

- (3) Ambassadors.
- (4) Alien enemies
- (5) Foreign army.
- (6) Men-of-war.

The courts in India are prohibited from issuing a process against the President of India or the Governor of a State. ([Article 361 of Constitution](#))

### **Territorial jurisdiction.**

The territorial jurisdiction of criminal courts will extend into the sea as far as 12 nautical miles.

*Leading case:—R v Kastya Rama*

### **Extra-territorial operation.**

An offence committed *outside* India may, however, be tried as an offence committed *in* India under the following circumstances:—

1. By virtue of any Indian law (**section 3**).
2. When such offence is committed by
  - (1) any citizen of India in any place without and beyond India,
  - (2) any person on any ship or aircraft registered in India wherever it may be (**section 4**).

Where an offence is committed *beyond* the limits of India but the offender is found *within* its limits he may be (I) extradited; or (II) tried in India.

### **Extradition.**

(I) Extradition is the surrender by one State to another of a person desired to be dealt with for crimes of which he has been accused or convicted and which are justiciable in the courts of the other State. Whether an offender should be handed over pursuant to a requisition is determined by the domestic law of the State on which requisition is made. In India, the procedure is to be found laid down in the [Extradition Act, 1962](#).<sup>5</sup>

### **Intra-territorial trial.**

(II) The Courts in India are empowered to try offences committed out of India either on (A) Land or (B) High Seas or (C) Aircraft.

### **Land.**

(A) By virtue of [sections 3 and 4 of IPC, 1860](#), and [section 188 of Cr PC, 1973](#), local courts can try offences committed outside India.

When the consequence of an act committed by a foreigner outside India if ensued in India, he can be tried in India.<sup>6</sup>

### **High seas: Admiralty Jurisdiction.**

(B) The jurisdiction to try offences committed on the high seas is known as Admiralty jurisdiction. It is founded on the principle that a ship on the high seas is a floating island belonging to the nation whose flag she is flying.

The jurisdiction extends over—

- (1) Offences committed on Indian ships. Such offences may be committed:
  - (a) on the high seas or in rivers, below the bridges, where the tide ebbs and flows, and where great ships go; or
  - (b) at a spot where the municipal authorities of a foreign country might exercise concurrent jurisdiction.
- (2) Offences committed on foreign ships in Indian territorial waters.
- (3) Pirates.

[Section 18 of IPC, 1860](#), defines India as the territory of India excluding the state of Jammu and Kashmir. These territorial limits would include the territorial waters of India.<sup>7</sup> By The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 80 of 1976, extend of India's Territorial waters was statutorily fixed at 12 nautical miles.

All the High Courts in India have inherent admiralty jurisdiction and can invoke the same for the enforcement of a maritime claim.<sup>8</sup> Admiralty jurisdiction was vested in the mofussil courts by 12 & 13 Vic. c. 96, and [section 686 of the Merchant Shipping Act, 1958](#). The investigation/enquiry under Part XII of the [Merchant Shipping Act, 1958](#), cannot be held to be a substitute for a proper investigation into an alleged crime if the same has been committed.

### **Aircraft.**

(C) The provisions of [IPC, 1860](#), are made applicable to any offence committed by any person on any aircraft registered in India, wherever it may be.

Indian courts cannot try foreigners who are in India for offences committed by them outside India.

### **Laws not affected by the Code.**

The [IPC, 1860](#), does not affect the provisions of (1) any act for punishing mutiny and desertion by officers, soldiers, sailors or airmen, in the service of the Government of India;

(2) any special or local law (section 5).

An offence expressly made punishable by a special or local law will be punishable under the Code. But if the Legislature in framing the special or local law intended to exclude the operation of the Code, no prosecution under the Code would lie. However, a person cannot be punished both under the Code and the special law for the same offence.

## **General Explanations. Chapter II.**

In chapter II, the leading terms used in the Code are defined and explained and the meanings, thus, announced are steadily adhered to throughout the subsequent chapters.

