

Introduction
Def' don't
In regard to
Bodily pain
Present
Infirmit
Voluntary

(1)

Q. Hurt and grievous hurt

Introduction -

- Sec 319 to 338 deals with hurt in various forms.
- Sec 319 defines simple hurt as causing bodily pain, disease, or infirmity and sec 321 makes voluntarily causing of hurt an offence punishable under Sec 323, IPC

Definition -

Sec 319 defines hurt as

"Whoever cause bodily pain, diseases or infirmity to any person is said to cause hurt"

Ingredients :-

To constitute hurt it is necessary to cause

(i) Bodily pain

(ii) Diseases

(iii) Infirmit to another

Bodily pain:-

- To cause hurt there must need not be any direct physical contact

- Hurt is constituted by causing bodily pain and not mental pain

Eg: Giving alarming news may cause pain

but not hurt

- Bodily pain is necessary to constitute hurt. ~~not~~ direct force to body.

- When the injury is not serious and there is no intention to cause death nor had the accused knowledge that it was likely to cause death, or grievous hurt, the accused must be guilty of causing hurt only even if the death is caused.

Diseases :-

- A person communicating a particular disease to another would be guilty of hurt.

- There appears to be conflicting judicial decision with respect to cases of communication of sexual diseases by one to another.

In R v Clarence

It was held that it is neither an infliction of grievous bodily harm nor an assault for man to infect his wife with gonorrhoea by having sexual intercourse with her, even if he aware of his condition & he was ignorant of it & even though she could not have intercourse with him & known his condition.

Punishment for voluntarily causing grievous hurt Sec 325

Whoever, except in the case provided for by or sec 335, voluntarily causes grievous hurt, shall be punished with imprisonment for either description for a term which may extend to 7 yrs and shall also be liable to fine.

Aggregated form of hurt & grievous hurt Voluntarily causing grievous hurt

Sec 322
Sec 324 to 338, IPC prescribe severe penalties when hurt or grievous hurt is caused under aggravating circumstance. This represents a judgement that the offence is more serious in some kinds of circumstance.

326 A Voluntarily causing grievous hurt by use of acid

In Sec 326 A - Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables any part or parts of body of a person or cause grievous hurt by throwing acid on or by administering acid to that person or by using any other means with intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description

Voluntarily causing grievous hurt :-

In Sec 322

whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause grievous hurt and if the hurt which he causes is grievous hurt is said "voluntarily to cause grievous hurt".

Explanation:-

A person is not said voluntarily to cause grievous hurt except when in both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one killed, he actually cause grievous hurt of another kind.

Illustration:-

A intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face but which cause Z to suffer severe bodily pain for the space of 20 days. A voluntarily caused grievous hurt.

Definition of ^{second} grievous hurt:

In Sec 320, following kinds of hurt only are designated as grievous:-

First - Emasculation

Secondly - Permanent privation of the sight of either eye

Thirdly - Permanent privation of hearing of either ear,

Fourthly - Privation of any member or joint

Fifthly - Destruction or permanent impairing of the powers of any member or joint

Sixthly - Permanent disfigurement of head or face

Seventhly - Fracture or dislocation of bone or both

Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of 20 days in severe bodily pain, or unable to follow ordinary pursuit

Infirmity

Infirmity means a temporary mental impairment, hysteria or terror.

In Tashammud Thanmatmal V. Brahmanand Sarpanca it was held that the act was sufficient to cause a state of temporary mental impairment or hysteria resulting in infirmity of mind of complainant wife to subtract sec 319.

Voluntary causing hurt [Sec 321]

Whoever does any act with intention or thereby causing hurt to any person or with knowledge that he is likely thereby to cause hurt to any person and does thereby cause hurt to any person is said to voluntarily to cause hurt.

Sec 321 defines voluntary causing hurt

323 Punishment for voluntary causing hurt

Whoever, except case provided for Sec 334, voluntarily causes hurt shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both.

for a term which shall not less than 10 yrs but which may extend to imprisonment for life and with fine.

Provided that such fine shall be just & reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any imposed under this section shall be paid to the victim

Voluntarily throwing or attempting to throw acid
Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to 7 yrs and shall also be liable to fine

Explanation 1 - 7

For the purpose of Sec 326 A and this section 'acid' includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury to scars or disfigurement or temporary or permanent disability

Explanation 2 -

For the purpose of Sec 326A and this section, permanent or partial damage shall not be required to be irreversible.

Case law

Mohindar Singh v. Emperor 1925

The accused on 22nd August 1922 inflicted a wound on Sarwan Singh's leg with a gandsa. Tetanus set in on 31st August 1922, which causes his death.

Judgement

It was held that a wound in the leg was not in itself sufficiently dangerous to bring the case within the meaning of grievous hurt when death resulted due to tetanus which supervened & resulted in the result of the deceased.

Offences against property

(2)

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Page _____

Introduction

- Offences against property find a prominent place in the penal code
- It consists of 85 sections 378 - 462
- The basic element common to the offences under this chapter is dishonesty, which court describes as the intention of causing wrongful gain to one person or wrongful loss to another.
- Theft is defined in Sec 378, and its punishment is in 379
- Theft means, the dishonest removal of movable property out of possession of any person without his consent.

Offences against property

- Theft
- Exortion
- Robbery
- Criminal misappropriation
- Criminal breach of contract
- Receiving stolen property
- Cheating
- Fraudulent deed
- Mischief
- Criminal trespass

Definition

Act + Sec 378, "Theft" -

Whoever intending to take dishonestly any movable property out of the possession of any person without the person's consent, ~~moves~~^{moving} the property in order to such taking, is said to commit theft.

Explanation 1:-

A thing so long as it attached to the earth, not being movable property is not subject to theft; but it becomes capable of being the subject to theft as soon as it is severed from the earth.

Explanation 2:-

A moving effected by the same act which affects the severance, may be a theft.

Explanation 3:-

A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing as well as by actually moving it.

Explanation 4:-

A person, who by any means causes an animal to move, is said to

be more than animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5 :-

The consent mentioned in the definition may be express or implied and may be given either by the person in possession or by any person for the purpose authority either expressed or implied

Illustration :-

A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft

Ingredients :-

To constitute theft, the following ingredients are required

- i) The accused must have a dishonest intention to take the property
- ii) The property must be movable
- iii) The property must be taken

out of possession of another person resulting in wrongful gain by one wrongful loss to another.

iv) The property must be moved in order to such taking ie obtaining property by description: +

iv) Taking must be without the person's consent (express or implied)

i] Dishonest intention :-

- Intention is the graft of offence

- The taking will not amount to theft unless the intention with which it is taken is dishonest

- There can be no theft where there is no dishonesty.

Illustration:-

A in a good faith believing property belonging to B to be his own property, takes it out of B's possession. As A does not take dishonestly as such he does not commit theft.

ii] Movable property :-

- The subject of the theft must be movable property ie corporeal property of every description except land.

and things attached to the earth or permanently fixed to anything which is attached to the earth.

- The property is ~~not~~ to be movable when it is capable of being carried about.

- Theft of electricity is not a theft of movable property under Sec 379 IPC. It is punishable under Sec 39 of Electricity Act 1910.

iii] Possession and Custody

- The term possession must be distinguished from custody.

- A man is said to be in a possession of a thing who he can deal with it as the owner to the exclusion of others.

- To constitute theft, the property must be in the possession of someone and then removed from his possession.

Illustration :-

When a person took an article belonging to himself which was in the possession of constable A for which constable was accountable, the person held guilty of theft.

iv] Moving property in order wq to such taking :-

- Theft is complete the moment a thing may yet be far from passing into thief's possession.

- Moving a thing at the initial stage in the possession of that which is taken and theft is considered complete as such an initial stage, thus actual taking and theft in or possession is not well consequence in determining whether the theft has been committed or not.

v] Without consent :-

- The offence of theft is committed if the property of another person is taken away from him without his consent with a dishonest intention.

- The removal of property must be without the consent of the person in possession of it.

- The consent obtained by force is no consent, thus property must be moved without consent of the person in possession of it.

- Consent may be express or implied -

Punishment for theft :-

See 379, Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

Nature and procedure :-

The offence under this section is cognizable, non-bailable and triable by a magistrate.

Case law.

In Chando Kumai Deo Karmakar v Abanidas Roy

The appellants were charged with committing the theft of fish by fishing in a tank called Nutan placed in possession of complainant. The appellant were shown as tenants in records with their interest described "settled raiyat mukat", while complainant claimed to be possessor of the tank as result of partition held that appellants were not guilty. The appellant had bona fide claim though weak over the property.

(3)

Q What is criminal conspiracy? When it is punished? What is the difference between criminal conspiracy and unlawful assembly?

→ Introduction :-

- Conspiracy at common law

- Conspiracy at common law has its own origin primarily as a civil wrong but was lately punishable as a criminal wrong.

- Accⁿ to english law if two or more person agree together to do something contrary to law, or wrongful and harmful towards another person or to use unlawful means in the carrying out of an object not otherwise unlawful, the persons who so agree commit the crime of conspiracy

Definition :-

Sec 120 A.

When two or more person agree to do, or cause to be done -

i) an illegal act or

ii)

ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy

B

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act ^{besides} ~~done~~ the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation

It is immaterial whether ~~the~~ illegal ~~activities~~ act is the ultimate ~~or~~ object of such agreement, or is incidental to the object.

Ingredients of Criminal conspiracy :-

The ingredients of 120A, IPC are stated below

i) There should be an agreement between two or person who are alleged to conspire;

ii) The agreement should be to do or cause to be done

a) an illegal act or

b) an act which may not itself be illegal by illegal means

The Section also provided that an agreement, except an agreement to commit an offence shall not amount to a criminal conspiracy unless someone act ~~done~~ besides the agreement is

done by one or more parties to such an agreement in persons therof which an act is illegal.

The Indian law has insisted on some overt act, the English law did not, but an overt act was necessary in an act of tort for conspiracy. But no one overt act is necessary only when the object of conspiracy is the commission of an illegal act not amounting to an offence.

Conspiracies ~~not~~ fall into two classes not ~~but~~ wholly exclusive of one another, viz;

i) conspiracies falling within the definition of abetment in Sec 107 of the IPC, and

ii) conspiracies ~~is~~ outside the definition of abetment, but falling within the words of Sec 128

Punishment for criminal conspiracy

Sec 120 B, prescribes punishment for criminal conspiracy

- The See has classified conspiracy into classes for punishment -

i) In the first case, where the conspiracy is to commit an offence of serious nature i.e. to commit an offence punishable with death, imprisonment for death, or rigorous imprisonment for a term of two years or upwards and where no provision is made in the code for punishment, the person would be liable to punished in the same manner as if he had abetted such an offence.

