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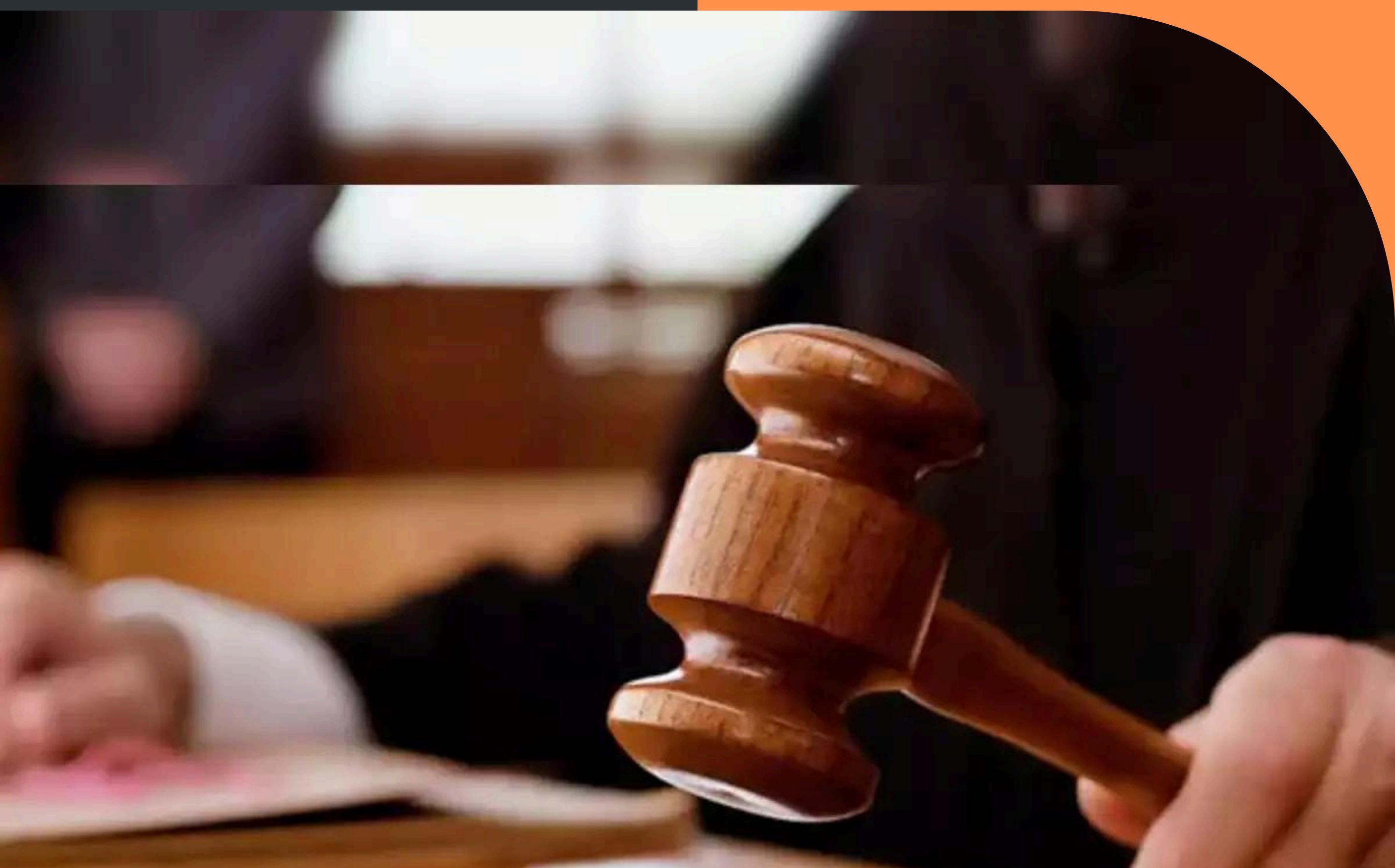
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SMART NOTES ON BNS

NEW CRIMINAL LAW

BY AMARESH PATEL

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PRESENT

Indian Penal code

Smart Notes on Indian Penal Code
(With Landmark Case Laws)

CHAPTER I: INTRODUCTION AND

BACKGROUND

- ✓ The Indian Penal Code is one of the most unique and Spectacular Penal Law Code entailing a number of crimes, their scope, nature and punishments thereof.
- ✓ It is best-taken care in the hands of Judiciary, Law practitioners, academicians, students and law learners.
- ✓ The Indian Penal Code indirectly owes its origin to Jeremy Bentham, who is a well-known jurist on the subject of law reforms. T
- ✓ The basic premise of the substantive law Code is very much influenced by the British law; however, elements from the
- ✓ Napoleonic Code (1804) and Louisiana Civil Code (1825) have also been derived. The Code is all around recognized as a pertinently drafted code, relatively revolutionary. It has considerably survived for more than 150 years in a number of jurisdictions without major corrections or amendments.
- ✓ The Indian Penal Code was enacted in the year 1860. In the midst of cataclysmic upheavals, social and political, it stands as a tribute to the genius of LORD MACAULAY who, as the president of the First Indian Law Commission constituted in 1834, said: “Our principle is simply this- uniformity when you can have it; diversity when you must have it; but, in all cases certainty.”
- ✓ The Indian Penal code is a role model in the matter of certainty. During the 143 years of its existence on the statute book, it has undergone the last number of amendments. Indeed, rarely one comes across a judgment stressing the need to fill in any lacuna in the Penal Code due to ambiguous language or otherwise.

