THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 71] Limit of punishment of offence made up of several offences.

Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

225. **[Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or**

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.]

ILLUSTRATIONS

(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

COMMENT—

The section says that where an offence is made up of parts, each of which constitutes an offence, the offender should not be punished for more than one offence unless expressly provided. Where an offence falls within two or more separate definitions of offences; or where several acts of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence, the offender should not be punished with a more severe punishment than the Court which tries him could award for any one of such offences. The section governs the whole Code and regulates the limit of punishment in cases in which the greater offence is made up of two or more minor offences. It is not a rule of adjective law or procedure, but a rule of substantive law regulating the measure of punishment, and it does not, therefore, affect the question of conviction, which relates to the province of procedure. Section 71 IPC, 1860 as well as section 26 of the General Clauses Act, 1897 talk only of punishment and not of conviction. Thus, conviction of the accused in respect of the same act for two different offences is quite legal.[226.] The section contemplates separate punishments for an offence against the same law and not under different laws. Where offences are committed under two separate enactments, section 71 IPC, 1860 is not helpful to the accused and as such, two separate sentences cannot be

questioned by pressing section 71 into service.[227.] In order to attract provisions of Article 20(2) of the Constitution, i.e., doctrine of *autrefois acquit* or section 300 Cr PC, 1973 or section 71 IPC, 1860 or section 26 of the General Clauses Act, 1897 ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not identity of the allegations but the identity of the ingredients of the offence.[228.]

The rules for assessment of punishment are laid down in sections 71 and 72 of the IPC, 1860 and section 31 of the Cr PC, 1973. Section 31 of the Code of Criminal Procedure provides that when a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the IPC, 1860, sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; and in the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offence being in excess of the punishment which it is competent to inflict on conviction of a single offences, to send the offender for trial before a higher Court. It, therefore, enhances the ordinary powers of sentences given to Magistrates by section 29, Cr PC, 1973; but in order to bring a case within the purview of this section, the accused must have been convicted of two or more offences in the same trial, and the sentence for any one of these offences should not exceed the limits of their ordinary powers. The limits fixed by this section refer to sentences passed simultaneously, or upon charges which are tried simultaneously. Sentences of imprisonment passed under it may run concurrently. When an accused is convicted at one trial of two or more offences, section 31(1) of Cr PC, 1973 vests discretion in Court to direct that punishment shall run concurrently. Court may sentence the accused for such offences to several punishments prescribed therefor, and such punishment would consist of imprisonment to commence, one after expiration of other in such order as the Court may direct, subject to limitation contained in section 71 of IPC, 1860.[229.]

[s 71.1] Illustration (a).—

"A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up whole beating. If A were liable to punishment for every blow, he might be imprisoned for 50years, one for each blow. But he is liable only to one punishment for the whole beating." It is to be noted that the whole beating is considered to constitute one offence while each of the blows also amounted to the offence of voluntarily causing hurt. It can be said, therefore, that while the obtaining of money by cheating on the presentation of an individual bill did constitute the offence of cheating the obtaining of the entire money in pursuance of the terms of the single contract and the single conspiracy entered into also constituted the offence of cheating. When the accused could not be punished with the punishment for more than one such offence it cannot be the intention of law that the accused be charged with each of the offences, which were in a way included in the complete offence made up by the entire course of conduct of the accused in pursuance of the conspiracy.[230.]

[s 71.2] Section 71 IPC and section 220 Cr PC.—

Section 71 of the IPC, 1860 has to be read in conjunction with section 220 of the Cr PC, 1973. It should, however, be remembered that section 220 Cr PC, 1973 contains only rules of criminal pleading in regard to joinder of charges and does not deal with the sentence to be passed on the charges of the offences mentioned in the several illustrations thereunder. Sub-section (5) of section 220 Cr PC, 1973 makes this position abundantly clear. A joint reading of section 71 IPC, 1860 and section 220 Cr PC, 1973 clearly shows that clause (2) of section 71 IPC, 1860 approximates sub-section (3) of