In the other category of cases, conspiracy to commit offences other than those covers under the first category (including offences punishable with fine) conspiracy to commit illegal acts is covered. In such cases the See provides a uniform punishment; viz., imprisonment of either description for a term which may extend up to six months, for or fine, or both. In case of offences punishable with fines only a provision has also been made for punishment when the conspiracy is unsuccessful.

Case law Nature of offence & procedure

The offence u/s 120-B under the offence which is the object of conspiracy is cognizable, non-cognizable and according as the offence which is subject to object of conspiracy is bailable or non bailable and triable by court by which abetment of offence which is object of conspiracy is triable.

Case law

In Kehar Singh v/s Union of India 1988.

There were two actual killer and two conspirators out of them one was acquitted. It was held that mere proof of an agreement is enough for conviction. Planning something secret is prima facie evidence of conspiracy within the meaning of s.10 of Indian Evidence Act.

Ram Narain Poply v CBI 2003

Supreme court held that for an offence punishable u/s 120-B of IPC prosecution need not necessarily prove that the perpetrators expressly agree to do or cause done illegal act, the agreement may be proved by necessary implication offence of criminal conspiracy has its foundation to commit an offence.

Criminal trespass

Date _____
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Q. Criminal trespass

Introduction :-

- The offence of criminal trespass is directed towards the protection of possession and not ownership.

- It consists of two limbs; first, entry into or upon the property in the possession of another with the intention to commit an offence.

Secondly, remaining in a possession of another having lawfully entered into the property with the intention of intimidating, insulting or annoying any person in possession of such property or with the intention of committing an offence.

Definition :-

Sec 441 ",

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate

or annoy any such person, or with intent to commit an offence,

said to commit "criminal trespass"

Ingredients :-

Thus, to constitute trespass under Sec 441, IPC -

(to annoy any person in possession) There must be an unauthorized entry into or upon another's property against the will of the person in possession.

- The offence of criminal trespass is committed only when the intention is effecting the entry as to cause annoyance to person in possession

ii) An authorised entry into or upon another's property

ii) An authorised entry lawfully obtained but unlawfully remaining therein and

iii) Such entry as unlawful stay must be with an intention —

i) Intention to commit an offence :-

- Intention to commit an offence is an essential ingredient.

- A mere occupation even if illegal cannot amount to criminal trespass.

Illustration :-

Writing a letter by boy to girl & delivering the same at her residence would surely annoy an innocent girl and if he enters her house to deliver the letter, he is guilty of crime of trespass.

ii) Entry into another's premises :-

- There must be an actual personal entry by accused.

- Constructive entry upon a property by a servant is not an entry within the meaning of section.

- The property referred in section means movable either movable or immovable or possible to enter ie motor car or boat.

Criminal trespass

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Page _____

Punishment for criminal trespass :-

447 (1) Whoever Sec 447

Whoever commits trespass shall be punished with imprisonment of either description for a term which may extend to 3 months with fine or which may extend to five hundred rupees or with both.

~~House Trespass~~

Definition of house trespass :-

Sec 442,

Whoever commits
criminal trespass by entering into or remaining
in any building, tent or vessel used by
as a human dwelling or any building
used as a place of worship or the place for
the custody of property is said to
commit 'house - trespass'

Explanation:-

The introduction of any part of
the criminal trespasser's body in entering
sufficient to constitute house trespass

Lurking house trespass

~~Introduction~~

Definition:-

Sec 443, "Whosoever commits house trespass having taken precautions to conceal such house-trespass for some persons who has a right to exclude or eject the trespasser from the building, tent, or vessel which is subject of trespass, is said to commit 'lurking house trespass'.

Ingredients:-

- i) Trespass
- ii) House trespass
- iii) Trespass being surreptitiously committed concealing the house trespass from one who has right to exclude the trespasser

Lurking trespass by night:-

Sec 444, Whosoever commits lurking house-trespass after sunset and before sunrise, is said to commit 'lurking house-trespass by night'

The law is well settled that unless the accused is alleged to have taken some active steps to conceal his presence no charge can be framed against him under Sec 443 or sec 444.

Punishment for house trespass:-

Sec 449, Whoever commit house trespass shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, which may extend to one thousand rupees or with both.

② Nature and Procedure

The offence u/s 449 is cognizable, bailable, compoundable & triable by any magistrate.

Case law House trespass

Kanwal Sood v. Naval Kishor

In this case held that criminal intent to commit trespass is essential ingredient of house trespass u/s 448 of IPC.

Punishment for lurking house trespass

See 453

Whoever commits lurking house trespass shall be punished with imprisonment of either description for a term which may extend to two years and shall be liable to fines.

Aggravated form of Lurking house trespass

Sec 454 : Lurking house trespass in order to commit offence punishable with imprisonment
Punishment upto ten years

Sec 455 - Lurking house trespass after preparation for hurt ; assault or wrongful restrain
Punishment upto ten years and also liable to fine

Sec 456 - Punishment for lurking house - trespass by night -

Extend to three years
and shall be liable to fine

Conclusion :-

- The object of making trespass a criminal offence is to keep the trespass away from the premises of dwelling house of private person so that one may enjoy his or her property uninterrupted by any outside intruder. To safeguard the interest of individuals from outside interference a wider connotation has been given to a dwelling - house.

house breaking

Q House breaking

Introduction :-

- The term 'house breaking' is a term borrowed from common law, which is now punishable in England by Theft Act.
- In English law the term house breaking has not been defined instead possession of house breaking implements etc has been made punishable which is similar to the house breaking under Sec 445 IPC.

- The term house breaking implies forcible entry into a house.

- To break a house is used to mean the removal or setting aside with violence any part of a house or the fastening provided to secure it.

Definition :-

Sec 445, A person is said to commit house breaking "who commits house-trespass if he effects his entrance into the house or any part of it in any of six ways hereinafter described or if being in the house or any part of it for

the purpose of committing an offence or having committed an offence therein, he quits the house or any part of it in any of six ways, that is to say -

First, if he ~~passes~~ enters or quits through a passage by himself or by any abettor of the house trespass, in order to the committing of the house trespass.

Secondly, if he enters through any passage not intended to any person, other than himself or an abettor of the offence; for human entrance or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly, if he enters or quits through any passage which he or any abettor of the house trespass has opened, in order of committing of the house-trespass by any person by which that passage was not intended by the occupier of house to be opened.

Fourthly, if he enters or quits by opening any lock in order to the committing an assault or b of the house-trespass or in order to the quitting of the house after a house trespass.

Fifthly, if he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault.

Sixthly, if he enters or quits by any passage which he knows to have been fastened against such entrance or departure, or to have unfastened by himself or by abettor of the house trespass.

Explanation :-

Any out-house or building occupied with a house, and between which such house there is an immediate internal communication is the part of the house within the meaning of this section.

Illustrations :-

A commits house trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house breaking.

Essential ingredients :-

- i) There must be a house-trespass
- ii) The person who commits trespass must effect his entrance in the section.

In all cases of house breaking there must be an entry or ingress. The entry of any part of the human body is sufficient to bring an action under this section:

The breaking open of a cattle-shed in which agricultural implements are kept amounts to house breaking.

The following acts are held to be house-breaking under English law amounts to house breaking under IPC:

- a) The entry effected by removing a glass from door or breaking of panel of glass, lifting up a heavy flap of a cellar to emerge etc.
- b) by opening a lock, by using criminal force.
- c) The fastened by entering or quitting any passage fastened against such entrance or exit, fastened implies more than being closed such as

changing the shutter or turning them with rope or bolting them)

The entry of an accused into house by merely pushing the shutter of the door does not constitute the offence of house breaking.

House breaking at night:

Whoever commits house breaking after sunset & before sunrise is said to be house breaking at night.

Punishment for house breaking

Whoever commits house breaking shall be punished with imprisonment of either description for a term which may extend for two years, and shall be liable to fine.

Punishment for house breaking at night

Whoever commits house breaking at night shall be punished with imprisonment of either description for a term which may extend to three years & shall be liable to fine.

Nature & procedure

The offence is cognizable, non bailable and is triable by magistrate of first class.

* Aggravated form of house trespass, lurking ~~house trespass and house breaking~~

See 446 : House breaking at night.

See 449 : House-trespass in order to commit offence punishable with death.

Whoever commits house-trespass in order to the committing of any offence punishable with death, trespass shall be punished with imprisonment for life or with rigorous imprisonment for term not exceeding 10 yrs and shall also be liable to fine.

Sec 450 : House-trespass in order to commit offence punishable with imprisonment of life
 Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment for life shall be punished with imprisonment of either description for a term not exceeding ten years and shall also liable to fine.

Sec 451 : House trespass in order to commit offence punishable with imprisonment

for _____ Whoever commits house trespass in order to the committing

of any offence punishable with imprisonment trespass shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine and if the offence intended to be committed to the term of imprisonment may be extended to seven years

Sec 452 : House trespass after preparation for hurt, assault or wrongful restraint -
Punishment may extend to seven years and shall also be liable to fine.

Sec 454 : Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment -

Punishment may extend to ten years and shall be also liable to fine.

See 455 : Lurking house-trespass or house-breaking after preparation for hurt, assault & wrongful restraint -

Punishment

may extend to three years and shall also be liable to fine.

Sec 456 : Punishment for lurking house-trespass or house breaking at night - Punishment may extend to three years and shall also be liable to fine

~~on a trial that he heard I admit the justice of B's claim, A has given false evidence~~

Sec 457: Lurking house trespass or house breaking by night in order to commit offence punishable with imprisonment:

Punishment may be extended to fourteen years

Essential ingredients:-

a) A person commits -

i) Lurking house trespass by night or

ii) house breaking by night

b) He does so in order to the commission of an offence punishable with imprisonment

Sec 458: Lurking house trespass or house breaking by night after preparation for hurt, assault or wrongful restraint - Punishment may extend to fourteen years and shall be liable to fine

Sec 459: Grosses hurt caused whilst committing lurking house trespass or house breaking
Punishment may extent to ten years and shall be liable to fine

Sec 460: All persons jointly concerned in lurking house trespass or house breaking by punishable

where death or grievous hurt caused by one of them - Punishment may extend to ten years and shall be liable to fine.

Sec 461: Dishonestly breaking open receptacle containing property - Punishment may extend to two years or with fine or both.

Case law

In Ghulam 1923 Lahore High Court held that where a hole was made by burglary but their way was blocked by presence of beams on the other side of the wall, the offence was one of attempt to commit house breaking and not actual house breaking.