DEFINITION OF CRIME BY PROMINENT JURISTS

Bentham: Offences are whatever the legislature has prohibited for good or for bad reasons according to the principles of utility, we give the name of offence to every act which we think ought to be prohibited by reasons of some evil which it produces or tends to produce.

Henry Maine: An ancient time, penal law is not the criminal law, but it is wrong law.

Blackstone: Crime is an act committed or omitted in violation of public law either forbidding or commanding it.

Austin: A wrong which is pursued at the discretion of the injured party and his representative is a civil injury. A wrong which is pursued by the sovereign or his subordinate is a crime.

Stephan: Crime is an act forbidden by law and which is at the same time revolting to the moral sentiments of the society.

Kenny: Crimes are wrongs which sanction is punitive and is no way remissible by any private person, but is remissible by crown alone, if remissible at all. Here sanction means punishment and remissible means pardon by crown.

Keeton: A crime would seem to be any undesirable act which the State finds it most convenient to correct by the institution of proceedings for the infliction of a penalty, instead of leaving the remedy to the discretion of some injured party.

Millar: Crime is to be commission or omission of an act which the law forbids or commands under pain of a punishment to be imposed by the State by a proceeding in its own name.

Section 1 IPC (S.1 BNS): Title and extent of operation of the Code.

This Act shall be called the Indian Penal Code, and shall 1[extend to the whole of India 2***.]

1. The Original words have successively been amended by Act 12 of 1891, s. 2 and Sch. I, the A.O. 1937, the A.O. 1948 and the A.O. 1950 to read as above.
2. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10- 2019).

Extra Territorial Jurisdiction under IPC

- Before talking about extra territorial jurisdiction, it is important to understand what the word jurisdiction exactly means under IPC.
- The word jurisdiction comprises two different words, juris which means law and dicer which means to speak. In simple words jurisdiction means authority or power given to various legal bodies so that It can provide justice within their defined field of authority.
- Legal body includes all courts, governmental and political bodies. Now a question might arise why the concept of jurisdiction was introduced: this was done so that all the legal bodies would

know about which matters they have to adjudicate and also to ensure that the courts do not overstep their boundaries in any manner.

- Under IPC there is Territorial Jurisdiction which is further subdivided into two other jurisdictions:
 1. Intra-territorial jurisdiction
 2. Extra-territorial jurisdiction

Intra Territorial

Extra Territorial

INTRA TERRITORIAL JURISDICTION

Section 2 [S.1(3)]- Punishment of offences committed within India:

Every person shall be liable to punishment under this code and not otherwise for any act or omission contrary to the provisions thereof, of which he shall be guilty within.

Section 5-

This section is an exception to section 2, section 5 of the code, which is saving clause to section 2 and excludes the operation of the IPC in those cases where separate provisions have been made by a special or local law to deal with such offences mentioned therein, reads:

Certain laws not to be affected by this Act- Nothing in this act shall affect the provision of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law.

EXTRATERRITORIAL JURISDICTION

Definition

A particular crime is considered to be extra territorial in nature when it happens in a particular country but the trial takes place in some other country.

Section 3 and 4 of IPC deals with extra territorial jurisdiction.

Illustration- B, a citizen of India, commits a murder in London. He can be tried and convicted of murder in any place in India in which he may be found.

Section 3 [S.1(4)BNS]

Punishment of offences committed beyond, but which by law may be tried within India- Any person liable by any Indian Law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this code for any act committed beyond (India) in the same manner as if such act had been committed within.

Section 4 [S.1(5) BNS] Extension of code to extraterritorial offences-

The provisions of this code apply also to any offence committed by: Any citizen of India in any place without and beyond India. Any person on any ship or aircraft registered in India wherever it may be. Any person in any place without and beyond India committing offence targeting a computer resource located in India.

Scope of Section 3 and Section 4:

There are 2 conditions that are required to be fulfilled before section 3 can be imposed are as follows:

Firstly- There should be an allegation that no matter whether a citizen of India or not has committed a crime outside India which if committed in India would be punishable under IPC.

Secondly- That person is liable under some Indian Law to be tried in India for that offence. When both these conditions are satisfied the accused person is required to be dealt with according to the provisions of the IPC in the same manner as if the particular crime had been committed in India.

IMPORTANT CASE:

Rao Shiv Bahadur Singh v. State of Vindhya Pradesh

In this case, Shiv Bahadur Singh and another person were the Minister for Industries and secretary to the Industries Department of the then United States of Vindhya Pradesh. The state of Panna was one of the component states of Vindhya Pradesh. Diamonds are extensively found and mined in a place called Panna. In 1936, The Panna Durbar entered into a 15-year lease contract with the panna diamond mining syndicate to operate the diamond mines. In October 1947 when the above mentioned two persons were the minister and secretary, the permission to mine was abruptly terminated on the ground that the syndicate was not carrying on the operations in a proper way.

By February 1949 it was alleged that the two persons had conspired together and were demanding money for the purpose of revoking the cancellation orders. They were also alleged to have received

illegal gratification up to Rs 25000 at the constitution house, Delhi. However, they were acquitted by the trial court, however the appellate court convicted them and sentenced to three years imprisonment.

Also, it was said by the supreme court that though the offence of giving gratification money took place outside the state of panna sections 3 and 4, IPC clearly covered the field and when read with section 188 of CPC permitted the prosecution to be launched against the appellants. Hence the conviction of the appellants including extra territorial offence said to have been committed by the first appellant was held not open for challenge.