General exceptions are part of the definition of every offence contained in [IPC, 1860](#), **section 6**, but the burden to prove their existence lies on the accused.

The Supreme Court has explained some of the categories of "public servants" (**section 21**).

The definition is not exhaustive. A person may be a public servant under some other statute. *Naresh Kumar Madan v State of MP*, Leader of opposition in the Assembly is not a public servant. *Sushil Modi v Mohan Guruswamy*.

**Leading cases:—***K Veeraswami v UOI* *Lakshmiman Singh v Naresh Ashok Marketing Ltd v PNB*.

Imitation of foreign currency is an offence within the meaning of "counterfeit" (**section 28**).

**Leading case:—***State of Kerala v Mathai Verghese*

An act includes an illegal omission save where the contrary appears from the context. Where the causing of an effect in an offence is caused either by an act or by an omission, the causing of that effect partly by an act and partly by an omission is the same offence (**section 36**). When an offence is committed by several persons committing different acts, each person intentionally committing one of those acts, either singly or jointly with others, commits the offence (**section 37**).

## **Joint offenders.**

Where a [criminal act](#) is committed jointly by several persons the following principles will apply:—

1. When the act is done in *furtherance of the common intention* of all, each of such persons is liable for it in the same manner as if it were done by him alone (**section 34**).

Mere presence does not create a presumption of complicity. A person not cognizant of the intention of his companion to commit murder is not liable for murder, though he has joined his companion to do an unlawful act. There must be (i) a pre-arranged plan or a preconcert and (ii) in offences involving physical violence participation if section 34 is to apply; both these factors must be established against the accused before he can be held liable under the section. Common intention or meeting of minds to bring about a particular result may well develop on the spot itself as between a number of persons. Joint responsibility was inflicted upon the sub-inspector (SI) in charge of a

police station where two police constables beat a person to death, though the SI himself had done no beating. *Amar Singh v HP*. It is not necessary that all must come together. *State of MP v Mansingh*. The Supreme Court examined the effect of mere presence at the place of occurrence. *State of UP v Sohruntia*.

**Leading cases:—***Barendra Kumar Ghose v Mahbub Shah; Hari Om v State of UP; Suresh v State of UP*.

The Supreme Court has reiterated that there could rarely be direct evidence of common intention. *Jhinku Nai*.

2. When the act is only criminal by reason of its being done with a criminal knowledge or intention, each is liable only to the extent of his own knowledge or intention (**section 35**).

A person assisting the accused who actually performs the act must be shown to have the particular intent or knowledge. If an act which is an offence, without reference to any criminal knowledge or intention on the part of the doer, is done by several persons, each of them is liable for the offence.

3. Where several persons are engaged or concerned in the commission of a [criminal act](#), they may be guilty of different offences by means of that act (**section 38**). *Yunus v State*, [1995 Cr LJ 3205](#) (Del), where common intention was found only up to the stage of causing hurt, though the end result of the crime was murder.

Section 34 deals with acts done with a common intention, section 38, with acts done with different intentions.

An act done under compulsions of survival, such as putting up huts on public-footpaths, cannot be regarded as voluntary. (**section 39**)

**Leading case:—***Olga Tellis v Bombay MC*

### **Punishment. Chapter III.**

The punishments to which offenders are liable are:—

1. Death.
2. Imprisonment for life.
3. Imprisonment :
  - (i) Rigorous (i.e., with hard labour);
  - (ii) Simple;
  - (iii) Solitary.
4. Forfeiture of property.
5. Fine (**section 63**).

Imposition of proper and appropriate sentence is a bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused received appropriate sentence. The sentence must be accorded to the gravity of the offence (section 53) *Gurumukh Singh v State of Haryana*, [AIR 2009 SC 2697](#) [[LNIND 2009 SC](#)

847] . The Supreme Court explained guidelines for sentencing policy in *State of MP v Babu Nath*, [AIR 2009 SC 1810](#) [[LNIND 2008 SC 2471](#)] .