8 Defamation

Introduction :-

(-The law gives protection to a man's reputation, which to some is dearer than life itself .)

- Love of reputation inspires people to do great things, acquire fame and name which is the mainspring of life in every walk of life .

~~- The aim of the law of defamation is to protect one's reputation, honour, dignity in the society .)~~

- A person needs protection of his reputation, honour, dignity, integrity and character as much as right to the enjoyment of property, health, personal safety, liberty and a number of other privileges.

- Defamation an injury to a person's reputation, is both a crime and a civil wrong.

- An aggrieved person may file a criminal prosecution as well as Civil suit for defamation.

- Withdrawal of a criminal complaint or tender of apology is no bar to a

civil action for libel unless there is a specific agreement barring a civil action

Definition :-

Sec Whoever, by words either spoken or intended to be read or by signs or by visible representations, make or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person is said, except in cases hereinafter expected, to defame that person

Explanation 1: ^{Family relative}

It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living and is intended to be hurtful to the feeling of his family or other near relatives.

Explanation 2: ^{Finance}

It may amount to defamation to make an imputation concerning a company or association or collection of persons as such.

Explanation 3:

An imputation in the form of

Sanger

an alternative as expressed ironically, may amount to defamation

Explanation 4:

No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person or lowers the character of that person in respect of his caste or of his calling or lowers the credit of that person or causes it to be believed that the body of that person is in a loathsome state, or in the state generally considered as disgraceful.

Illustrations:-

A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation unless it fall within one of the exceptions.

Ingredients :-

The offence of defamation consists of the following essential ingredients viz -

- 1) Making or publishing of an imputation concerning a person

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ii] Such imputation should have been made -

- a) by words either spoken or written
- b) by signs
- c) by visible representations

iii] The said imputation should have been made with the intent to harm or knowing or having reason to believe that it will harm the reputation of such person or defame him

This section is aimed at protection of the reputation, integrity and honour of the person. The definition of the offence contains three important elements viz -

- i) the person
- ii) his reputation
- iii) the harm to reputation of person with necessary mens rea

If the imputation is defamatory per se, necessary mens rea will be presumed. The maker of the statement must know that it will harm the reputation of one concerning whom the allegation is made.

Explanation includes even a dead person.

The gist of the offence is dissemination of harmful imputation concerning a person.

The offence is non cognizable, bailable compoundable with the permission of the court and triable by the court of session.

Exceptions:-

Sec 499 provides ten exceptions to the charge of defamation when a statement would not attract penalty.

i] First exception

Imputation of truth in public interest for public good -

To invoke the exception two conditions must be proved namely:-

- i) that the alleged imputation regarding the complainant was true and
- ii) that the publication was for the public good.

If any one of two conditions is not satisfied, Exception 1 would not be attracted. So though the truth of defamatory matter is a complete defense to an action for damage in civil suit it is not so prosecution for crime of defamation.

ii] Public conduct of public servant:-

Exception 2 deals with criticism of public servant. When a

an editor of a newspaper is prosecuted with defamation under sec 500, IPC for publishing some defamatory statements complaining about the conduct of jail superintendent towards the prisoners & about defective sanitary fittings and medical arrangements in the jail, the accused must show that opinion expressed by him was confined to character of official concern if it appeared in conduct in discharge of public function.

3. Conduct of any person touching any public question-

Third exception to section 499
embraces a much wider area of fair comment by providing that it is not defamation to express any opinion whatsoever respecting the conduct of any person touching any public question, respecting his character.

The conduct of publicists who take place part in politics or other matter concerning the public can be commented on good faith.

4. Publication of report of proceeding in court

Sec 499 provides that it is no defamation to publish a substantially new report to the proceeding of court or of result of any such proceeding.

5. Merits of case decided in court or conduct of witness

The exception deals with comments expressed on the merits of the case which has

been already decided in a court or otherwise relating to conduct of parties & witness in case it is not defamation to express in good faith any opinion whatever respecting -

- i) the merits of any case, civil or criminal which has been decided by a court or
- ii) the conduct of any person as party, witness or an agent in any proceeding or
- iii) the character of such person so far as his character appears in that conduct and no further

6. Merits of public performance -

It deals with literary criticism of public performances submitted to its judgement. It covers criticism of books published on literature - act, painting, speeches made in public, acting, singing etc. The criticism should be fair and made in good faith.

7. Censure passed in good faith by person having lawful authority over another.

The illustration to this exception gives some instances of censure protected by exception in good faith.

- i) A head of a department censoring those who are under him
- ii) A parent censoring his or her child in the presence of other children
- iii) A master censoring a servant for remission of service

8. Accusation preferred in good faith in authorised person:-

This exception indicates that accusation in good faith against a person to any of those who have lawful authority over that person is not defamation. Good faith has to be established as a fact explained in Sec 52, IPC.

9. Imputation made in good faith by protection of his or other's interest -

In order to come under this section within this exception the imputation must have been made or published by accused -

- a) for the protection of his interest
- b) in good faith

10. Caution intended for good of person to whom conveyed or for public good:

This section gives immunity to caution conveyed in good faith to a person against another, provided such ~~that~~ caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good. Most of the reported decision on tenth exception relate to caste matters, and things done at caste.

Sec 500

Punishment for defamation :-

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years or with fine or with both.

Nature and procedure :

The offence under this section is non-cognizable, bailable and triable.

Case law :

In Harbhajan Singh v. State of Punjab

In Harbhajan Singh v. State of Punjab, the Supreme Court set aside the conviction of the appellant, who has been prosecuted under Sec 500, IPC. Surinder Singh Kairon, the son of Pratap Singh Kairon the chief minister of State of Punjab has complained that the appellant has published an statement in 'Blitz', a monthly magazine published from Bombay, on July 23, 1959. Extract from it given wide publicity in number of local, regional & national papers were highly defamatory of Mr. Kairon. The statement reads:

"The son of our chief minister is not leader of smugglers but responsible for large number of crimes being committed in Punjab. Because the culprit happens to chief minister's son, the cases are always shelved."

Q Mens rea

Introduction:-

- Crime is the an act committed or omitted in violation of a public law forbidding or committing it. Some criminologist define crime in terms of criminal behaviour.

According to them, "Crime is an act that has been shown to be actually harmful to society or that is believed to be socially harmful by a group of people that has the power to enforce its beliefs and that places such act under the ban of positive penalties." The meaning of latin maxim actus non facit reum mens sit rea, there can be no crime without guilty mind.

Meaning of actus reus:

The word actus connotes a 'deed' a physical result of human conduct. The word mens rea forbidden by law" ~~says~~ ~~says~~. The word actus reus is made up of three constituent parts, namely;

- i) human action & which is usually termed as "conduct"
- ii) the result of such act in the specified circumstances which is designed as "injury"
- iii) such act is 'prohibited by law'

i) Human action : conduct :

- The first chief characteristic of a crime is that the offender or accused is a human being is defined as "an event subject to control of the will of the human being".

- Thus an act is something done voluntarily by a human being.

- These human actions includes acts of commands as well as acts of omissions e.g giving a blow, failure to arrest accused, etc.

- For the purpose of criminal liability the act may be analyzed as consisting of three parts:

- a) its origin in some mental or bodily activity or positivity of the doer.
- b) its circumstances
- c) its consequences

ii) Result of conduct

- It is one of the essential to constitute the crime that there must always be a result brought about by human conduct, a physical event which the law prohibits.

e.g. case of murder the death is caused by conduct of accused, which is *actus reus*. Thus this crime is

constituted by event and not by activity which causes the event

iii) Acts prohibited by law

Only those acts are crimes which are prohibited by law. Thus no act is crime unless prohibited by law, e.g. no crime is committed when soldier in battle field shoots an enemy because the act is authorised by law. Similarly no crime is committed when a person exercising his lawful right of private defence causing harm to another. In same way act of omission to be punishable must be illegal or breach of duty.

Sec 32 of IPC p.

provides that words referring to act include illegal omission.

"Every part of this code except where a contrary intention appears from context words which refer to acts alone extend also to legal omission."

Sec 43 defines illegal. Illegality

The word illegal applicable to everything which is an offence or which is prohibited by law or which furnishes ground for complaint.

action and a person is said to be legally bound to do whatever it is legally to him to omit.

Sec 33 Act omission: The word act denotes as well as series of acts as a single act and word omission denotes as well as series of omission as single omission. (ommitte to crime is an crime even)

Sec 36 : Effect caused partly by act and partly by omission -

Whatever the causing of certain effect , an attempt to cause that effect , by act or omission is an offence , it is to be understood the causing partly by act & partly by omission

Illustration:-

A intentionally causes Z's death partly by illegally committing to give Z food ; and partly by beating Z . A has committed murder .

Meaning of MENS REA

- Actus reus refers to the physical aspects in a crime.

- Mens rea is a technical term, generally taken to mean some blameworthy mental condition, whether constituted by intention, knowledge, or otherwise.

- Mens rea is a wider concept - It includes intention, motive, knowledge, recklessness and negligence etc often used to indicate the different possible mental attitude constituting Actus reus ~~not~~ of a particular crime.

- Guilty mind is an intention to do that which one knows to be wrongful or prohibited by law.

Aland Williams says guilty mind :- Implies

- That the conduct is voluntary

- There must be an intention to produce civil consequences or recklessness in producing them.

Conditions constituting actus reus of particular crime :-

i) Intention :

Intention means a purpose or desire to bring about a contemplated result or foresight that certain consequence will follow the conduct.

ii) Motive : (Ex.)

Motive is a reason or ground of action whereas intention is violation or active desire to act.

iii) Knowledge - Knowledge is the awareness of consequence of an act.

iv) Recklessness : It is an attitude of mental indifference to obvious risk.

v) Negligence - (Ex. omission)

Negligence is used to denote want care & precaution which a reasonable man would have taken under particular circumstance of case.

Mens Rea under the IPC :-

The doctrine of mens rea has no application to the offences in general under IPC code unlike common law.

The doctrine has been incorporated in two ways -

i) The provisions as the state of mind required for particular offence have been added in the section itself by using words as 'intentionally, knowingly, voluntarily, fraudulently, dishonestly etc.'

ii) the concept of mens rea has been incorporated into the provision in relating to general exception in chp v of code

Strict Liability :

The legislature may pass an act that whoever commits a wrong whether knowingly, or unknowingly should be punished.

A general rule is that mens rea applies to all criminal offence but it is applicable to certain exception.

The doctrine of mens rea is not applicable -

i) The second category include the cases of public nuisance, libel, and contempt of courts.

ii) The category includes

Development of Police Organ's Action

Date _____
Page _____

(1)

Beginning of civil protection against crime & disordered cases. European Union Directive 86/136/EEC + came into effect by 1989.