About liability of a foreigner for offences commit in India

An Indian citizen is held liable for prosecution for anything done in foreign land if the act committed is an offence in India, although the same may not be an offence in the foreign country where it is committed. Likewise, a foreigner even if he had not been in India at the time the actual occurrence took place would be still liable if the act was completed in India.

In the case of Mubarak Ali,

The following things were held by Supreme Court:

A foreigner who commits an offence within India is guilty and can be punished as such without any limitation as to his corporeal presence in India at the time.

Section 2, IPC applies to a foreigner who has committed an offence within India notwithstanding that he was corporeally present outside.

Being a foreign national does not imply that the foreigner will not be liable for criminal acts in the country. In fact, nationality cannot be a limiting principle in respect of criminal jurisdiction which is primarily concerned with security of the state and of the citizens of the state.

ESSENTIAL ELEMENTS OF A CRIME

1. Human Being
2. Guilty intention or mens rea
3. Act/omission or Actus reus
4. Harm or injury

Human Being

Act/Omission
or Actus\Reus

Guilty Intention
or Mens Rea

Harm or Injury

1. Human Being

Under Ancient Indian Law, animal tribes were prevalent and animals were tried and punished for committing crimes. With refinement in the idea of mens rea as an essential element of crime, it was realised that animals could not be convicted for committing crimes and since then it has been accepted that there must be a human-being to commit a crime. The human being must be able to understand the nature of punishment which he is going to suffer for committing the crime i.e. he must not be an infant or insane person. Thus, there must be a normal adult human being to commit a crime. The other requirement of a human being is that he must be under a legal obligation to obey the law.

In ancient times, an out -law i.e. a person who has been exiled from society, could not be held guilty because he was not a member of the society. But the institution of out-laws, has now been abolished and now each and every member of the society is under a legal obligation to obey the law. But at the present time, certain persons are exempted from criminal liability, such as the President of India, Foreign Sovereigns visiting India and their Ambassadors visiting India.

Barring these specific exemptions each and every normal adult human being can be held guilty for committing a crime.

Criminal liability of a company or corporation

The following difficulties were felt in the beginning in holding a company or a corporation for committing a crime:

- i) Since the company was no body of its own, it could not be imprisoned or hanged and therefore it could not commit a crime.
- ii) Since a company had no mind of its own, it could never have a guilty intention or mens rea which is an essential element of a crime.
- iii) Since a company can act only through its agents or servants, the liability of a co. would be vicarious and there was no place for vicarious liability in criminal law.
- iv) A company can never authorise the commission of a crime because it would be beyond the legal capacity of a company.

However, during the course of time, all these difficulties were resolved. Firstly, it was held in *R vs. Birmingham Railway Co.* (1842) 3 QB 223. The Railway Company was lined up for committing a public nuisance i.e. for obstructing a highway.

In R vs. Great North of England Railway Company, it was held that if a statutory duty was cast upon a company or corporation and it failed to do that duty penal liability be imposed and in this case, the Railway Company was held liable for not repairing a highway.

In the meantime, an important development took place in the Law of Torts. In Leeward Carrying Company vs. Asiatic Petroleum Company (1950), Viscount Haldane, J., made a distinction between superior officers and the servants or minor officers of a company and he said that the intention of the superior officers i.e. the directors can be attributed to the company itself because they are the directing minds of the company itself i.e. the very ego and centre of the personality of the company and the corporation.

The Alter Ego Doctrine was extended to criminal law on 1944 in R vs. ICR, Haulage Ltd. Case and since then, companies have been held guilty even for the crimes which require specific guilty intention.

In Artisan Press Ltd. vs. State of M.P., the company was fined for entering false weight in the weight of the consignment in the transport papers. Similarly, a company was fined for filling false income-tax return. Thus a company can be guilty for the crime requiring criminal intentions.

But the Bombay High Court in 1965, in Messer Syndicate Transport Private Limited has clarified that a co. cannot be held guilty of those crimes which can be committed only by human individuals such as rape, bigamy, murder, burglary etc.

Similarly, a company cannot be held guilty for those crimes which are punished by death or imprisonment but a company can be held guilty for those crimes which are punished exclusively or alternately with fine. The word human-being has not been defined in the IPC but the words man and woman have been defined. Section 11 of the IPC defines the word 'person' and it says that the word 'person' includes any company or association or body of persons whether incorporated or not.

2. **Guilty intention or mens rea** (separate notes are also being provided for this topic and Actus reus)

'Actus non facit reum nisi mens sit rea': The act itself does not make a man guilty of a crime unless his intention is also guilty. This maxim has been borrowed from 'Moral Theology' by Lord Edward Coke and applied to common law crimes and since then, it has been uniformly applied in common law crimes.

APPLICATION OF THE DOCTRINE OF MENS REA IN CRIMES IN ENGLAND

The application of the doctrine of mens rea in statutory offences in England remained uncertain till 1946. In the very first case of R vs. Prince (1875), the accused was charged for taking away an unmarried girl Annie Phillips aged 14 years of age without the consent of her father.

Under Section 55 of the 'Offences Against the Person Act, 1861', it was an offence to take away any unmarried girl below 16 years of age without the consent of her father or mother or lawful guardian. In this case, the girl herself told Prince that she was 18 years of age and she also physically appeared to be of 18 years of age. The jury also found upon evidence that the girl went with Prince willingly and Prince bona fide believed that she was of 18 years of age and such a belief was reasonable.