section 220 Cr PC, 1973 and clause (3) of section 71 IPC, 1860 corresponds to sub-section (4) of section 220 Cr PC, 1973. It, therefore, follows that the embargo on separate sentence under section 71 IPC, 1860 applies only to cases falling within sub-sections (3) and (4) of section 220 Cr PC, 1973 and not under, for example, sub-section (1) of that section.[231.] Thus in cases covered by illustrations (i), (j) and (k) to sub-section (3) and illustration (m) to sub-section (4) of section 220 Cr PC, though the offences mentioned therein could be tried together and conviction recorded in regard to each one of them, yet no separate sentences could be passed in view of the embargo contained in section 71 IPC, 1860. Similarly, where the accused was convicted and sentenced under section 147 IPC, 1860 a separate sentence under section 143 IPC, 1860 could not be passed.[232.] In the same way when an accused is convicted for a more serious offence, e.g., under section 148 IPC, 1860 a separate sentence under section 147 IPC, 1860 is not only uncalled for but illegal.[233.] It, therefore, means that cases falling under sub-section (1) of section 220 Cr PC, 1973 where several distinct offences are committed in course of the same transaction, the accused cannot only be tried and convicted of all of them at one trial but even separate sentences can be passed in regard to each one of them. Thus, where a person commits lurking house-trespass by night (section 457 IPC, 1860) and also commits theft (section 380 IPC, 1860) in course of the same transaction, he can be convicted and sentenced separately for both of them.[234.] Though the offence under section 420, IPC, 1860 and offence under section 138, N.I. Act are very distinct and their ingredients are different, still both the offences were committed during the same transaction; accused could have been charged and tried for both the offences during single trial as per section 220, Cr PC, 1973. However, from the language of section 220, it appears to be enabling provision whereby two or more different offences may be tried together by the Court and not mandatory.[235.]

[s 71.3] CASES.—

1.It was contended that the accused having caused the evidence of the two offences under sections 330 and 348 to disappear, committed two separate offences under section 201 and are punishable accordingly. Taking a strict view of the matter, it must be said that by the same act the appellants committed two offences under section 201. The case is not covered either by section 71 of the IPC, 1860 or by section 26 of the General Clauses Act, and the punishment for the two offences cannot be limited under those sections. But, normally, no Court should award two separate punishments for the same act constituting two offences under section 201. The appropriate sentence under section 201 for causing the evidence of the offence under section 330 to disappear should be passed, and no separate sentence need be passed under section 201 for causing the evidence of the offence under section 348 to disappear.[236.] Where death was caused by rash and negligent driving of a truck and the accused could be convicted under sections 279 and also under sections 304A, it was held that a separate sentence under sections 279 could not be imposed.[237.]

[s 71.4] Rioting and grievous hurt.—

The illustration (a) to section 71 IPC makes it clear that where only an offence is made up of many parts, and then only, the offender shall not be punished for more than one such offence. When the offences are separate and distinct and do not constitute parts of one offence, the accused can be convicted separately for each one of the offences. Therefore, the argument that the sentence both under sections 148 and 324, IPC is opposed to section 71, IPC is not acceptable.[238.]

The provisions of section 31 of the Code of Criminal Procedure have to be read subject to the provisions of this section and that where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the offender shall not be punished with more severe punishment than the Court which tries him could award for anyone of such offences.[239.]

3. Same facts constituting different offences.—It has been held that although the act of the petitioner is only one, namely plying of overloaded vehicle on the public road, he had committed two distinct offences punishable under two different enactments, namely (i) violation of the terms of permit and certificate of registration granted by the authorities which is punishable under the Motor Vehicles Act, 1988 and (ii) causing damage to the public property which is punishable under the Prevention of Damage to Public Property Act, 1984. Hence, the claim of the petitioner that he is being punished more than once for the same offence violating Article 20(2) of the Constitution of India is neither factually correct nor legally tenable as he is being proceeded against for two distinct offences punishable under two separate Acts and no parallel procedure for the same offence is being adopted.[240.] Prosecution under sections 5 and 6 of Rajasthan Sati (Prevention) Act 1987 not barred since section 5 makes the commission of an act an offence and punishes the same while the provisions of section 6 are preventive in nature and make provision for punishing contravention of prohibitory order so as to make the prevention effective. The two offences have different ingredients.[241.]

4. An act giving rise to an offence and an aggravated form of the same offence.— Section 457 makes punishable lurking house trespass by night or house breaking by night in order to the committing of any offence punishable with imprisonment and if the offence intended to be committed is theft, the punishment is higher. Section 380 makes punishable a theft committed in a dwelling house. The two offences do not, in our opinion, fall under section 71 and, therefore, the conviction under both the sections is not illegal.[242.]

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225. Added by Act 8 of 1882, sec. 4.

226. *Ramanaya v State,* 1977 Cr LJ 467 (Pat).

227. *Re Natarajan,* 1976 Cr LJ 1502 (Mad); see also *Sukhnandan v State,* (1917) 19 Cr LJ 157 .