Labour taken from prisoners must not be of obnoxious nature and payment must not be less than the applicable minimum wage. *Gurdev v HP*, [1992 Cr LJ 2542](#) (HP).

In addition to these there is punishment of detention in reformatories or Borstal Schools in the case of juvenile offenders (Act VIII of 1897 and other local Acts).

## Death.

1. Sentence of death may be commuted without the consent of the offender by the appropriate Government for any other punishment (section 54). The punishment of death *may* be awarded in the following cases:—

- (1) Waging war against the Government of India (**section 121**).
- (2) Abetting mutiny actually committed (**section 132**).
- (3) Giving or fabricating false evidence upon which an innocent person suffers death (**section 194**).
- (4) Murder (**section 302**).

Capital punishment should be confined to rarest of rare cases.

*Leading cases:—Bachan Singh. Machhi Singh. Munwar Harun Shah. Triveniben v State of Gujarat Madhu Mehta v UOI.*

### **Swamy Shraddananda (2) v State of Karnataka; Santosh Kumar Bariyar v State**

- (5) Abetment of suicide of a minor, or an insane or an intoxicated person (**section 305**).
- (6) Attempt to murder by a person under sentence of imprisonment for life, if hurt is caused (**section 307**).
- (7) Dacoity accompanied with murder (**section 396**).

Sentence of death *may* be awarded where a person who is under sentence of imprisonment for life commits murder (**section 302**).

Section 303 has been struck down by the Supreme Court as void and unconstitutional being violative of both [Articles 14](#) and [21](#) of the [Constitution](#). *R Rathinam v UOI*. This decision was subsequently reversed in *Gain Kaur v State of Punjab*.

*Leading cases:—Mithu. Bhagwan Bax Singh.*

Causing death in custody by third degree methods should merit deterrent punishment.

*Leading case:—Gauri Shanker Sharma v State of UP.*

## Imprisonment for life.

2. The appropriate Government may commute, without the consent of the offender, a sentence of imprisonment for life to imprisonment not exceeding 14 years (section 55).

In calculating fractions, imprisonment for life is reckoned as equivalent to 20 years (section 57).

*Leading case:—Gopal Vinayak Godse v State of Maharashtra.*

Imprisonment for life must be inflicted for being a 'thug' (**section 311**).

### **Imprisonment.**

3. In every case in which sentence of imprisonment for life shall have been passed, the appropriate government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding 14 years (section 55);

The lowest term of imprisonment actually named for a given offence, viz., misconduct by a drunken person, is 24 hours (section 510); but the minimum is unlimited except in two cases:—

(1) If at the time of committing robbery or dacoity the offender uses a deadly weapon or causes grievous hurt, or

(2) If while committing this offence he is armed with a deadly weapon, he is punished with imprisonment for not less than seven years (**sections 397 and 398**).

Sentence of imprisonment may be, in certain cases, wholly or partly rigorous or simple (**section 60**). But in two cases the imprisonment must be rigorous:—

(1) Giving or fabricating false evidence with intent to procure conviction for a capital offence (**section 194**).

(2) House-trespass to commit an offence punishable with death (**section 449**).

There are 12 offences that are punishable with simple imprisonment only.

The courts are expected to properly operate the sentencing system. The court should impose such sentence for proved offences as will serve as a deterrent for their commission by others. The socio-economic status, prestige, race, caste of the accused or victim are irrelevant considerations in the policy of sentencing. *State of Karnataka v Krishnappa* (**section 53**).

### **Solitary confinement.**

Solitary confinement may be inflicted for offences punishable with rigorous imprisonment. The offender may be kept in solitary confinement for any portion or portions of his term of imprisonment, not exceeding *three* months in the whole. But the solitary confinement must not exceed—

one month, if the term of imprisonment does not exceed six months;

two months, if the term of imprisonment exceeds six months but does not exceed one year;

three months, if the term of imprisonment exceeds one year (**section 73**).