It was argued on behalf of Prince that the common law doctrine of 'mens rea' should also be applied under Section 55 and he should not be convicted because he had no intention to commit the offence. Only J. Brett accepted this argument and held that Prince was not guilty as he had no intention to commit the offence. J. Beramwell made a distinction between offences which are *mahim in se* (both legal as well as moral wrongs) and offences which are *mahim prohibitum* (only legal wrongs) and he said that for offences which are '*mahim in se*' mens-rea would be presumed and need not be specifically proved by the prosecution and since Prince has committed an immoral act in taking away an unmarried girl, his mens rea under Section 55 would be presumed and he was guilty.

J. Demon expressed the view that since Prince had knowingly committed a tort (seduction) this would be sufficient mens rea under Section 55 and he was guilty. But all other judges expressed the view that since the legislature have punished this act irrespective of mens rea according to the language of section, the accused was guilty and the doctrine of mens rea shall not be applied in this case.

This case has been criticised by many authors including Russel as unsatisfactory and in conflict with established principles of criminal law. However, Professor Jerome Hall has expressed view that the judges in this case were influenced by the concern for the protection of young girls from sex-offenders and they must be protected the indignation with the general public.

In R vs. Tolson (1889), Martha Ann Tolson was married to Kelly Tolson in 1880, and in 1881, he left for America. She and her father made enquiries about him and learned from his elder brother and from the general reports that Tolson had been lost in the ship bound for America. In January 1887, Mrs. Tolson supposing herself to be a widow, married another man. All these facts were known to the second husband and the second marriage was not a secret one. Kelly Tolson was alive and he returned from America in December 1887. Mrs. Tolson was then charged for the offence of committing bigamy under section 57 of the 'Offences Against the Person Act, 1861' which punished a person, who shall marry any other person during the life of the former husband or wife.

Upon the words of the Section, it was apparently immaterial whether the parties or either of them knew or did not know that the former wife or husband as the case may be was or was not alive. The question again arose whether mens rea did form a part by implication in the definition of bigamy. At the trial, the court gave a direction to the jury that a belief in good faith and on reasonable grounds that her husband was dead would not be a defence to the charge of bigamy. The jury found her guilty and the judge sentenced her to one-day imprisonment.

The accused then appealed on the ground that the direction to the jury was wrong, as it involved the question of mens rea. The question before the court of appeal was whether the conviction could be upheld in face of the fact that she had made enquiries and she had every reason to believe that her husband was dead and that she had no intention to commit the offence of bigamy. The court of appeal quashed the construction of the trial court by a majority of 9-5 judges and held that a bonafide belief on reasonable ground in the death of the husband at the time of the second marriage was a good defence to the charge of bigamy.

J. Cane observed: "At common law, an honest and reasonable belief in the existence of circumstances which if true, would make the act an innocent one, would make the act an innocent

one has always been a good defence. This doctrine is embodied in the maxim – actus non facit reum nisi mens sit rea. Honest and reasonable mistake in fact stands on the same footing as an absence of reasoning faculty as in case of lunacy. So far as I am aware, it has hence been suggested that these exceptions do not equally apply in cases of statutory offences unless they are excluded, either expressly or by necessary implication.”

Thus, in this case it was held that the doctrine of mens rea shall apply to statutory offences as well, unless excluded either expressly or by necessary implication. Thus, in R vs. Prince, the doctrine of mens rea was not applied and in R vs. Tolson, it was applied.

Again in R vs. Wheats and Stoks (1921), it was not applied. In this case, the accused Wheat, a man of little education instructed his solicitors to obtain a divorce from his wife and received a letter from the solicitors that he would receive necessary papers for signature. As soon as Wheat signed those papers, he thought that the divorce was complete and he married Stoks. He was tried for bigamy and was held guilty, as there was no sufficient evidence to show that he had reasonable grounds for believing that he had been divorced from his first wife.

The court further observed that even a reasonable belief that the first marriage has been dissolved in the circumstances would be no defence to the charge of bigamy. The court also observed that the observations of J. Cane in R vs. Tolson were too wide for general application and the accused was guilty.

By the year 1936, the courts generally refused to look into the criminal intention in statutory offences and Prof. Stallybeas has remarked that the doctrine of mens rea in statutory offences in England has come under eclipse. But the doctrine of mens rea was again restored by the House of Lords in 1946 in Brend vs. Wood. Lord Chief Justice Goddard observed,

“It is of the utmost importance for the protection of the liberty of the subjects that the court should always bear in mind that unless a statute either expressly or by necessary implication rules out mens rea as a constituent part of crime no person should be found guilty unless he has the guilty mind”.

The court also approved the observation of Cane J. in *R vs. Tolson* and since then even in statutory offences the doctrine of mens rea has been applied.

APPLICATION OF THE DOCTRINE OF MENS REA IN INDIA

The application of the doctrine of mens rea in other Penal Codes except the IPC is based upon the decision of House of Lords in *Brend vs. Woods*. That is unless the statute either expressly or by necessary implication rules out mens rea as a constituent part of a crime no person shall be guilty unless he has a guilty mind.

The Supreme Court has followed this decision in *State of U.P. vs. Hari Prasad Rao* in 1951 and since then there are a number of cases following this decision.