228. *Mahendrabhai v State of Gujarat,* AIR 2012 SC 2844 [LNIND 2012 SC 1473] : (2012) 7 SCC 621 [LNIND 2012 SC 1473] : 2012 Cr LJ 2432 .

229. *Satnam Singh Puransing Gill v State of Maharashtra,* 2009 Cr LJ 3781 .

230. *Banwarilal Jhunjhunwala v UOI,* AIR 1963 SC 1620 [LNIND 1962 SC 382] : 1963 (Supp2) SCR 338 : 1963 Cr LJ 529 .

231. *Nirichan, 12 M. 36; Kalidas,* 38 C 453 : Wazir, 10A 58.

232. *Poovappa,* 1981 Cr LJ NOC 107 (Kant).

233. *Re Thangavelu,* 1972 Cr LJ 390 (Mad).

234. *Udai Bhan,* 1962 (2) Cr LJ 251 : AIR 1962 SC 1116 [LNIND 1962 SC 37] ; see also *Ramanaya v State*, 1977 Cr LJ 467 (Pat).

235. *Sharan P Khanna v Oil & Natural Gas Corp Ltd*, 2010 Cr LJ 4256 (Bom).

236. *Roshan Lal v State of Punjab,* AIR 1965 SC 1413 [LNIND 1964 SC 339] : 1965 (2) Cr LJ 426 . See also *Nafe Singh v State of Haryana,* (1971) 3 SCC 934 : (1972) 1 SCC (Cr) 182; *Kharkan v State of UP*, AIR 1965 SC 83 [LNIND 1963 SC 205] : 1965 (1) Cr LJ 116 .

237. *Kantilal Shivabhai v State of Gujarat,* 1990 Cr LJ 2500 (Guj).

238. *Angadi Chennaiah v State of AP,* 1985 Cr LJ 1366 (AP).

239. *Puranmal,* AIR 1958 SC 935 [LNIND 1958 SC 89] : 1958 Cr LJ 1432 .

240. *Vikash Kumar Singh v State of Bihar,* AIR 2011 Pat 72 [LNINDORD 2011 PAT 7073] .

241. *State of Rajasthan v Hat Singh,* 2003 (2) SCC 152 [LNIND 2003 SC 7] : AIR 2003 SC 791 [LNIND 2003 SC 7] .

242. *Udai Bhan v State of UP,* AIR 1962 SC 1116 [LNIND 1962 SC 37] : 1962 Cr LJ 251 .

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[s 72] Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences, he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

COMMENT—

This provision is intended to prevent an offender whose guilt is fully established from eluding punishment on the ground that the evidence does not enable the tribunal to pronounce with certainty under what penal provision his case falls. The section applies to cases in which the law applicable to a certain set of facts is doubtful. The doubt must be as to which of the offences the accused has committed, not whether he has committed any. Moreover, this rule would apply even if one of the alternatives were an offence of murder.[243.]

243. *Sahel Singh*, 3 Cr LJ 364; see also *Nesti Mondal,* AIR 1940 Pat 289 .

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[s 73] Solitary confinement.

Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that

the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

a time not exceeding one month if the term of imprisonment shall not exceed six months;

a time not exceeding two months if the term of imprisonment shall exceed six months and [244.][shall not exceed one] year;

a time not exceeding three months if the term of imprisonment shall exceed one year.

COMMENT—

Solitary confinement amounts to keeping the prisoner thoroughly isolated from any kind of contact with the outside world. It is inflicted in order that a feeling of loneliness may produce wholesome influence and reform the criminal. This section gives the scale according to which solitary confinement may be inflicted. Where the petitioner, an undertrial prisoner, who was arrested in connection with the assassination of a former Prime Minister was put in a separate cell only as a precautionary measure, to ensure his non-mingling with other prisoners and for his security, it was held that it did not amount either to solitary confinement or cellular confinement.[245.] The well-known principle of law is that the convict carrying death punishment is not deemed to be 'prisoner under sentence of death' unless death sentence becomes final, conclusive and beyond judicial scrutiny. Such convict is handed over to the jail authority to be kept in safe and protected custody with purpose that he may be available for execution of the sentence eventually confirmed. This custody is different from custody of a convict suffering from simple or rigorous imprisonment. Therefore, he cannot be kept in Cell or solitary confinement which itself is a separate punishment.[246.]