In executing a sentence of solitary confinement, such confinement must not exceed 14 days at a time, with intervals between the periods of solitary confinement of not less duration than such period; and when the imprisonment awarded exceeds three months, the solitary confinement must not exceed seven days in any one month of the whole imprisonment awarded with intervals between the periods of solitary confinement of not less duration than such period (**section 74**).

A sentence of solitary confinement for more than three months cannot be passed even if a person is convicted at one trial of more than one offence. Such confinement is awarded for offences under the Code only. Even then it cannot be awarded where imprisonment is not part of the sentence or where the imprisonment is in lieu of fine. It may be awarded in a summary trial. Solitary confinement must be imposed at intervals. A sentence inflicting solitary confinement for the whole imprisonment is illegal, though not more than 14 days are awarded.

### **Forfeiture.**

4. The punishment of forfeiture of the property of the offender has been abolished except in the following cases:—

(1) Where a person commits depredation on the territories of any power at peace with the Government of India, he is liable, in addition to other punishments, to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired thereby (**section 126**).

(2) Where a person receives property taken as above mentioned or in waging war against any Asiatic Power at peace with the Government of India, he is liable to forfeit such property (**section 127**).

(3) A public servant, who improperly purchases property, which, by virtue of his office, he is legally prohibited from purchasing, forfeits such property (**section 169**).

5. Fine is awarded as a sentence by itself in the following cases:—

### **Fine.**

(1) A person, in charge of a merchant vessel, negligently allowing a deserter from the Army, Navy or Air Force to obtain concealment in such vessels is liable to a fine not exceeding Rs. 500 (**section 137**).

(2) The owner or occupier of land, on which a riot takes place or an unlawful assembly is held, and any person having or claiming any interest in such land, and not using all lawful means to prevent such riot or unlawful assembly, is punishable with fine not exceeding Rs. 1,000 (**section 154**).

(3) The person for whose benefit a riot has been committed not having duly endeavoured to prevent it (**section 155**).

(4) The agent or manager of such person under like circumstances (**section 156**).

(5) Illegal payments in connection with an election (**section 171-H**).

(6) Failure to keep election accounts (**section 171-I**).

(7) Voluntarily vitiating the atmosphere so as to render it noxious to the public health is punishable with fine of Rs. 500 (**section 278**).

(8) Obstructing a public way or line of navigation is punishable with fine not exceeding Rs. 200 (**section 283**).

(9) Committing of public nuisance not otherwise punishable is punishable with fine not exceeding Rs. 200 (**section 290**).

(10) Whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear from doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of a ticket, lot, number, or figure, in any such lottery, not being a State lottery or a lottery authorised by the State Government, is punished with fine not exceeding Rs. 1,000 (**section 294A**).

The general principal of law running through sections 63–70 is that the amount of fine should not be harsh or excessive. *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171] .

### **Imprisonment in default of fine.**

The following provisions regulate the character and duration of the sentence of imprisonment in default of payment of fine:—

Where an offender is sentenced to a fine, the court may direct that the offender shall in default of payment suffer a term of imprisonment, which imprisonment may be in excess of any other imprisonment to which he may have been sentenced for the offence, or to which he may be liable under a commutation of sentence (**section 64**).

If the offence be punishable with *imprisonment as well as fine* such imprisonment must not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence (**section 65**); such extra imprisonment may be of any description to which the offender might have been sentenced for the offence (**section 66**).

*Leading case:—Ramjas v State of UP.*

If such imprisonment is within the prescribed limits, it is not to be added to the substantive punishment.

*Leading case:—P Balaraman v State of TN.*

When the offence is punishable with *fine only* such imprisonment must not exceed

two months when the amount of the fine does not exceed Rs. 50;

four months when the amount does not exceed Rs. 100, and for

any term not exceeding six months in any other case (**section 67**).

The imprisonment in such cases must be simple only.