- Under the English doctrine of strict liability is a departure from common law principle of *actus non facit rem, nisi mens sit* create therefore intent.

- The exclusion of mens rea from statutory offence is justified on ground that such law are enacted by legal legislature to preserve & protect social & economic interest of community.

Case law

Queen v. Tolson

It was held that she bona fide believed that her husband to be dead, she has no mens rea. An innocent act always makes defn in common law.

THE POLICE SYSTEM

Date _____
Page _____

Development of Police Organisation

- The beginning of the civil protection against crime and disorder in England came into promulgation of the Edict of West Minister in 1285 by King Edward I.
- Under the system, local groups of property owners numbering about a hundred each were responsible for maintenance of peace in their district.
- This system prevailed in Great Britain for centuries.
- The industrial revolution in 18th century witnesses a considerable increase in crimes of violence in England.
- Thereafter a police force of 126 constables was set up by Middlesex Justice Act to arrest the growing incidence of crime & disorder.
- One of the important development in British police system was the introduction of rural police force. The rural p-
- The rural police force in Britain was an outcome of historical development.

Police force in India

- Police force has been in existence in India in one form or another from the ancient times.
- According to Manu who was ancient law gives emphasised the need of police force for maintenance of law & order.
- According to him, police function would be entrusted to only those who were well acquainted with local people and were dedicated to the cause of protection of society against law violators.
- He also refers to the secret intelligence practised in his time for prevention & detection of crimes.
- The ancient history of India further reveals that there was a well organised police force during the reigns of ancient Hindu rulers.
- The Mughal rulers in India also had a well organised police force for maintaining law & order in society.
- The police commission in 1860 recommended continuance of prevailing system of rural policing with minor change.

- The other recommendations of the commission were as follows
 - * The police function were to be entrusted to civil constabulary separating them completely from military force.
 - * The civil police administration was to be headed by an inspector general of police for each province
 - * The Inspector general would be responsible to provincial govt whereas superintendent of police would be responsible to the collector of district
 - * The village police were to be under the supervisory control of the superintendent of police
- The Indian police system which is developed on the basis of police Act 1961, three characteristics :
 - the police force is organised, maintained stratified like military & directed by several states of Indian Union.
 - the Indian police system is horizontally stratified like military forces organised into different cadres ;
 - the police in each state are divided vertically into armed and unarmed branches.

The constitution of India provides the Police is a 'state subject'.

- It is therefore for the state to maintain their own police force for maintaining peace & security within their respective territorial jurisdictions.
- Modern police is primarily concerned with detection & investigation of crime & apprehending criminals by making arrests.
- They are concerned with the protection of society against crimes & safeguarding the person and the property of the people.

Problems of Police

- Firstly the problems faced by police during investigation render this job difficult, particularly because of lack of public co-operation & support.
- Secondly, people are most unwilling to help police in crime detection and apprehending the offender due to fear of possible harassment at the instance of police officials. Police has a very low profile in the eyes of public.
- Thirdly, the lack of sense of social responsibility among people is also one of the reasons for their apathy and callousness as not comply

forward to help the police.

Fourthly, the recent criminalisation of politicians provides undesirable protection to professional offenders and all sorts of pulls & pressures are ex-

Q. What is private defence

Introduction

- See 96 to 106 of penal code state the law relating to the right of private defence of person & property.
- * The provisions contained in these section give authority to man to use necessary force against an assailant or wrongdoer for the purpose of protecting one's own body & property or also another body & property immediate aid from state machinery not readily available.
- Self-help is the first rule of criminal law
- The right of private defence is absolutely necessary for the protection of one's life, liberty and property.
- It is right inherent in a man.
- The use of force to protect one's property & person is called right of private defence.
- The most important principle is that right of private defence requires that the force used in defence should necessary & reasonable in the circumstances.

Provisions relating to IPC

Sec 96:

As the section puts nothing is an offence which is done in the exercise of the right of private defence.

The importance of right of private defence.

Doctrine of necessity ph:

- i) This right arises from necessity for self-preservation however concept of necessity is wider & consequent it cannot be said necessity in right of private defence

Q What is the private defence? When it extend to offence causing death or insure in relation to body.

→ Introduction Meaning Provisions in detail

Section 96 to 106 are the seventh general exception which relate to the rights to private defence (RPD)

Sec 96 declares in general that nothing is an offence which is done in exercise of right of private defence

Sec 97 says right of private defence is of two types i) right of private defence of the body and ii) right of private defence of property

Body by one's own body or body of another person & likewise property may be movable or

immovable and be on oneself or any other

Right of private defence of body and of property
Sec 94 lay down the principles of right of private

defence. i) the threat to one's person or property must be real and immediate

(ii) the force used must be necessary force till threat exists

(iii) It is not necessary to modulate one's defence step by step, accⁿ to attack before there is reason to believe that attack is over.

* ----- x ----- x ----- x ----- x ----- x ----- x -----

→ Sec 95) The right of self-preservation is inherent in every person but to achieve that end nothing could be done which militates against but to achieve another person. In other words "society place a check on the struggle for existence where the motive of self-preservation would dictate a definition aggression innocent person"

Right against an insane person
 Right of private defence against act of person of unsound mind
 Sec 98 lays down that for the purpose of

exercising the right of private defence, physical or mental capacity of person against whom it is exercised is no bar.

The right of private defence of body exists against all attackers, whether with or without mens rea.

Illustration

A enters a house by night of madness, attempts to kill which he is legally entitled to enter. Z in good faith, taking A for house breaker, attacks A. Here Z by attacking A under this misconception, commits no offence. But A has same right of private off defence against Z, which he would have if Z were not acting under misconception.

→ Illustration are pointing to a fact that even if an attacker is protected by some exception of law that does not diminish the danger & risk created from his act. Right of defence in case can also be excused.

Limitation on right of private defence under Sec 99
 Act against which there is no right of private defence
 This section deals with a variety of questions.

and also split up into two & more sections.

- The provision ~~firstly~~ clause applies to cases of public servant acting in good faith under the colour of his office through his act may not be strictly justifiable by law.

- Good faith in public servant is always a question of fact.

~~under force expired warrant & attack property.~~

- The second clause speaks of acts done under the direction of public servant.
 - An illegal issued warrant cannot be excused if a person to whom it is to be executed resists his resistance is justified & right of PP is available
- The third clause is that, there is no right of private defence when there is time to have recourse to protection of public authorities.
- The fourth clause lays down the extent to which RPD may be exercised.

To ~~other~~ The measure of self defence always be force necessary & proportionate to quantum of force used by attacker. It vanishes threat & danger

Grounds for killing assailant in case of body

- The right of private defence of body can be used to cause the assailant's death but this right is subject to restrictions laid down by Sec 99.
- The apprehension must be reasonable & the force inflicted must be proportionate ie - not greater than ~~which~~ is necessary.

Sec 100 : When right of private defence of body extends to causing death

The Section lays down that the RPD of the body extends to causing even the death of the assailant

- 1) Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault

- such an assault as may reasonably cause the apprehension that death or serious hurt will otherwise be the consequence of such assault
- An assault with the intention of committing rape.
- An assault with the intention of gratifying unusual lust
- An assault with the intention of kidnapping or abducting
- An assault with the intention of wrongfully confining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to public authorities unless

Commencement and Continuance of the Rights of private defence : Sec 102 of body

- The right of private defence commences as soon as a reasonable apprehension of danger of body arises from an attempt or threat to commit the offence, though the offence may not have been committed.
- It continues so long as such apprehension of danger to the body continues.

Commencement and continuance of RPD To Property : Sec 105

- See 102 + 105 indicate as to when the RPD to property & and body commences

Reasonable apprehension Sec 102.

- Reasonable grounds must exist for apprehension
- The RPD of property continues.
- There should not be an unreasonable interval of time between removal & recapture of property.
- Recapture can be made but it cannot be deemed to be in exercise of RPD of property.
- The recovery which section contemplates seems to be either immediate or made before offender has reached his final & retreat.
- This section applies to stolen property ; but not to property acquired dishonestly w/ meaning see 403 & 411

Provisions under IPC

Q Write critical note on Intra-territorial and Extra-territorial operations of IPC. Explain the Intra-territorial and Extra-territorial operation IPC?

→ Introduction

- The object of the IPC is to provide a general penal code for penal code came into operation in 1860.
- As per Sec 1 of IPC, it extends to the whole the State of Jammu & Kashmir.
- The IPC is a substantive law which includes + liabilities of parties.
- The provisions of the code have come into operation from 1 January 1862 + code applies to whole of India.
- After 1947, it extends the whole of Bharat except the state of Jammu & Kashmir.
- Pondicherry Regulation, the code of is extended to Union territories of Pondicherry with effect 1 Oct 1963.
- India is defined in Sec 18 of code as territory of India excluding the state of Jammu & Kashmir.
- Jammu & Kashmir is not a foreign territory.
- As an instrument of Accession executed with the Indian govt Jammu & Kashmir has become integral part of India.
- It is known as Ranbir Penal code.

Intra-territorial operation of the code

- Sec 2 extends the jurisdiction of the code within India.
- It lays down the territorial jurisdiction of code.
- That part of the sea over which the authority of the state is deemed to extend is called

Territorial sea

- It extends to the seabed & sub-soil thereof and to the air space above.
- Custom recognises the right of peaceful or innocent passage of foreign vessel through the territorial sea, including stopping & anchoring it incidental to normal navigation, or necessitated by weather or distress.
- Accⁿ to International law, the jurisdiction of state extends into sea up to twelve nautical miles & consequently an offence committed within this area can be tried by Indian courts, considering it to be offence committed in India.

Territorial Jurisdiction

- The portion of the sea or ocean which is adjacent to the shores of a country and washing its coast, which is commonly called its maritime territory is called territorial sea.
- Territorial sovereignty is a concept of the exercise by state of actual power and control over parts of the surface of the world.
- The portion of the sea or ocean which is adjacent to the shores of a country and washing its coast, which is commonly called its maritime territory is called territorial waters.
- Indian offences committed within this limit are consequently offences committed within India and therefore triable under the Indian Penal code.

+ The territory of the state includes its ships, armed or unarmed aircraft, private ships of its subjects on the high seas or in foreign tidal waters and foreign private ship while within its port.

Scope of Inter-territorial operation of IPC

a) Every person

- It means a natural person.

- In a company or association of persons since the requirement of mens rea is absent they are not held liable under the code.

The knowledge or intention of servant is imputed to the company, the company would be held liable.

b) Within India

- The code applies to every person irrespective of caste, creed, colour, rank or nationality.

