



# 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 45] "Life".

**The word "life" denotes the life of a human being, unless the contrary appears from the context.**

### COMMENT—

Section 45 of the IPC, 1860 defines life as denoting the life of a human being, unless the contrary appears from the context. Therefore, when a punishment for murder is awarded under section 302 of the IPC, 1860, it might be imprisonment for life, where life denotes the life of the convict or death. The term of sentence spanning the life of the convict, can be curtailed by the appropriate Government for good and valid reasons in exercise of its powers under section 432 of the Cr PC, 1973.<sup>320</sup> Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years or even 30 years, rather it always means the whole natural life.<sup>321</sup> The expression 'imprisonment for life' must be read in the context of section 45, IPC, 1860.<sup>322</sup> The Court may feel that the punishment more just and proper, in the facts of the case, would be imprisonment for life with life given its normal meaning and as defined in section 45 of the Indian Penal Code.<sup>323</sup>

### [s 45.1] Imprisonment for the remainder of Accused's natural life.—

As per the Criminal Law (Amendment) Act 2013<sup>324</sup>, the punishment for rape (section 376) is 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*. In sub-sections 370, 376(A), 376(D), 376(E) also it is specifically mentioned that 'Life' shall mean imprisonment for the remainder of that person's natural life. Parliament has enacted the Criminal Law (Amendment) Act, 2018 which provides for enhanced punishment in rape cases. The Amendment Act provides stringent punishment for perpetrators of rape particularly of girls below 12 years. Gang rape of a girl under 12 years of age is now made punishable with a jail term for remainder of guilty person's natural life or death.<sup>325</sup>

The right to claim remission, commutation, reprieve, etc., as provided under Article 72 or Article 161 of the Constitution will always be available, being guaranteed Constitutional remedies, which are untouchable by the Court.<sup>326</sup>

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320. *Sangeet v State Of Haryana*, (2013) 2 SCC 452 [LNIND 2012 SC 719] : 2013 Cr LJ 425 .
321. *Mohinder Singh v State of Punjab*, (2013) 3 SCC 294 [LNIND 2013 SC 71] : 2013 Cr LJ 1559 (SC); *Life Convict Bengal @Khoka @Prasanta Sen v BK Srivastava*, 2013 Cr LJ 1446 (SC) : AIR 2013 SC 1163 , JT 2013 (3) SC20 : 2013 (2) Scale 467 : (2013) 3 SCC 425 [LNINDORD 2013 SC 6760] ; *Zahid Hussein v State of WB*, AIR 2001 SC 1312 [LNIND 2001 SC 692] : (2001)3 SCC 750 [LNIND 2001 SC 692] ; *Munna v UOI*, AIR 2005 SC 3440 [LNIND 2005 SC 701] : (2005) 7 SCC 417 [LNIND 2005 SC 701] - A plea for premature release after 21 years of imprisonment rejected.
322. *Ashok Kumar v UOI*, (1991) 3 SCC 498 [LNIND 1991 SC 288] : 1991 SCC (Cr) 845 (3 Judge Bench); *Gopal Vinayak Godse v State of Maharashtra*, 1961 (3) SCR 440 [LNIND 1961 SC 11] : AIR 1961 SC (Const. Bench) : But a two judge bench in *Ramraj v State of Chhattisgarh*, (2010) 1 SCC 573 [LNIND 2009 SC 2093] : AIR 2010 SC 420 [LNIND 2009 SC 2093] held that life imprisonment is not to be interpreted as being imprisonment for the whole of a convict's natural life within the scope of Section 45.
323. *Swamy Shraddhananda (2) v State of Karnataka*, 2008 (13) SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 CrLJ 3911 .
324. Act No. 13 of 2013 w.e.f 2-4-2013.
325. Refer Chapter XVI infra.
326. *UOI v V Sriharan*, (2016) 7 SCC 1 [LNIND 2015 SC 677] : 2016 Cr LJ 845 .

