

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 27] Property in possession of wife, clerk or servant.

When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

***Explanation.—* A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.**

COMMENT—

Under this section property in the possession of a person's wife, clerk, or servant, is deemed to be in that person's possession. The possession must be conscious and intelligent possession and not merely the physical presence of the accused near the object.^{141.}

Corporeal property is in a person's possession when he has such power over it that he can exclude others from it, and intends to exercise, if necessary, that power on behalf of himself or of some person for whom he is a trustee.

A man's goods are in his possession not only while they are in his house or on his premises, but also when they are in a place where he may usually send them (as when horses and cattle feed on common land), or in a place where they may be lawfully deposited by him, e.g., when he buries money or ornaments in his own land, or puts them in any other secret place of deposit.

1. 'Wife'.—A permanent mistress may be regarded as a 'wife'. When a man furnishes a house for his mistress' occupation, he may reasonably be presumed to be in possession of all articles therein which can reasonably be inferred to belong to him or to be in possession of his mistress on his behalf. But the inference must be inapplicable to articles of which the mistress is in possession illegally or contrary to the provisions of law, especially when the article in question is such that he might well remain in ignorance that it was in his mistress' possession.^{142.}

Under this section the possession of the wife or servant must be shown to be on account of the accused otherwise he cannot be held liable for possession by his wife or servant of any incriminatory thing even in his own house. In other words, it must be shown that the accused was in conscious possession of the thing in question through his wife or servant. Moreover, it must also be shown that the possession of the incriminatory thing amounted to an offence under the [Indian Penal Code](#). Thus, possession of illicit liquor or an unlicensed pistol by the wife of the accused in his house would not make him liable for an offence under the Prohibition Act or the [Arms Act](#). The mere fact that the accused was the head of the family would not go to show

that the accused must have been in conscious possession of the incriminatory thing.¹⁴³

¹⁴¹. *Wahib Basha*, [AIR 1961 Mad 162](#) [[LNIND 1960 MAD 38](#)] .

¹⁴². *Banwari Lal*, (1913) PR No. 20 of 1914; see also *Narendra Nath Majumdar*, [AIR 1951 Cal 140](#) [[LNIND 1951 CAL 14](#)] ; *Dharam Singh*, [1961 Cr LJ 152](#) (Pun) where the wife alone was held responsible as she produced the key.

¹⁴³. *Chela Ram v State of Rajasthan*, [1984 Cr LJ 17](#) .1143 (Raj); *Narendra Nath Majumdar*, [AIR 1951 Cal 140](#) [[LNIND 1951 CAL 14](#)] .

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[s 28] "Counterfeit".

A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

^{144.} [Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.]

COMMENT—

The aforesaid definition states that imitation is not required to be exact. It also says that it is not necessary that counterfeit note should be made with primary intention of its being looked as genuine. It is sufficient if resemblance to genuine currency note is so caused that it is capable to being passed as such.^{145.} In order to apply section 28, what the Court has to see is whether one thing is made to resemble another thing and if that is so and if the resemblance is such that a person might be deceived by it, there will be a presumption of the necessary intention or knowledge to make the thing counterfeit, unless the contrary is proved. The difference between the counterfeit and the original is not therefore, limited to a difference existing only by reason of faulty reproduction.^{146.} The main ingredients of counterfeiting as laid down in [section 28, IPC, 1860](#), are:

- (i) causing one thing to resemble another thing,
- (ii) intending by means of such resemblance to practice deception, or
- (iii) knowing it to be likely that deception will thereby be practised.

There can be counterfeiting even though the imitation is not exact and there are differences in detail between the original and the imitation so long as the resemblance is so close that deception may thereby be practised. And if the resemblance is such that a person might be deceived thereby, it shall be presumed until the contrary is proved that the person causing one thing to resemble another thing was intending by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.^{147.}

The word 'counterfeit' occurs in offences relating to coin provided in Chapter XII and offences relating to property marks and currency notes in Chapter XVIII.