- The offence is every criminal act or omission must have been committed by him within India.

A foreigner entering India virtually submit himself to the application of the code.

c) Exemptions

Under Article 361(2) of the constitution and under International law the following persons are exempted from the jurisdiction of criminal courts of every country

- President and Governors
- Officers of United Nations Organisation & institutions
- Foreign sovereigns
- Foreign army

- Ambassadors
- Alien enemies
- Warships

1. President and Governor :- The Constitution no criminal proceedings whatever shall be instituted or continued against the president, or governor of a state in any court during term of office.
 2. Officers of the UNO & its institution - After World War II a general international organisation came to be established in October 1945. It is known as UNO.
 3. Foreign sovereigns - The principle upon which foreign sovereigns are ~~not~~ exempted in that exercise of the jurisdiction of court over them would be incompatible with legal dignity, absolute independence of every superior authority.
 4. Foreign army - When by consent of one state the armies of other state are on soil they are exempted from jurisdiction of that state.
 5. Ambassadors - An ambassador's immunity from jurisdiction of courts of country to which he is accredited is based on principle.
 6. Alien enemies - If an alien enemy commits a crime which is not connected with war.
 7. Warships - Warships of one state in foreign water they are exempted from jurisdiction.
- d) Corporation : position of
- Insofar as a corporation is concerned, it is a juridical person and not a natural person.
It can have no mind and it cannot act except 'through its agent & officers'.

The knowledge and intention of agents and officers of corporation however can be imputed to the body corporate.

c) Master and servant liability.

- In a case of master & servant, a master is criminally liable for acts of his servants only when he permits them to be done.
- In case of strict liability offence, the acts or default of servant committed ordinary course of business or employment make the master criminally liable.

Extra-territorial Jurisdiction

- Extra-territorial jurisdiction means the jurisdiction beyond India.
- Sec 3 & 4 of code & Sec 188 of Criminal procedure code must read together. Sec 188 says when an offence is committed outside India:
 - a) by a citizen of India, whether on high seas or elsewhere or
 - b) by any person not being such citizen on any ship or aircraft registered in India.
- The above sections provide for extra-territorial jurisdiction over Indian citizens.
- Sec 4 says the act committed outside India must amount to an offence under the code.
- Courts are thus empowered to try offences committed outside India on
 - i) land, high seas, aircraft.
- The jurisdiction to try offences committed on high seas is called Admiralty jurisdiction.
- Admiralty is executive department or officers having general authority over naval affairs.
- Behind this jurisdiction the principle is that a ship on high seas is floating island belonging to the nation whose flag she flies.
- This jurisdiction extends over:
 - offences committed on Indian ships, on the high seas in river below, the bridges where tide ebbs and flows and when great ships etc.
 - offences committed on foreign ships in territorial waters of India.
 - planes

- Admiralty jurisdiction however does not extend to any river, creek or port within the body of a district - because here ordinary criminal courts have jurisdiction.
- Between high and low water marks on the seashore the ordinary criminal courts as well as admiralty courts have alternate jurisdiction.
- Offences committed on high seas within ~~territorial jurisdiction~~ are now triable ordinary criminal courts, as if they were committed within the local jurisdiction of the courts.

Case law

Tugal Kishor More 1969

Supreme

court held that s.4 of IRE defines extra - territorial application of IRE. The procedure for securing surrender is governed by Extradition Act 1962.

Q Explain the provision regarding abetment under IPC

Introduction

- The term 'abetment' in criminal law indicates that there is distinction between the person abetting the commission of an offence and the actual perpetrator of the offence or principal offence or principal offender.
- Chp V of the IPC on 'Abetment' provides for the law covering the responsibility of all those considered in law to have abetted the commission of offence.
- The term 'abet' in general usage means to assist, advance, aid, help and promote.
- The word abet defined as meaning to aid, to assist to command to induce or assist to encourage or to set another to one to commit.

Definition

- As "to Sec 107, Abetment of a thing :-
- "A person abets the doing of a thing who -
- First - Investigates any person to do that thing or
 Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing if an act or illegal omission takes place in pursuance of that conspiracy and in order to doing of a thing or
- Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing.

Scope of Abetment

- A crime may be committed by a single person, or two or more persons.
- When several persons are associated with the commission of a crime the degree of culpability of each will depend on mode of his participation in the crime, for the law recognises gradations of guilt based on the variety of ways in which a person might be associated in act crime.
- Liability under this chapter for abetment is based on principle that many crimes would be impossible but for support and encouragement received from others who though not actively cooperating the crime, still prepare ground and facilitate its commission.

Essentials of Abetment

- Abetment means the instigation of a person to do an act in a certain way, or aid given by some person to another either of his own accord or under Instigation in doing an act which is offence.
- To constitute an offence of abetment there must be i) an abettor ii) he must abet iii) the act abetted must be an offence.

- Accⁿ to Sec 107, IPC a person abets the doing of a thing when he

1. Abetment by ~~instigation~~ Instigation

- A person is said to instigate another when he incites, urges, encourages, goads, solicits or provokes him to do an act prohibited by law.
- Advice amounts to ~~instigation~~ only when intended to actively suggest or stimulate the

commission of an offence.

Illustration

A says to B ' I am going to kill C ' & B replies ' Do as you wish & take consequence, whereupon A kills C, B cannot say to have instigated & to stab

2. Abetment by conspiracy

- A person is said to abet the commission of an offence by conspiracy, if he enters into an agreement with one or more persons to do a legal act by illegal means or to do illegal act & some act is done in pursuance thereof.

Illustration

A, a servant enters into an agreement with thieves to keep the doors of his master's house open in the night so that they might commit theft. A accⁿ to agreed plan keep door open & the thieves take away the property. A is guilty of abetment by conspiracy for offence of theft. But ^{should} thieves do not come. A will not liable under this section.

3. Abetment by Aid

- A person is said to abet the commission of an offence, if he intentionally render assistance or gives aid by doing an act or omitting to do an act.
- There must be some active conduct on the part of abettor and the act must be accomplished in pursuance thereof.

Illustration

A incites B to kill C by uttering the words manz mao and D pulls a knife in A's hand. Here A & D are guilty of abetting the offence of murder one by investigation & other by aiding to commit the offence.

- Aid may be given both 'by an act of commission as well as by an act of illegal omission'. A person abets by aiding when by act, done either prior to, or at time of commission of an act, he intends to facilitate, does in fact facilitate the commission thereof.'

Distinction between conspiracy in sec 107 (2) & sec 120 (A) of IPC

- To constitute an offence under clause (2) to Sec 107, IPC - an act or illegal omission must take place in pursuance of the conspiracy whereas under sec 120 (A), IPC a mere agreement is enough if the agreement is to commit an offence.

1. Abettor

- Sec 108, IPC defines abettor as a person who abets:
 - i) the commission of an offence or ii) the commission of an act which would be an offence if committed by a person capable of committing an offence in law.
- An abettor may be either an instigator, or a conspirator or helper in commission of crime.

under Sec 107 of Penal code.

Essentials

Three things are essential

There must be abettor

He must abet

The abetment must be an offence or act against which would be an offence.

Sec 108 : Abettor is a person abets an offence, who abets either the commission or an offence or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with same intention or knowledge as that of the abettor.

Five explanatory clauses to Sec 108 , IPC

Abetment of illegal omission

Effect of abetment is immaterial

Person abetted need not be capable of committing an offence

Abetment of an abetment is an offence

Abettor need not concert in abetment by conspiracy

Abetment - of offences outside India

Sec 108-A was added in the Penal code in 1898 with view to overrule a decision of the Bombay High Court in the case of Queen Empress v. Ganapatis Ramachandria in which it was held that the abetment in India by an Indian citizen of an offence committed in foreign country was not punishable under the code.

Sec 108 A is substance another explanation of constitute an abetment in Sec 108 IPC

The section states that a person would be guilty of an abetment, if he abets the commission of an act outside India, which if done in India, would constitute an offence.

Illustration

If A in India instigates B, a foreigner in Nepal to commit murder in Nepal. A is guilty of abetting murder; since A could have been liable for abetting the offence of murder had person abetted been in India.

Abetment of offences punishable with death or life imprisonment

Sec 115, Whoever abets the commission of an offence punishable with death or imprisonment for life shall if that offence be not committed in consequence of abetment & no express provision is made by this code for punishment of such abetment is punished with imprisonment of either description for a term which extent to seven years & shall liable to fine and if harm is caused in pursuance thereof upto 14 years of imprisonment & fine.

Illustration

A investigates B to murder Z, three possibilities arise.

- First, if B murders Z, both A & B would subject to punishment of death or imprisonment for life under Sec 302 & Sec 109 IPC
- Second if the offence is not committed, A would be liable to imprisonment for a term which may extent to 7 years & also to fine

- third, if hurt is caused to Z in pursuance of the abetment, A could be liable to imprisonment for term extend to 14 yrs & to fine

Abetment of offences punishable with imprisonment

Sec 116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of abetment, & no express provision is made by code for punishment of such abetment be punished with imprisonment of any description provided for offence for term which may extend to one-fourth part of longest term provided for that offence, with fine provided that officer or both

- Sec 116 provides for punishment in cases of abetment of offences punishable with imprisonment when offence is not committed.
- The section makes a distinction in respect to punishment in case of private persons for a police officer involved in abetment of crime.
- The section imposes greater responsibility in case of public servants whose duty is to prevent crime as compared to ordinary individuals

Q What is criminal conspiracy? When it is punished? What is the difference between criminal conspiracy and unlawful assembly

→ Introduction

- Conspiracy at common law, had its origin primarily as a civil wrong, but was lately made punishable as criminal wrong.
- Conspiracy was originally used to explain the acts of agreement of those who combined to carry on legal proceedings in an improper way.
- According to English law, if two or more persons agree together to do something contrary to law, or wrongful and harmful towards another person or to use unlawful means in carrying out an object not otherwise unlawful & the persons who agree commit the crime of conspiracy.
- A conspiracy consists not merely in the intention of two or more but in the agreement of two or more to do an unlawful act by unlawful means.

Conspiracy under the code

- Conspiracy under the IPC originally was punishable was only in two forms :-
 - i) conspiracy by way of abetment and
 - ii) conspiracy involved in certain offence.
- In other words, except in respect of the offences particularised in Sec 121A, conspiracy

per se was not an offence under the Indian code until the criminal law amendment Act of 1913 was passed.

The Indian Penal code deals with the law relating to criminal conspiracy:

- as a substantive offence
- as a form of abetment
- to wage, attempt or abet waging of war against govt of India
- involvement in certain offence; assembling for purposes of committing dacoity.