Such imprisonment terminates—

(1) upon payment of the fine (**section 68**); or

(2) before the expiration of the term of imprisonment fixed in default of payment, if such a proportion of the fine be paid, or levied, that the term of imprisonment suffered



in default of payment is not less than proportional to the part of the fine still unpaid (**section 69**).

Fine may be levied within six years, or at any time during the term of imprisonment if it be longer than six years; the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts (**section 70**). The limitation starts from the date of sentence of conviction by the trial Court: *Palakdhari Singh*.

An offender who has undergone full term of imprisonment inflicted in default of payment of fine is still liable for the amount of fine. The Bombay High Court has laid down that *movable* property of the offender can alone be distrained and sold for the recovery of fine. But the Calcutta High Court has held that a suit can be brought to recover fine by the sale of *immovable* property of the offender.

The Government may commute a sentence of

### **Commutation of sentence.**

(1) *death*, for any other punishment;

(2) *imprisonment for life*, for imprisonment for not more than 14 years (**sections 54, 55**).

The Government may commute without the offender's consent sentence in cases of *death and imprisonment for life*.

### **Limit of punishment of offence made up of several offences.**

(1) Where an offence is made up of parts, each of which constitutes an offence, the offender is not punished for more than one offence unless expressly provided.

(2) Where an offence falls within two or more separate definitions of offences; or where several acts of which one or more than one would, by itself or themselves, constitute an offence, constitute when combined a different offence, the offender is not punished with a more severe punishment than the court which tries him could award for any one of such offences (**section 71**).

*Leading cases:—Roshan Lal; Puranmal.*

The results of combination of [section 220, Cr PC, 1973](#), with this section have been enumerated at p 48.

### **Doubt as to nature of offence.**

Where it is doubtful as to of which of the several offences a person is guilty, he is punished for the offence for which the lowest imprisonment is provided (**section 72**).

### **Previous conviction.**

A person convicted by a Court in India of any offence

- (a) relating to Coin and Government Stamps (Chapter XII), or
- (b) against property (Chapter XVII)

punishable with imprisonment for a term of *three* years or upwards shall be subject to imprisonment for life, or to imprisonment for 10 years, if he is again guilty of any offence punishable under either of those Chapters with like imprisonment for the like term (**section 75**).

The offender is subject to increased punishment on the ground that the punishment undergone has had no effect in preventing a repetition of the crime. The subsequent offence must also be punishable with not less than *three* years' imprisonment. If the subsequent offence is committed by a person *previously* to his being convicted of the first offence he cannot be subjected to enhanced punishment. Attempts not specifically made offences within Chapters XII and XVII are not governed by this provision. The previous conviction of an accused for an offence under these Chapters cannot be taken into consideration at a subsequent conviction for abetment of an offence under those Chapters.

**3. Overlapping provisions.**—The fact of overlapping provisions about one or more offence, does not rule out trial under any one of them. The case did not fall within the Custom Act, 1962. It could not prevent trial under applicable provision of [IPC, 1860](#). *M Natarajan v State*, [\(2008\) 8 SCC 413 \[LNIND 2008 SC 1093\]](#) .

#### **General Exceptions. Chapter IV.**

The following acts are not offence under the Code:—

1. Act of a person bound by law to do a certain thing (**section 76**).
2. Act of a Judge acting judicially (**section 77**).
3. Act done pursuant to an order or a judgment of a court (**section 78**).
4. Act of a person justified, or believing himself justified, by law (**section 79**).
5. Act caused by accident (**section 80**).
6. Act likely to cause harm done without criminal intent to prevent other harm (**section 81**).
7. Act of a child under seven years (**section 82**).
8. Act of a child above seven and under 12 years but of immature understanding (**section 83**).
9. Act of a person of unsound mind (**section 84**).
10. Act of an intoxicated person (**section 85**).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (**section 87**).
12. Act not intended to cause death done by consent of the sufferer (**section 88**).