If coins are made to resemble genuine coins and the intention of the makers is merely to use them in order to foist a false case upon their enemies, those coins do not come within the definition of counterfeit coins.¹⁴⁸ The prosecution must establish that the coins manufactured resemble the original. It must also establish that there is an intention to deceive, or the knowledge that deception would be caused by such resemblance.¹⁴⁹

[s 28.1] Foreign Currency.—

The Supreme Court has observed that the word "counterfeit" has been defined in this provision in very wide terms and the same has been further supplemented by the Explanation which draws an adverse inference against the maker of the counterfeit matter. There being no restriction as to the subject-matter of the offence, quite obviously the offence of imitating a foreign currency would be within the scope of the expression.¹⁵⁰

¹⁴⁴. Subs. by Act 1 of 1889, section 9, for *Explanation*.

¹⁴⁵. *Narayan Maruti Waghmode v State of Maharashtra*, [2011 Cr LJ 3318](#) (Bom).

¹⁴⁶. *Liyakat Ali v State of Rajasthan* [2010 Cr LJ 2450](#) (Raj); *Golo Mandla Ram Rao v State of Jharkhand*, > [2003 Cr LJ 1738](#) (Jha); *Local Government v Seth Motilal Jain*, (1938) Nag 192.

¹⁴⁷. *State of UP v HM Ismail*, [1960 Cr LJ 1017](#) : [AIR 1960 SC 669](#) [[LNIND 1960 SC 29](#)] ; *K Hasim v State of TN*, [2005 Cr LJ 143](#) : [AIR 2005 SC 128](#) [[LNIND 2004 SC 1142](#)] : (2005) 1 SCC 237 [[LNIND 2004 SC 1142](#)] , exact reproduction is not necessary.

¹⁴⁸. *Velayudham*, (1938) Mad 80.

¹⁴⁹. *Shahid Sultan Khan v State of Maharashtra*, [2007 Cr LJ 568](#) (Bom).

¹⁵⁰. *State of Kerala v Mathai Verghese*, (1986) 4 SCC 746 [[LNIND 1986 SC 461](#)] : [AIR 1987 SC 33](#) [[LNIND 1986 SC 461](#)] : [1987 Cr LJ 308](#) .

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[s 29] "Document."

The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

ILLUSTRATIONS

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document. A power-of-attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document. A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

ILLUSTRATION

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

COMMENT—

An assessment order is certainly a 'document', under [section 29, IPC, 1860](#).¹⁵¹. An agreement in writing, which purported to be entered into between five persons, was signed by only two of them. It was held that it was a 'document' within the meaning of this section though it was not signed by all the parties thereto.¹⁵². Letters or marks imprinted on trees and intended to be used as evidence that the trees had been passed for removal by the Ranger of a forest are documents.¹⁵³. Currency notes would be included in the definition of "documents."¹⁵⁴. A charge ticket for overseas calls which a telephone operator has to prepare for accounting purposes is a document.¹⁵⁵.

151. *Ishwarlal Girdharilal Parekh v State Of Maharashtra*, [AIR 1969 SC 40](#) [[LNIND 1968 SC 143](#)] : [1969 Cr LJ 271](#) (SC).

152. *Ramaswami Ayyar v State*, (1917) 41 Mad 589. *Boraiah v State*, [2003 Cr LJ 1031](#) (Kant), post mortem report which was marked without objection was allowed to be read in evidence without its author being produced.

153. *Krishtappa*, [\(1925\) 27 Bom LR 599](#) .The definition includes anything done by pen, by engraving, by printing or otherwise, whereby, it is made on paper, parchment, wood or other substance. Similar definitions of the word 'document' are found in [Section 3, Evidence Act](#), and also in Section 3 (16), [General Clauses Act](#). *L K Siddappa v Lalithamma* [1954 Cr LJ 1235](#) (Mys).

154. *Shyama Charan*, [AIR 1962 Tripura 50](#) .