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**[s 46] "Death."**

**The word "death" denotes the death of a human being, unless the contrary appears from the context.**

### COMMENT—

A present day understanding of death as the irreversible end of life must imply total brain failure, such that neither breathing, nor circulation is possible any more.<sup>327.</sup>

<sup>327.</sup> *Aruna ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .

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**[s 47] "Animal".**

**The word "animal" denotes any living creature, other than a human being.**

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### [s 48] "Vessel".

**The word "vessel" denotes anything made for the conveyance by water of human beings or of property.**

### COMMENT—

The word "vessel" has been defined in [section 48 of the Indian Penal Code](#) to denote anything made for the conveyance by water of human beings or of property. The train compartment is not a building, tent or vessel used as a human building neither a place for worship nor a place used for the custody of property.<sup>328.</sup>

<sup>328.</sup> *P Balaraman v The State*, [1991 Cr LJ 166](#) (Mad).

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**[s 49] "Year." "Month."**

**Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.**

### COMMENT—

A person sentenced to imprisonment for the space of one calendar month is entitled to be discharged on the day in the succeeding month immediately preceding the day corresponding to that from which his sentence takes effect.<sup>329</sup> The day on which a sentence is passed on a prisoner is calculated as a whole day.

<sup>329</sup>. *Migotti v Colvill*, (1879) 4 CPD 233 .

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**[s 50] "Section."**

**The word "section" denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.**



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### [s 51] "Oath."

**The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.**

### COMMENT—

An oath is a religious asseveration, by which a person renounces the mercy, and imprecates the vengeance of heaven, if he does not speak the truth.<sup>330</sup> The form of oath differs according to the religious persuasion of the swearer. A Christian swears on the Bible, a Jew upon the Pentateuch, a Mahomedan upon the Koran, and a Hindu on the Gita. A Hindu or a Mahomedan has the statutory right to be affirmed instead of taking an oath.

<sup>330</sup>. *White v White*, (1786) 1 Leach 430; *U Vali Basha v Mohd. Bashu*, (2008) Cr LJ 1011 (Karn).

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**[s 52] "Good faith".**

**Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.**

### COMMENT—

The expression "good faith" in criminal jurisprudence has a definite connotation. Its import is totally different from saying that the person concerned has honestly believed the truth of what is said. See the language of the law in this regard. It starts in the negative tone excluding all except what is allowed to be within its amplitude. Insistence sought to be achieved through the commencing words of the definition "nothing is said to be done or believed in good faith" is that the solitary item included within the purview of the expression "good faith" is what is done with "due care and attention". Due care denotes the degree of reasonableness in the care sought to be exercised. In Black's Law Dictionary, "reasonable care" is explained as "such a degree of care, precaution, or diligence as may fairly and properly be expected or required, having regard to the nature of the action, or of the subject matter and the circumstances surrounding the transaction. It is such care as an ordinary prudent person would exercise under the conditions existing at the time he is called upon to act".<sup>331</sup> The element of honesty which is introduced by the definition prescribed by the [General Clauses Act](#) is not introduced by the definition of the [Penal Code](#); and we are governed by the definition prescribed by section 52 of that Code.<sup>332</sup> Nothing is an offence which is done by any person who is justified by law, or who by reason of mistake of fact and not by reason of mistake of law, in good faith, believes himself to be justified by law, in doing it.<sup>333</sup>

Some parents made poisonous propaganda against an educational institution. The court said that this could not have been done by them in good faith. Hence, the exception to section 499 was not attracted. The complaint of defamation against them could not be quashed.<sup>334</sup>

### **[s 52.1] Burden of proof.—**

The burden is on the accused to prove this fact. Whether a person took due care and attention before he made the imputation is a matter most often within the personal knowledge of that person himself. The accused must prove that he made due enquiries before he published the imputation. It is not enough to say that he made a formal enquiry in a slipshod manner. The words 'due care and attention' imply that the accused must have made the enquiry in a reasonable manner with all circumspection. It is true that the accused is not bound to prove that the enquiry made by him was fool-proof or without the possibility of any error or chance of mistake. However, the accused must show that he got the information from proper source and he had reasonable grounds to