Dr. H.S. Gaur and Ratanlal have expressed the view that the maxim ‘actus non facit reum nisi mens it rea’ has no application to the offences under the Indian Penal Code. This view was based on a distinction between common law offences and the statutory offences under English Law. The doctrine of mens rea has been incorporated into the Indian Penal Code in the following two ways:

1. Care has been taken in defining offences under the Indian Penal Code so as to include the necessary criminal intention required for that offence in the definition itself. It has been done by using such words as intentionally, dishonestly, fraudulently, voluntarily, knowingly. This was not done in the definition of offences in English law which gave rise to conflict of judicial opinion from *R vs. Prince* to *Brend vs. Woods*. However, in certain sections, words defining mens rea have not been given but the nature of offences in those cases is such that no innocent person can commit them. For example, waging war against the government or counterfeiting of coins. (In such cases, mens rea is not required)
2. Chapter IV of the IPC [Sections 76 -106] lays down general exceptions which can be pleaded by an accused person as a defence in any criminal charge. These exceptions relate to mistake of fact, accident, infancy, insanity, intoxication, necessity, compensation, consent, right of private defence etc. These exceptions contain certain situations where law presumes absence of a guilty intention or the act is justified under the circumstances.

Thus, the doctrine of mens rea has been fully incorporated into the Indian Penal Code by these two methods. Mr. M.C. Setalwad in his book ‘Common Law in India’ has termed it as a modification of common law worked into the IPC by Macaulay and the colleagues.

3. Act or omission

Act or omission i.e. the physical event (i.e. the external manifestation of mens rea) i.e. Actus reus. In the words of Prof. Essor Jeram Hall “something more is required in addition to a mens rea to produce a criminal hurt i.e. there must be manifestation of ‘mens rea’ in the external world”. Professor Kenny for the first time used the word ‘Actus reus’ and defined it as a result of human conduct which the law seeks to prevent.

In this sense, the word ‘Actus reus’ not only includes the act or omission but also the resenting harm and injury. Russel calls it the physical event but this third essential element requires that there must be some ordered act done or there must be illegal omission – which means that there must be some positive legal duty to do something and a person intentionally omits to do it.

Section 32 of the IPC has clarified that the words which extend and refer to acts done includes illegal omissions. Section 33 further explains that the word ‘act’ denotes as well as a series of acts as single act and the word ‘omission’ denotes as well as a series of omissions as a single omission. Thus, an offence may be committed by means of a single act or by a single omission and partly by an act and partly by an omission. Similarly, an offence may be committed by a series of acts or partly by a series of omissions.

4. Injury

The fourth essential element of crime is that as a result of the act or omission there must be some injury or harm to some person or to the society at large. A notion of harm has a very significant place because it represents certain values, prescribed by Penal Law. If the notion of the harm is kept in view then it is easier to infer the intention of the accused person. Section 44 of the IPC has defined the word ‘injury’ as any harm whatever illegally caused to any person in body, mind, reputation or property.

WORDS DENOTING MENS REA IN THE

IPC

1. VOLUNTARILY

Section 39 [S.2(33) BNS] of the IPC defines the word 'voluntarily' – "If he causes it with the intention to cause it or by means which he at the time of employing those means knows is likely to be caused it, or cause it, or has reason to believe that such act is likely to cause that effect." The word 'voluntarily' has been used in several sections of the Penal Code including Sections 186, 322, 321, 323.

2. DISHONESTLY

Section 24 [S.2(6)] says that, "If a person does anything with an intention to cause wrongful gain to one person and wrongful loss to another, acts dishonestly." Section 24 says that wrongful gain is a gain of property by unlawful means to which the person gaining is not legally entitled. Similarly, wrongful loss means loss by unlawful means of property to which the person losing is legally entitled. Gaining wrongfully means that a person either acquires wrongfully or the rightful owner is wrongfully kept out of any property or is wrongfully deprived of the property.

Thus, the word dishonestly has been used in a technical sense, only in relation to property and that too when it causes with wrongful gain or wrongful loss and it has nothing to do with honesty.

If 'A' retains cattles of 'B' in order to compel 'B' to pay his debts he is guilty of theft because he has caused wrongful loss of property to 'B' and has acted dishonestly. (A.L. Mehra vs. State of Rajasthan AIR 1957 SC)

3. FRAUDULENTLY

Section 25 [S.2(8)] says that a person is said to do a thing fraudulently if he does that thing by which he intends to defraud but not otherwise. The word 'fraud' has not been defined in the IPC and it is not easy to define fraud exhaustively so as to include all possible cases of fraud. Sir Stephen has also remarked that there is great reluctance among the lawyers to define 'fraud', but if the term 'fraud' is analysed then two essential characteristics are always found:

1. Deception i.e. saying something as true when in fact it is not true. The deception need not always be expressed. It may be implied from the circumstances.

- With the intent to cause an injury or infraction of the right of some other person. Thus, every deception per se is not fraud unless it is accompanied with an intention to cause an injury.

In Dr. S. Dutt vs. State of U.P., the Supreme Court has explained that the intent to defraud in section 25 does not mean a bare intention to deceive. It means that as a result of the deception, a person does an act, or omits to do something resulting in loss or injury to him. A person forged a diploma of college of surgeons with the object of inducing a belief that the document was genuine and that he was a member of that college. He showed that diploma to one or two persons which intended to induce that belief in them. It was held that he did not intend to defraud, though he intended to deceive (R vs. Hedgesen).