Meaning

A criminal conspiracy under English law, and also under Indian law as it stands, is the agreement of two or more persons to do an illegal act, to do legal act by illegal means.

Illustration

A and B made a plan to murder C; letters passed between them as to movement of C. Here both A & B are liable for indictment to a charge of criminal conspiracy under Section since there was an agreement between A & B to do an illegal act.

Before the passing to Criminal law Amendment Act 1913, a conspiracy to an illegal act was punishable only when act amounted to an offence.

The criminal law amendment Act 1913 however, introduced two rather drastic changes in respect → By section 120B punishment is provided for external conspiracy of all kinds.

- whether according to requirement of Sec 107 an overt act has or has not taken place in pursuance of such conspiracy
- whether required by Sec 109, 115, 116 the object of conspiracy is not the commission of an offence

Ingredients

- The ingredients of Sec 120A, IPC as stated below:
 - i) There should be an agreement between two or more persons who are alleged to conspire
 - ii) The agreement should be to do or cause to be done:
 - an illegal act or
 - an act which may not itself be illegal by illegal means.
- the Indian law had insisted on some overt act the English law did not, but an overt act was necessary as an act of tort for conspiracy.

Definition

When two or more persons agree to commit an offence punishable with death, imprisonment for life or imprisonment of either description for a term of two years or upwards or to cause such offence committed, the agreement is designated a criminal conspiracy.

An illegal act

The word illegal is defined in Sec 43 of code applicable to everything which is an offence or which is prohibited by law or furnishes under the ground of civil action.

Requirement of one or more person

The conspiracy being an agreement it necessarily follows that there must be at least two persons. One person alone cannot conspire.

A person may be indicated alone for conspiracy with person who are unknown - death, untaught, incapable of committing crime.

Punishment of criminal conspiracy

Definition.

Whoever is a party to a criminal conspiracy to commit an offence punishable with death or rigorous imprisonment for term of two years or upwards shall where no express provision is made in the code for punishment of such a conspiracy be punished in the same manner as abetted such offence.

In the first case where conspiracy is to commit offence of serious nature, i.e. to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for the term of punishment two years or upwards and where no provision is made in code of punishment, the person is liable to be punished in same manner as he has abetted an offence.

with the knowledge

Culpable homicide. (13)

Introduction

Chap XVII, Sec 299 - 377 deals with the offences affecting the human body.

It aims at protecting the primary personal right to life, liberty, freedom of person, security of person, freedom of enjoyment of one's person against intentional invasion by others.

It ~~also~~ covers a wide range of offences which include murder, assault, kidnapping, abducting, wrongful restraint, use of criminal force, hurt confinement, sexual assault such as rape and unnatural offences.

Offences affecting life. (Sec 299 - 318) Unlawful homicide

i) Homicide

i) Culpable homicide (Sec 299, 304)

ii) Murder (Sec 300, 302)

iii) Culpable homicide not amounting to murder
(Exception I to V)

iv) Culpable homicide by causing death of person (Sec 301)

v) Death by negligence (Sec 304 A)

vi) Dowry death (Sec 304 A)

vii) Abetment, Attempt Suicide (Sec 306, 307)

viii) Thug (Sec 310, 311)

Definition.

Sec 299

Whoever causes death by doing an act with the intention of causing death or with the intention of causing bodily injury or it likely to causing death or with knowledge that he is likely to cause death or to commit the culpable homicide

Illustration.

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 a bush. B fires and kills Z; here B may be guilty of no offence, but A has committed the offence of culpable homicide

• Explanation

• Essentials.

The important elements are -

1. Causing death
2. by doing an act
3. Causing death

- In order to hold a person liable under sec there must be causing a death of human being as defined in Sec 46 of code.
- The causing of death of a child in the

Introduction

mother's womb is not homicide as stated in Sec 299

The act of causing death amounts to culpable homicide in any part of child has been brought forth though the child may not have breathed or been completely born

Causing death must be a living being which means living man, woman, child and atleast partially an infant under delivery or just delivered

2. by doing an act

Death may be caused by a hundred + one means, such as by poisoning, drowning, striking, beating and so on.

Under Sec 32, IPC word act has given wider meaning as it includes not only an commission, but illegal omission as well

Hence death may also be caused by neglect duty, such a parent not supplying + medical care to his child, a husband starving his wife, the result in the voluntarily causing of child + wife's death

Illustration

A omits to give Z food, and by that omission voluntarily causes Z's death. Now it's the murder if :-

- A was Z's (jailer) directed by law to furnish Z with food
- Z was a bedridden invalid and A, nurse was hired to feed Z.
- A was detaining Z in unlawful confinement thus contracted a legal obligation to furnish Z, during continuance & necessar

Exceptions

- All murder is culpable homicide but all culpable homicide is not murder.
- Subject to the five exception to Sec 300 IPC every act that falls within the one or more of the four clause of that section is murder & also falls within the definition of culpable homicide in sec Sec 299 IPC.
- Every act that falls within Sec 299 & does not fall within Sec 300, since it is not murder is culpable homicide not amounting to murder

Punishment

- Culpable homicide of first degree, which is the gravest form of culpable homicide is termed murder. It is defined in Sec 300 & punishable under Sec 302 with death or imprisonment for life to either of which fine may be added.
- Culpable homicide of second degree (culpable homicide not amounting to murder) as defined in Sec 300. Exception 1 to 5 & Sec 299, clause (i) (ii) is punishable under Sec 304 with imprisonment for life or imprisonment of either description for term which may extend to 10 yrs to either of which fines may be added.
- Culpable homicide of third degree which is defined in Sec 299, clause (iii) & is punishable under the latter part of Sec 304 with fine only or both with imprisonment up to limit of 10 yrs or with both.

Explanation of culpable homicide.

1. A person who causes bodily injury to another who is labouring under disorder, disease or bodily infirmity and thereby accelerates the death of that other, shall be deemed to have caused death.

2. Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused death, although by restoring to proper remedies and skilful treatment the death might have been prevented.
3. The causing of death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

~~Murder~~ ~~Killing~~ Lawful homicide

Homicide may be either i) lawful ii) unlawful.

In first case will set culprit free, in second case he will be held criminally responsible for his criminal act.

It is classified into

Excusable homicide

This includes homicides which are committed with no criminal intention & knowledge.

The code of foll' situations which criminal responsibility for homicide is excused, listed below:-

- * where death is caused by accident or misfortune & with no criminal intention or knowledge in doing of unlawful act in lawful manner & with proper care & caution

- * where death is caused by child or person of unsound mind or an intoxicated person.
- * where death is caused unintentionally by an act of good faith for benefit of person killed:
 - minor or lunatic
 - consent

Justifiable homicide

- Rep: A homicide is considered in law to be justified, if death is caused:
 - * by a person who is bound or by a mistake of fact faith believes himself bound by law.
 - * person exercising his ^{right} private defence
 - * " acting with no criminal intention to cause harm and in good faith
 - * person acting in pursuance of judgement or or order of court of justice
 - * person who act pursuant to lawful authority

Unlawful homicide

- The features of unlawful homicide are:
 - * degree of intention & knowledge as recklessness with which a particular homicide is committed
 - + If the probability of death resulting from a bodily injury is of very high degree, this constitutes murder, & if probability is not

of that order, it is culpable homicide to kill under circumstances committed under grave and sudden provocation, private defence, exercise of legal power, with consent, it is culpable homicide not amounting to murder.

Case law:

Hariba Ashruka Shelar v State of Maharashtra · 2001:

Supreme court held that when the appellant inflicted a solitary sickle blow on the neck of the deceased at highest he had the knowledge of his death, contemplated by clause three of S. 299 of IPC, the breach of which is punishable under 304 part II of IPC.

Why Culpable Homicide amounting to murder

Introduction

- The word murder has been derived from germanic word "mortha", which means secret killing.
- Accⁿ to early germanic people a distinction was drawn between open killing and secret killing.
- In 12th century, every homicide whether open or secret was considered to be punishable.
- Under English law, unlawful homicide may be broadly classified into murder and manslaughter.

Murder

- When a person of sound mind & discretion unlawfully kills any reasonable creature in being and under King's peace with malice, forethought either express or implied.

Manslaughter

- Manslaughter on another hand is said to be an unlawful killing of such person without malice either express or implied.

Definition

Sec 300.

3. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death or —

Secondly -

If it is done 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 or —

Thirdly -

If it is done with the intention of causing bodily injury to any person and bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death or —

Fourthly -

If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Essentials

The essentials of murder are ; when the death is caused :

- i) in a sudden fight
- ii) in heat of passion without premeditation, ~~or~~ ~~or~~ arising out of certain quarrel.
- (iii) without the offenders having taken undue advantage.
- (iv) the offender should not act the cruel and unusual manner.
- v) the fight must have been with the person killed.

In a sudden fight :-

~~Against the most important clause~~

-- It is an important element under this class clause

- The word fight has not been defined in the code

- The word fight has not been defined in the code

- The word fight means a combat between two or more persons whether with or without weapons

2. Death caused in the heat of passion without premeditation

Sugj Mal v. Union Territory of Chandigarh

It was held that when injury is caused resulting in death in a sudden fight without premeditations and in the heat of passion and no undue advantage was taken by the accused, nor had he acted in a cruel manner the case would fall under Exception 4 to Sec 300 IPC punishable under Sec 304 IPC, Part I

3. Without taking any undue advantage

In

Manke Ram v. State of Haryana

~~fact~~
The Supreme court held that since both the persons were intoxicated there was every possibility that their action were beyond their control. Accordingly considering the totality of factual matrix, the court held that the ~~appell~~ appellant was entitled to the benefit of Exception 4 to Sec 300 because the incident took place in heat of passion

4. Cruel and Unusual manner

In

Ghapoo Yadav v. State of Madhya Pradesh

The apex court held that dispute having been arisen without premeditation in a sudden fight upon a sudden quarrel b/w the two groups, the infliction of injuries and their nature proved the intention of

of the accused appellant but the manner of causing of such injuries could be termed either as cruel and unusual. It was found that one injury out of seven was of grievous ~~but~~ nature which was sufficient in the ordinary course to cause death the deceased.

Illustration

A without any excuse fires a loaded canon into a crowd of persons & kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

Punishment for murder: Sec 302

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

Death or imprisonment for life:

Sec 302, IPC

prescribes an alternative punishment of either death or imprisonment for life with fine

if an accused is found guilty of murder

Punishment for murder:

Whoever commits murder shall be, save as otherwise provided in sub section (2), be punished with imprisonment for life & shall be liable for fine.