155. *RV Sharma*, [\(1990\) 2 All ER 602](#) (CA).

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156. [s 29A] "Electronic record."

The words "electronic record" shall have the meaning assigned to them in clause (t) of sub-section (1) of [section 2 of the Information Technology Act, 2000](#).]

COMMENT—

This section has been inserted by the [Information Technology Act 2000](#) (Act No. 21 of 2000), which came into force on 17 October, 2000. With the on-going electronic and communicational developments, electronic commerce requires the use of electronic record. Section 29A simply refers to the definition of 'electronic record' as the meaning assigned to these words in clause (t) of sub-section (1) of [section 2 of the Information Technology Act 2000](#). It reads thus;

"(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated microfiche;"

While giving meaning to the words "electronic record" and its definition under section 29A one has to resort to the meaning of the words "computer" and "data" as given in sections 2(1)(i) and 2(1)(o) of the [Information Technology Act 2000](#). The words "electronic form" used in the definition of electronic record have further been defined in [section 2\(1\)\(r\) of the Information Technology Act](#), which reads thus,

"2(1)(r) "electronic form" with reference to informations, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated microfiche or similar device."

156. Ins. by Act 21 of 2000, section 91 and Sch. I (w.e.f. 17-10-2000).

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[s 30] "Valuable security".

The words "valuable security" denote a document which is, or purports to be, ¹ a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right.

ILLUSTRATION

A writes his name on the back of a bill of exchange. As the effect of this endorsement is transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security".

COMMENT—

The words "valuable security" also occurs in sections 329–331, 347, 348, 420, 467 and 471. Account books containing entries not signed by a party are not "valuable security."¹⁵⁷ A copy of a valuable security is not a valuable security.¹⁵⁸ An 'order of assessment' is a 'valuable security'.¹⁵⁹

1. 'Which is, or purports to be'.—The use of the words "which is, or purports to be" indicates that a document which, upon certain evidence being given, may be held to be invalid, but on the face of it creates, or purports to create, a right in immoveable property, although a decree could not be passed upon the document, comes within the purview of this section.¹⁶⁰ The words "purports to be" are wide enough to include a document which is not in conformity with the provisions of the [Registration Act](#). Such a document though not otherwise receivable in evidence would still be receivable in evidence for the purpose of the [Indian Penal Code](#).¹⁶¹ However, certificates which the accused had forged in order to get admission in a college could not be described as "valuable security" and as such their conviction under section 471 read with section 467 had to be changed to one under [section 471](#) read with [section 465, IPC, 1860](#).¹⁶² A lottery ticket is a valuable security.¹⁶³

¹⁵⁷. *Hari Prasad v State*, (1955) 1 All 749 ; *Moosa v State of Kerala*, AIR 1963 Ker. 68 .

¹⁵⁸. *Gobinda Prasad v State*, AIR 1962 Cal 174 [LNIND 1961 CAL 76] .

159. *Ishwarlal Girdharilal Parekh v State Of Maharashtra*, AIR 1969 SC 40 [LNIND 1968 SC 143] : 1969 Cr LJ 271 (SC).
160. *Ram Harakh Pathak*, (1925) 48 All 140 .
161. *Kalimuddin v State*, 1977 Cr LJ NOC 261 (Cal).
162. *BK Patil v State of Maharashtra*, 1980 Cr LJ 1312 : AIR 1981 SC 80 ; *Noor Mohamad v State of Maharashtra*, 1980 Cr LJ 1345 AIR 1981 SC 297 ;.
163. *Farzeen Sulthana v Government of Kerala*, 2012 (1) KLT 309 ; *Chacko v State of Kerala*, 1970 KLT358; **relied** on *Central Government of India v Krishnaji Parvetesh Kulkarni*, AIR 2006 SC 1744 [LNIND 2006 SC 253] : (2006) 4 SCC 275 [LNIND 2006 SC 253] .