In Sashibhushan vs. Emperor, the accused applied for admission to the LL.B final class to the principal-Queens college, Banaras stating that he had attended the LL.B first year class in Canning College, Iko, he was admitted to the LL.B (final) class on condition that he produces a certificate from the principal, Canning College, (Iko), that he had attended LL.B (previous) class. He produced a forged certificate shown to have been signed by the Principal Canning College, Iko. It was held that he had committed forgery because he was saving on a year's fee illegally and causing a loss of one seat of Queens College, Banaras.

There is a distinction between fraudulently and dishonestly. Fraudulently necessarily involves deception while dishonestly does not. Dishonestly necessarily involves wrongful gain or wrongful loss of property, but fraudulently involves wrongful gain or loss and also injury of any other kind. The word 'fraudulently' has been used in Sections 206, 207, 208, 210, 239, 240, 242, 243, 250, 251, 252, 253, 261, 262, 263, 264, 265, 432 and 435. The words 'fraudulently' and 'dishonestly' have been jointly used in Sections 209, 246, 247, 415, 421, 422, 423, 424, 464, 471 and 496.

ELEMENTS OF CRIMINAL LIABILITY

There are two essential elements to establish penal liabilities:

- Actus reus and
- Mens rea

Actus reus is the physical aspect of the crime whereas mens rea is the mental element involved in a crime.

Intra
Territorial

Extra
Territorial

ACTUS REUS

Actus reus is the physical result of conduct and defined as “such result of human conduct as the law seeks to prevent”. The term Actus reus derived from words, “Actus” meaning human conduct and “reus” meaning forbidden by law connotes, doing of an act which is legally prohibited. Actus reus is the result of conduct and not the conduct itself which produced the result. For example: In a case of murder, it is the death of the person which is Actus reus, and not the physical act of killing.

Actus reus has three requirements:

1. Human action/conduct:

- a) Conduct should be voluntary: e.g., shooting done by an epileptic person under a fit of epilepsy, resulting in the death of a person is not a crime as it was done involuntarily.
- b) The conduct can be one of commission or of omission: commission can be any actual physical causative act. For e.g.: shooting, striking, etc. Omission can be the refraining of the accused from doing a certain thing/act (which he is bound to do by law) knowing that this would cause injury to someone.

E.g.:

- i) A jailor, who does not provide food to his prisoners and some of them are starved to death, commits a crime.
- ii) A railway-crossing gatekeeper who does not close the gate and collision takes place, he is held guilty of negligence.
- c) The Act is not limited: rather, there can be a series of acts. Section 33, I.P.C, explains this, e.g., in a case of murder by shooting, the various acts, such as purchasing the gun, purchasing the cartridge, loading the gun, aiming, pulling the trigger... etc. together constitute the act.

2. The result of the act (under the given circumstances), generally called an injury

Crime is constituted by the event/result and not by the activity itself. E.g., X shoots at Y, intending to kill him but Y is not killed. The accused will not be charged of murder; rather he will be charged of attempt to murder. The question ‘how’ is important only for fixing the criminal liability.

3. Forbidden by law:

e.g. X kills Y, but X is a hangman. His killing of Y is not forbidden by law; hence, he has not committed a crime here.

Omission can be put into two groups, viz, (1) those forbidden by law (jailor/gatekeeper examples), (2) and those not forbidden by law e.g. a gold medalist swimmer sees a child drowning but doesn't rescue, the child dies, hear the person doesn't commit a crime as his omission was not forbidden by law.

MENS REA

Mens rea is the second essential ingredient in crime. The term Mens rea derived from words, "mens" meaning mental element and "rea" meaning forbidden by law connotes the mental or psychological element involved in an act prohibited by law. It is generally referred to as "guilty mind or evil intention."

Granville Williams defines mens rea as follows: "Mens rea refers to the mental element necessary for the particular crime and this mental element may be either intention to do the immediate act or being about the consequence or recklessness as to such act or consequence". Mens rea is thus, the attitude of mind which actuates the conduct which results in Actus reus.

Significance of mens rea

Significance of the concept of mens rea is that no act is per se criminal unless it has a guilty mind behind it.

Tips as to infer mens rea from evidences:

1. Act should be voluntary: E.g. some dacoits put a pistol on a blacksmith's temple and force him to break open the lock of a godown here the blacksmith is not guilty as he has done the act involuntarily. However, if he also had some intention of stealing things from the godown he would be held guilty.

2. Foresight/knowledge: If the knowledge is missing, the intention is missing, then there shall be no crime E.g. A shoots a tiger (in a jungle) but tiger escapes and B who was behind the bush is hit and is killed, as A did not have the knowledge of B's presence behind the bush, he did not intend to kill him and hence, no crime committed. However had the event occurred in a residential area or a park etc. the case would have been different in that case he would be presumed of knowing the co- incidental presence of someone.

Mens rea has not been defined in the IPC anywhere. However while defining the crimes, the court has incorporated the requirement of mens rea.

Tests for mens rea

The prosecution must establish the following in order to establish the mens rea:

- i) The accused's conduct brought about or contributed in a substantial degree to the consequences which amount to the Actus reus.
- ii) Conduct was voluntary.
- iii) At the time he was so conducting himself he realised that he would or might bring about consequences of that kind.

Motive: It is an attitude of mind i.e. the emotion prompting the act. Motive is irrelevant to the concept of mens rea.