[s 73.1] Convicts on death row.—

The question about solitary confinement or keeping condemned prisoner alone under strict guard as provided in various jail manual has been considered in depth by the Constitution Bench in *Sunil Batra v Delhi Administration*[247.] and *Triveniben v State of Gujarat*.[248.] In *Batra's* case, it has been held that if the prisoner under sentence of death is held in jail custody, punitive detention cannot be imposed upon him by jail authorities except for prison offences. When a prisoner is committed under a warrant for jail custody under section 366(2) Cr PC, 1973 and if he is detained in solitary confinement which is a punishment prescribed by section 73, IPC, 1860 it will amount to imposing punishment for the same offence more than once which would be violative of Article

20(2). Practice of keeping prisoners in condemned cell before confirmation is a pre-constitutional practice and such practices should be avoided. Therefore, practice adopted in the jail until now cannot be a ground of putting the petitioners in solitary confinement or separate condemned cells.[249.]

The Supreme Court in *Shatrughan Chauhan v UOI*[250.] held that to be 'under sentence of death' means 'to be under a finally executable death sentence'. The Court, in this case also issued guidelines for safeguarding the rights of the death row convicts.

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244. Subs. by Act 8 of 1882, section 5, "for be less than a".

245. *Perrarivalan v IG of Prisons, Madras,* 1992 Cr LJ 3125 (Mad).

246. *Anand Mohan v State of Bihar,* 2008 Cr LJ 1273 (Pat).

247. *Sunil Batra v Delhi Administration,* AIR 1978 SC 1675 [LNIND 1978 SC 215] : 1978 Cr LJ 1741 .

248. *Triveniben v State of Gujarat,* AIR 1989 SC 1335 [LNIND 1989 SC 885] : 1990 Cr LJ 1810 . Also see *Kishor Singh Ravinder Dev v State of Rajasthan,* AIR 1981 SC 625 [LNIND 1980 SC 436] : (1981) 1 SCC 503 [LNIND 1980 SC 436] .

249. *Acharaparambath Pradeepan v State of Kerala,* 2004 Cr LJ 755 (Ker).

250. *Shatrughan Chauhan v UOI,* 2014 Cr LJ 1327 .

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[s 74] Limit of solitary confinement.

In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

COMMENT—

Solitary confinement if continued for a long time is sure to produce mental derangement.

The section limits the solitary confinement, when the substantive sentence exceeds three months, to seven days in any one month. Solitary confinement must be imposed at intervals. A sentence inflicting solitary confinement for the whole imprisonment is illegal, though not more than 14 days is awarded.[251.]

251. *Nyan Suk Mether,* (1869) 3 Beng LR 49.

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CHAPTER III OF PUNISHMENTS

[252].[[s 75] Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.

Whoever, having been convicted, [1] —

(a) by a Court in [253].[India], of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, [254].[***]

[255]. **[***]**

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to [256].[imprisonment for life], or to imprisonment of either description for a term which may extend to ten years.]

COMMENT—

Principle.—This section does not constitute a separate offence but only imposes a liability to enhanced punishment. What section 75 IPC, 1860 contemplates is that where a person who has been, previously convicted of an offence punishable under Chapter XII (which deals with offences relating to coin and Government stamps) or Chapter XVII. (which relates to offences against property) with imprisonment of either description for a term of three years or up-wards, is once again found guilty of a similar offence, he shall be liable to enhanced punishment which may extend to imprisonment for life or to imprisonment of either description for a term which may extend to ten years. The section is concerned with a previous conviction for a similar offence but it does not postulate that in respect of the previous conviction, the punishment imposed should have been one of not less than three years. All that it posits is that the previous conviction should have been in respect of an offence punishable with a term of imprisonment for a term of three years or upwards, but it does not lay down that the offender should have been actually punished with such a term of imprisonment.[257.] It does not apply to offences under other Acts.[258.]

1. 'Having been convicted'.—A plain reading of this provision goes to show that the previous conviction ought to be for offence punishable under Chapter XII or Chapter XVII and the sentence imposed is three years or more than that. If the sentence is less than three years or the offence does not fall within any of the two Chapters then section 75, IPC, 1860 would not be applicable. If any authority is required then reference may be made to *Re Kamya*,[259.] wherein it has been held that the minimum required for enhancement of punishment under section 75, IPC, 1860 is that the previous conviction of the accused should have resulted in punishment of three years or more.[260.] Section 75 is invoked for enhancement of the sentence and that can come only at the time the sentence is to be imposed. The fact that the accused is an old offender is not to be taken note of by the Court at the trial. Only at the conclusion of the