Whoever commits murder shall,
Whoever commits murder shall,

a) if the murder has been committed after previous planning & involves extreme brutality or

b) if the murder involves exceptional depravity or

c) if the murder is of a member of any armed forces of the Union or any police force or any public servant whose duty is to preserve peace or order in any area or place while such member or public servant is on duty.

d) if the murder has been committed by him, while under sentence of imprisonment for life and such sentence has become final, be punished with death or imprisonment for life and shall be liable to fine.

Nature and procedure of offence:

Offence is
wgnizable, Non-bailable, Triable by
Court of session, Non-compoundable

When culpable homicide is not murder
exceptions:

Culpable homicide is not
murder if the case falls within any
of 5 exception to S. 300
w/s 299 - refer

Difference b/w culpable homicide and
murder.

Case law

Manjushree Sarda case 1982 -

The first official case of domestic violence was the alleged murder of manjushri sarda in 1982. The case became important because the various pune based women organisations put pressure on police for speedy investigation. Manjushree husband shared sarda was prime accused. Manjushree was found dead in bed room of their house in Swargate. The preliminary inquiry had revealed that manjushree

has consumed cyanide - However there was suspension of murder in as the victim was said to be harassed by her husband over money, Sardar was acquitted due to lack of evidence. He had also married secretly. The case had a historic impact as IPC was amended inserting new provision 318 498-A exactly by husband or relative of husband to a married women.

Q Discuss offences of rape in detail with amendments.

Introduction

- The code in Sections 375, 376 + 376 A' to 376 E has dealt with sexual offences and unnatural offences under Sec 377 IPC, Sec 375, IPC enumerates the offence of rape.

- The word rape literally derived from latin 'ward rapio' means to resize.

- Rape is violation with violence of the private person of woman, an outrage by all means

- The ravishment of a woman without her consent by force, fear or fraud.

Definition Sec 375

A man is said to commit "rape" if he -

- a) penetrates his penis, to any extent into the vagina, mouth, urethra or anus of a woman or make her to do so with him or any other person : or .

- b) inserts to any extent, any object in a part of the body, not being the

penis, into vagina, the urethra or anus of a woman or make her to do with him or any other person, or

c) manipulates any part of the body of a woman as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person.

d) applies his mouth to the vagina, anus, urethra of a woman or make her do so with him or any other person,

under the circumstances falling under any of the following seven descriptions.

First - Against her will

Secondly - without her consent

Thirdly - With her consent has been obtained by putting her so any person in whom she is interested, in fear of death.

Fourthly - With her consent, when the man knows that he is not her husband and believes that he is another man to whom she as or believe herself to be lawfully married-

Fifthly - 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 wholesome substance, she is unable to understand the nature & consequence of that which gives consent

Sixthly - With or without her consent when she is under 18 yrs of age

Seventhly - When she is unable to communicate consent

Explanation 1 - For the purpose of this section
"vagina shall also include
labia majora.

Explanation 2 - Consent means an ~~eq~~ unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in specific sexual act.

Provided that a woman who does not physically resist to act of penetration shall not by reason only of that fact regarding as consenting to sexual activity

Exception 1 - A medical procedure or intervention shall not constitute rape.

Exception 2 - Sexual outcome intercourse or sexual acts by man with his own wife, the wife not being under 15 yrs of age ^{at} is rape

Punishment for rape: Sec 376

i) Whoever except in the cases provided for in sub-section (2), commits rape shall be punished which shall be not less than than seven years, but which may extend to imprisonment for life & shall also be liable to fine.

(2) Whoever -

a) being a police officers, commits rape

i) within the limits of the police station to which such police officer is appointed or

ii) in the premises of any station house ; or

iii) on a woman in such police officer's custody or in custody of police officer subordinate to such police officer ; or

b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of public servant

subordinate to such public servant or

c) being a member of armed forces deployed in area by central or state government commits rape in such area or

d) being on management or on the staff of jail, remand home or other place of custody established by or under any law for time being in force or of women's or children's institution, commits rape on any inmate of such remand home, place or institution or

e) being on the management or on the staff of hospital, commits rape on a woman in that hospital or

f) being a relative, guardian or teacher of, or a person in position of trust or authority towards woman, commit rape on such woman or

g) commits rape during communal or sectarian violence or

h) commits rape on woman knowing her to be pregnant or

i) commits rape on a woman when she is under 16 yrs of age

(j) commits rape, on a woman incapable of giving consent or -

(k) being in a position of control or dominance over a woman, commits rape on such woman : or -

(l) (commits rape on a woman suffering from mental or physical disability) or

(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman or -

(n) commits rape repeatedly on same woman,

shall be punished with rigorous imprisonment for term shall not less than 10 yrs but may extend to imprisonment for life, which mean imprisonment for the remainder of that person's natural life and shall be liable to fine.

Explanation - From the para

For the purpose of this
sub sections -

a) "armed forces" means the naval military and air forces and includes any member of the armed forces constituted under any law for time being in force, including the paramilitary forces and any auxiliary

forces, including those that are under the control of Central Govt or State Government -

b) "Hospital" means the premises of the hospital and includes the premises of any institution for reception & treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

c) "police officer" shall have the same meaning as assigned to expression "police" under the Police Act, 1861

d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception & care of women or children.

Punishment for causing death or resulting in persistent vegetative state of victim Sec 376-A

Whoever commits an offence punishable under sub sec (1) or sub-sec (2) of sec 376 and in course of such commission inflict an injury which causes the death of woman or cause the woman to be in persistent vegetative state, shall be punished with rigorous imprisonment for term which shall not less than 20 yr but which

may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death.

Sexual intercourse by husband upon his wife during separation : See 376 - (B)

Whoever has sexual intercourse with his own wife, who is living separately whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not less than 2 yrs but which may extend to 7 yrs & shall be liable to fine.

Explanation -

In this section "sexual intercourse", shall mean any of act mentioned in clause (a) to (d) of Sec 375

Sexual intercourse by a person in authority .- Whoever being - See 376 - (C)

- a) in the position of authority or in a fiduciary relationship or
- b) a public servant
- c) superintendent or manager of a jail, remand home or other place of custody established by or under law for time being in force or women or children's institution or
- d) on the management of a hospital or

or being on a staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to offence of rape shall be punished with rigorous imprisonment of either description for term which shall not less than 5 yr but which may extend to 10 yr & shall be liable to fine.

Explanation 1 - In this section "sexual intercourse" shall mean any of acts mentioned in clause (a) to (d) of sec 375.

Explanation 2 - For the purpose of sec Exp 1 to sec 375 shall also be applicable

Explanation 3 - Superintendent in relation to jail, remand home or other place of custody of women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority to control over its inmate.

Explanation 4 - The expressions "hospital" and "women's or children's institution" shall resp. have the same meaning in Explanation 1 sub (2) of sec 376.

376D Gangrape: Sec 376 D

Where a woman is raped by one or more persons constituting a group or acting in furtherance of 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 less than 20 yrs, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life + with fine.

Provided that such fine shall be just & reasonable to meet medical expenses & rehabilitation of the victim.

Provided further that any fine imposed under this section shall be paid on a victim.

376E Punishment for repeat offenders - See 376 E

Whoever has been previously convicted of an offence punishable under Sec 376 or Sec 376A or Sec 376D & is subsequently convicted of an offence punishable under any of said sections shall be punished with imprisonment for life which shall mean imprisonment for remainder of that person's natural life or with death.

Case Law

Bodhisattwa Gautam v Subhra Chakraborty
1996

In the case supreme court held that rape victim is entitled to compensation. The accused a lecturer who had married the victim, his student, ~~but~~ later he refused to recognise her as his life partner was asked to pay an interim compensation of Rs 1000 per month to the victim until her charges of rape, cheating and other criminal offences were decided by trial court.

Q Explain the offence of kidnapping

Introduction

- The word kidnapping has been derived from the word 'kid' meaning 'child' and 'napping' to 'steal'
 - Kidnapping literally means child stealing
 - Sec 359 to 369 of the code have made kidnapping
 - Punishment will be given on basis of severity, nature and gravity of offence
 - The main aim of this act is to preserve secure the personal liberty of citizen and to give legal protection to children of tender age from being abducted or seduced for improper purpose and also to preserve the rights of parents and guardians over the wards.
- Kidnapping is defined in Sec 359 2 (c) of

- i) Kidnapping from India v/s 360 +
- ii) Kidnapping from lawful guardianship v/s 361

Kidnapping from India Sec 360

Sec 360, IPC defines kidnapping from India and Sec 363 IPC prescribes punishment for the offence. To

To attract this section there must be -

- i) conveying of any person beyond the limits of India
- ii) without the consent of that person, or of someone legally authorised to consent on behalf of that person.

The offence under this section may be committed in respect of any person, male or female major or minor and irrespective of his nationality.

Conveying without consent -

The word 'convey' literally means simply going together on a journey but in a popular parlance, it now means carrying a person to his destination.

The offence would not be complete until the person actually reaches not only a foreign territory but to his destination as well.

Conveying of a person from one place to another is not criminal. That does become criminal if he is conveyed without consent.

A person may be so conveyed as much by using force as

by inducing him to give his consent by
Fraud & Deception.

- Similarly a consent
loses its essential elements if it is under
fear or duress in case of submission &
not consent.

Ingredients:

- i] There must be taking or enticing
of a minor, or a person of unsound mind.
- The gravity of offence of kidnapping lies
in the 'taking' or 'enticing' of a minor
under the specified age out of keeping of
the guardian, without the consent of such
guardian.
- The word 'take' or 'entices' any minor out
of keeping a lawful guardian of such
minor in Sec 361 is significant.
- ii] Such minors must be
under 16 years of age, if a male or under
18 years of age, if a female.
- The word minor for the purpose of this
section has been defined as a male
child under 16 and a female child
under 18 years of age.
- The statutory age for offence of kidnapping
has been fixed at 16 yr. for female.

unlike in Indian law it is 18 yrs. if
it is no defence that accused did not
know the girl to be under 18 or
her appearance he thought to old
enough to accord consent

iii] Taking or enticing must be
out of keeping of lawful guardian of such
minors or person of unsound mind

- A legal guardian is a guardian appointed
by law or whose appointment by law
is in consonance with general law of
land & the person who is a guardian.

- A minor or lunatic is the custody of the
legal guardian, and he or she is taken
or enticed out of custody of such
legal guardian, in case of kidnapping.

iv] Taking or enticing must
be without the consent of such guardian

Punishment for Kidnapping Sec 363

Whoever 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.

Nature & procedure

The offence is cognizable, bailable, non compoundable and triable by magistrates of first class.