Objective Standard of mens rea:

Rule: A person always intends the natural consequences of his act. Mens rea being mental element cannot be ascertained physically, thus, mens rea is ascertained by an objective standard of a reasonable man, placed in similar Situation. The objective standard is supported by the legal presumption that a man is always deemed to have intended the natural consequences of his acts.

For example: If X hits Y with an iron rod on Y's head, repeatedly, and causes Y's death, he shall be presumed to have intended that death will be the consequence of his act, and he shall not be allowed to contend, that he just intended to cause minor injury.

Director of Public Prosecution vs. Smith, 1960 All ER 161

In this case, the Accused Stole a car, and was chased by a police officer, who hung by the car, the accused drove the car rashly and the police officer was grievously injured and consequently died. The court, asked, whether he could, as a reasonable man, contemplate that grievous injury would follow, if yes, he would be liable for the death, because every person intends the natural and probable consequences of his acts. The House of Lords approved this rule.

In R vs. Faulkner, 1877: Parkes C. B. said "The law imputes to a person who wilfully commits a criminal act, an intention to do everything which is the probable consequence of the act constituting the corpus delicti which actually ensues. This inference arises irrespective of the particular

consequence which ensured being or not being foreseen by the criminal and whether his conduct is reckless or reverse.” This principle was affirmed in the Public Prosecution vs. Smith case.

In R vs. Lumley (1911): Avery J. also enunciated the same principle. This test of reasonable standard was modified in England by Section-8 of criminal Justice Act, 1967, which provides: “A court or jury in determining whether a person has committed an offence,

- a) shall not be bound in law to infer, that he intended or foresaw a result of his actions by reason only of its being a natural and probable consequence of those actions, but,
- b) shall decide whether he intend or foresee that result by reference to all the evidence drawing such references from the evidence as appear proper in the circumstances.”

Section was applied to decide the cases of:

In R vs. Lipman 1969 WCR, where the court held that the intention to create a dangerous situation which results in death, even if the latter was not intended or even anticipated is sufficient in manslaughter. **In R vs. Mrs. Hyam (1979)**, the court held that knowledge or foresight of the probable result is sufficient to constitute criminal intention, whatever the motive or desire.

STAGES IN THE COMMISSION OF CRIME

In the crimes which are committed at the spur of the moment or in the heat of passion, the distinct stages in the commission of crime are not apparent. But in pre-meditated crimes there are four distinct stages – I. Contemplation II. Preparation III. Attempt IV. Accomplishment

I. Contemplation

In the Ancient English Criminal Law, a mere intention to commit a crime was punished like a completed crime. But after sometime, Burdick observed that the doctrine that a mere intention amounts to a crime passed long ago and now even in order to constitute an attempt there must be something more than an intention to commit it. In Re Seinfeld (1784), Lord Mansfield observed, “so long as an act rests in bare intention only it is not triable”. Lord Chief Justice Brian also observed that a thought to a man is not triable because the devil himself knows not the thought of a person.

However, the law takes notice of the intention to commit crime if it is verbally expressed without committing any act in some cases as e.g. an agreement between two or more persons to commit a crime amounts to criminal conspiracy [Section 120 (A)] and it is punished even if no act is committed in pursuance of the agreement. Similarly, are the offence of criminal intimidation and criminal insult [Sections 503 and 506].

II. Preparation to commit a crime

Preparation means devising means always necessary for the commission of a crime. Generally speaking, a preparation to commit a crime is not punishable. But certain dangerous types of preparations are punished. For example, preparation to wage war against the government (Section 122), preparation to wage war against any friendly foreign country (Section 126), to commit robbery or dacoity (Section 399). These preparations are such which totally preclude any innocent person committing them and, therefore, such preparations are punished. Criminal liability starts from this stage and the law allows opportunity to repent from the crime only upto the stage of preparation.

III. Attempt

The word 'attempt' has not been defined in the IPC. According to Sir Stephen, 'an attempt to commit a crime is an act termed with intention to commit it and forming part of a series of acts which could constitute the offence if it were not interrupted'. Kenny describes certain crimes as incomplete crimes such as attempt, abetment, and criminal conspiracies.

J. Baron Park has said, "Acts remotely leading towards the commission of an offence are not to be treated as an attempt to commit it. But acts immediately connected with it are."

Lord Bishop has observed that an attempt is an intended, apparent and an unpunished crime.

Thus, if an attempt is analysed, three characteristics or three essential documents are formed:

a) An intention to commit a crime.

b) Some overt act must be done towards the commission of the crime

i.e. an attempt is not possible by an offence which is committed by an omission because such omission constitutes a completed offence. (This is not hundred percent correct).

c) The act done must fall short of the completed offence.

The IPC deals with attempt in the following three ways – 1. In some cases, the completed offences and their attempts have been provided under the same section and same punishment is given for both. In some other cases, the completed offence and its attempts are dealt with side by side in different sections and different punishments are provided for them.

There are only four such types of attempts –

a) Attempt to murder (Section 307) and murder punished (Section 302).

b) Section 304 punishes culpable homicide. Section 308 punishes attempted culpable homicide.

- c) Section 392 punishes robbery and Section 393 attempted robbery.
- d) Section 309 punishes an attempt to commit suicide. (But 'suicide' as such is not punished anywhere; rather it cannot be punished also).

The Bombay High Court in 1986 had declared Section 309 of the IPC as unconstitutional in the case of **State of Maharashtra vs. Maruti Sripat Dubal**; because right to life under Article 21 of the Constitution includes the right to die. This view was accepted by the Supreme Court in 1994 but in 1996, the Supreme Court has reversed this view and has held in **Gyan Kaur vs. State of Punjab** that Section 309 is constitutional and right to life does not include a right to die under Article 21.

