person is **not consent** if given under the following circumstances.

- (1) If he has given consent under fear of injury or under a misconception of fact.
- (2) If he is unable to understand the nature and consequence of his consent due to unsoundness of mind or because of intoxication.
- (3) If he is a minor under the age of 12 years.

In the given problem, P has consented not under any of the above said circumstances. The consent can only be taken as valid consent and hence S is not liable to be punished for any offence under the Bharatiya Nyaya Sanhita,2023

(19) A intentionally and forcibly pulls up the veil of B a woman. She used to wear veil. She complains to the police. Has A committed any offence ?

Hint - A is liable to be punished for the offence of outraging modesty of a woman as defined in s.74 of the Sanhita. (**Read Topic XXVII**). You may write the entire topic (Outraging modesty of a woman) in the examination.

(20) A, a police officer tortures B, to tell him where the stolen property was kept by him. Has A committed any offence?

Hint - By virtue of s. 120 of the Sanhita , if a person voluntarily causes hurt for the purpose of extorting confession from the sufferer or any information which may lead to the detection of an offence, he shall be punishable with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

In the given problem, 'A' has tortured 'B' to tell him where the stolen property was kept by B. The object of torture is to extort confession. Thus A is liable to be punished under s. 120 of the Sanhita.