Illustration

- Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of a minor, in order that such minor may be employed or used for purpose of begging shall be punished with imprisonment of either description for a term which may extend to ten years, shall liable to fine
- Whoever any person mains any minor in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment for life & shall also be liable to fine

• Where any person not being the lawful guardian of a minor, employs or uses such minor for purpose of begging, it shall presumed, unless contrary is proved, that he kidnapped or otherwise obtained the custody of minor in order these minor might employed or used for purpose of begging.

• In this section.—

Begging means—

- i) soliciting or seeking alms in public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise.
- ii) entering on any private premises for purpose of soliciting or seeking alms.
- iii) exposing or exhibiting with object of obtaining or extorting alms, any sore, wound, injury, deformity, disease, whether himself or any of an animal.
- iv) using minor as exhibit for purpose of soliciting or receiving alms.

Minor means—

- i) in case of male, a person under 16 yrs.
- ii) in case of female, a person under 18 yrs.

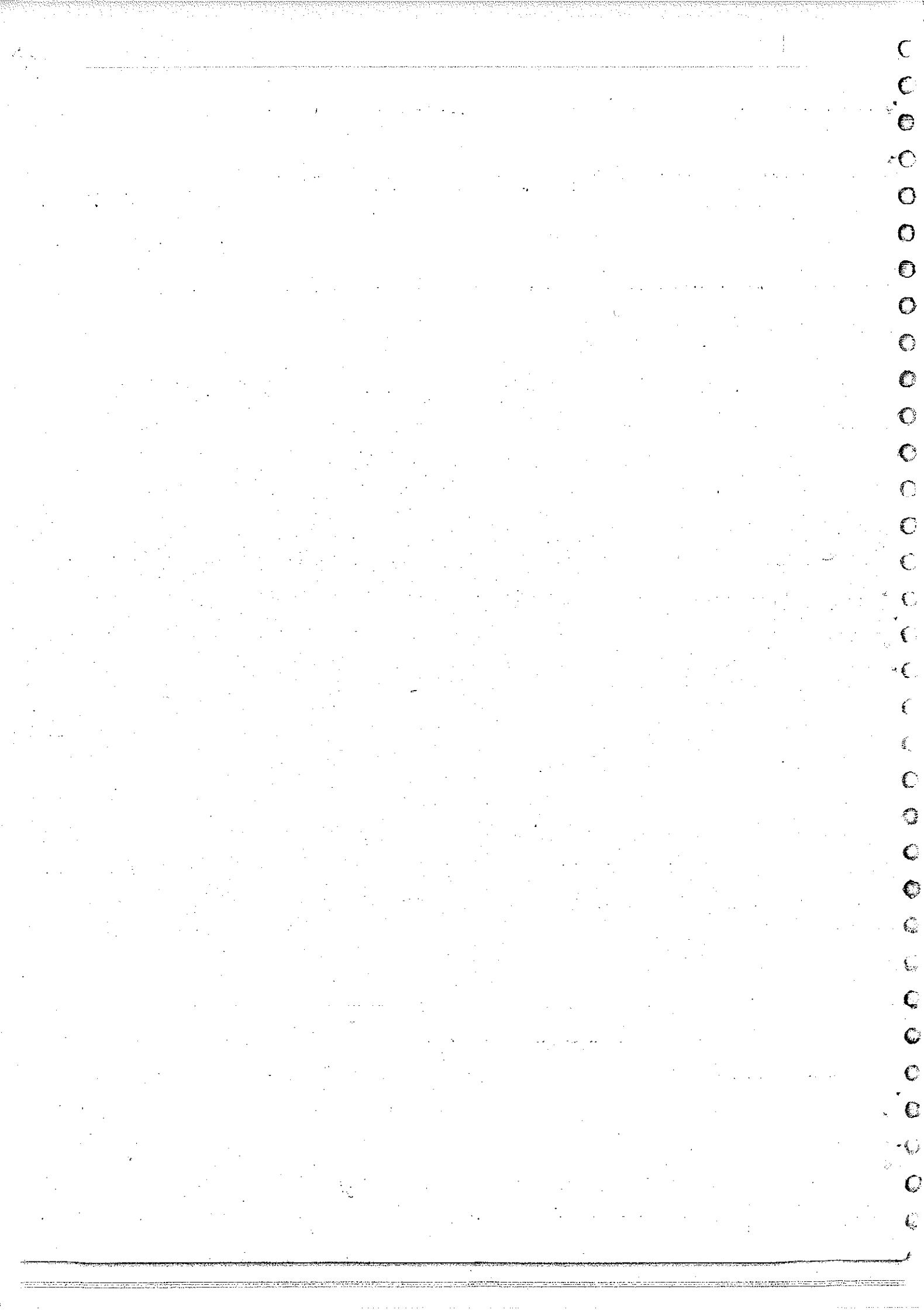
Case law

Thakori Lal D. Vadgama v. State of Gujarat

In Thakori Lal, the accused was charged for kidnapping a minor girl, Mohini below 15 yrs of age from lawful guardianship of her father under Sec 361, IPC. It was established that the accused had at an earlier stage solicited or induced mohini to leave her father's protection by conveying or indicating an encouraging suggestion that he would give her shelter. Holding the accused liable for kidnapping under Sec 361.

Judgement

The Supreme court said that mere circumstances that his act was not immediate cause of leaving her parental home or guardian's custody would constitute no valid defence and would not absolve him from the offence of kidnapping.



Q. What is private defence / When does it extend causing the death of assailant

Introduction

Meaning Sec 96 & 97 / Definition.

Right of private defence under innocent person

- Sec 99 : Limitation

Grounds for private defence for killing assailant in case of body.

- Wherever there is apprehension of immediate death
- the assailant is to cause grievous hurt
- probable rate could be committed
- ratiocinate unnatural lust
- probability of kidnapping or abduction
- wrongful confinement
- acid attack

- When does private defence commence and continue as to resulting apprehension or potential of the assailant

- Right of private defence in unavoidable use where the innocent person is said to be harmed.

Introduction :-

Sec 96 to 106 of Penal code states the law relating to the right of private defence of person & property.

- The provisions contained in these section give authority to man to use necessary force against an assailant or wrongdoer for the purpose of protecting one's own body & property as also another body & property immediate aid by state machinery not readily available.

- Self help is the first rule of criminal rule.

- It is a right inherent in a man.

- The use of force to protect one's property & person is called right of private defence.

Definition :-

Sec 96 : Things done in private defence -

Nothing is an offence which is done in the exercise of the right of private defence.

Sec 97 : Right of private defence

of the body and of property -

every person has a right, subject to the restriction contained in Sec 99 to defend :-

First - His own body and the body of any other person, against any offence affecting the human body.

Second - The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

Right of private defence under same person :-

Sec 98 lays down that for the purpose of exercising the right of private defence, physical or mental capacity of person against whom it is exercised.

- The right of private defence of body exists against all attackers whether with or without mens rea

- When an act, which would otherwise be a certain offence, is not offence by reason of youth, the want of maturity of understanding, the unsoundness of mind or intoxication of person doing the act, by reason of any misconception on part of that person, every person has right of private defence against which he would have if act were that offence.

Illustration :-

~~Illustration~~ A enters a house by night of which he is legally entitled to enter Z in good faith, taking A for house breaking, attacks A. Then Z by attacking A under the misconception commits no offence. But A has same right of private defence against Z, which he would have if Z were not acting under misconception.

Limitation :-

This section 99 limitation when act against whom there is no right of private defence are :-

Firstly, it applies to the cases of public servant acting in a good faith under the colour of his office through his act.

may not be strictly justifiable by law

(e) - Secondly, speaks of act done under the direction of public servant:

"An illegal issued warrant cannot be executed, if a person to whom it is to be executed resists his resistance is justified & right of private defence is available.

- Thirdly, there is no right of private defence when there is time to have response recourse to protection of public authorities.

- Fourthly clause lays that extent Right which Right of private defence may be exercised.

The measure necessary of self defence always be force necessary & proportionate to quantum of force used by attacker.

Grounds of private defence for killing assailant in case of body :-

The Section lays down that the Right of private defence of the body extends to

causing even the death of ~~and~~ the assailant :-

Such an assault as may be reasonably cause the apprehension that death will be otherwise be the consequence of such death

- Such an assault may be reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault

- An assault with the intention of ~~giving~~ gratifying the unnatural lust

- An assault with the intention of kidnapping or abducting

- An assault with the intention of wrongfully confining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authority for release

- An act of throwing or administering acid or an attempt to throw or administer acid when

may reasonably cause the apprehension
the grievous hurt will otherwise
be the consequence of such act

~~Commencement and continuance of
Right of private defence by property
See 103 : The right of
Private defence of property commences
when the reasonable apprehension
of~~

Commencement and continuance of
Right of private defence of body.

See 102 : The right of
private defence commences as soon
as the reasonable apprehension of
danger of body arises from an
attempt or threat to commit
the offence, though the offence
may not have been committed.

It continues so long
as such apprehension of danger
to the body continues

Right of private defence is unavoidable use where the innocent person is said to be harmed

Sec 106 says that "If in the exercise of the right of private defence against an assault which reasonably cause the apprehension of death, the defender be so situated that he cannot effectively exercise the right without risk to harm to an innocent person, his right to private defence extends to the running of that risk"

Illustration

A is attacked by a mob who attempt to murder him. He cannot effectively exercise his right of private defence without firing on mob and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing harms any of the children.

Case law :-

Ram Kishan and Ors v. The state of Rajasthan on 2007

It was held that there is no right of private defence in cases in which there is no time to have recourse . . . further provided that there is no right of private defence in cases in which there is time to have recourse

Kashi Ram & others v State of Rajasthan
2008

It was held that there is no right of private defence in cases in which there is time to have recourse . . . right may be exercised . The right of private defence in no case extends to inflicted of more than harm than

Conclusion

The right of self defence must be fostered in the citizen of every country . The right is recognized in every system of law which entails various in inverse ratio of capacity of state to protect life & property of citizen

Free

summar

Cesare Lombroso: Founder of modern criminology

Positive school.

New trend 19th century, positive school

free will emerged

Lombroso,

Pioneer of positive school or Italian school

- Criminal study, hereditary criminals

- Insane criminal, criminoids

bound, insane habitual, occasional

Enrico Ferri -

or

2nd

Typological

Total permissible deduction of any
employed person shall not exceed

such deduction wholly or
partly made payment
of co-operation societies
75% of such wages

in any other case
50% of such
wages.

Consequences of unauthorized deductions

Compensation

claim application
file before authority
under this act by
employer for
unauthorized
deduction of payment
of wages by employer

The authority or prov is
authorised to grant a
compensation not
exceeding 10 times the
amount deducted -