All the remaining cases of attempt are covered under Section 511 which is a residuary section. Section 511 says that if an attempt is not otherwise punished in the Penal Code, it shall be punished under Section 511 and the maximum punishment under this Section shall be one half of the maximum punishment prescribed for that offence. For the purpose of this Section, the half of life imprisonment is computed as 10 years of imprisonment.

Distinction between preparation and an attempt

The courts have adopted several tests to distinguish between a preparation and an attempt to commit a crime.

1. Locus Penintentiae Test

If the accused has the opportunity to repent or give up the idea of committing the crime, he is in stage of preparation, but if he has lost this opportunity, he is in the stage of an attempt. In *R vs. Taylor*, the accused purchased a matchbox from the market with the intention of setting fire to a haystack. It was held that he is in the stage of preparation, howsoever clearly, it might be proved that he intended to commit arson because he still has the opportunity to give up the idea of committing arson.

Even if he goes near the haystack with the matchbox in his pocket he will be in the stage of preparation. But if he bends down near the haystack and lights the match and then extinguishes it on noticing that he is being watched he is guilty of an attempt to commit arson, because he has lost the opportunity to give-up the idea of committing the crime.

In **Emperor vs. Dayal Bauri**, the accused was caught by villagers with a ball of rags fell down from his dhoti. It was held that the accused was still in the stage of preparation, as he still had the opportunity to give up the idea of committing arson. In **Emperor vs. Ram Saran**, the accused in order to forge a document in the name of 'X' set his servant 'S' asking him to misrepresent himself

as 'X' before the stamp window and procure the stamp paper in X's name. The servant was arrested and further progress was stopped. It was held that it is preparation.

In Emperor vs. Ramakhor, a woman on account of quarrel with her father and brother ran towards a well shouting that she would jump in it and commit suicide. She was caught when she reached the well. It was held that she is not guilty of an attempt to commit a suicide. She should have done something so that she may have fallen in it i.e. by trying to jump from the parapet wall.

In Vasudev Shai vs. Emperor, it was held that asking for a bribe amounts to an attempt to obtain bribe although the money asked may be refused. In Narayan Das Bhagwan Das vs. State of West Bengal, the accused was caught carrying Rs. 25,000 in two secret pockets of his trousers at the Calcutta Airport and he was held guilty of attempting to smuggle Indian currency out of the country.

2. Proximity Test

Under this test, an act constituted an attempt if the accused has completed all or almost all important or necessary steps towards the commission of the crime, but falls short of the consequences desired.

In R vs. White, the accused put two grams of potassium cyanite (KPN) in his mother's drink intending her to take it and be killed. It was held that he was guilty of an attempt to murder even though the quantity was insufficient to cause death. In Bashir Bhai Mohammad Bhai vs. State of Bombay, the three accused approached 'X' and told him that they were proficient in duplicating currency notes. 'X' mentioned it to 'Y' and both decided to trap them and inform the police.

The three accused came and asked for currency notes. As soon as they had taken the money, police entered the room and arrested all the accused persons. It was held that they were guilty of an attempt to cheat.

3. Mens rea test

Salmond has advocated this test. Under this test, if the act itself is a clear evidence of mens rea, it is an attempt and if the act itself is not a clear evidence of mens rea, it is preparation e.g. going to the market and purchasing poison is not clear evidence that the person intended to commit murder by poisoning and therefore it is preparation.

In State vs. Parasmal, 'A' went to petrol-pump to purchase diesel. He was asked by the dealer to come on the next day. The accused stayed near the petrol-pump during the night. The dealer mixed kerosene oil in it, to which 'A' objected and reported the matter. It was held that the dealer was guilty of an attempt to sell adulterated oil.

4. Social Alarm Test

Prof. Sayre of USA has advocated this test. In *Common Wealth vs. Kennedy*, 'A' and 'B' agreed to place a bomb on the railway track. When 'A' left his home on a bicycle with a bomb in pursuance of the agreement and immediately in front of his house he was arrested, it was held that he was not in the stage of preparation but has attempted to commit arson i.e. if the act causes social alarm it would be regarded as an attempt howsoever remote, it may be from the completed offence. However, the Allahabad HC has not accepted this test. In 1954, in *Emperor vs. Pannalal*, the accused took the girl on the roof of the house and tried to disrobe her and it was held that it was a mere preparation to commit rape and he was not guilty of an attempt to commit it.

MENS REA IN STATUTORY OFFENCES

Cases 1. Lim Chin Aik v. The Queen (1963) (Privy Council) Facts: By section 6 of the Immigration ordinance, 1952 of the State of Singapore, it was made unlawful for a person other than a citizen of Singapore to enter Singapore or having already entered, remain there, if he has been prohibited from entering the colony by an order made under Section 9.

Section 9 contained provisions as regards the publication or otherwise having attention of a class of persons against whom the order was made, but it did not contain any such provision against an individual. The appellant used to visit Singapore (where his family resided) from Malaysia. An order was passed prohibiting his entry into Singapore.

However, this order was neither published nor communicated to the appellant nor was there any source at the hand of the appellant to know of any such order. The appellant was arrested and prosecuted. Judgment: It is not enough to label the statute as one dealing with a grave social evil and from that to infer that strict liability was intended. It is pertinent also to enquire whether putting the defendant under strict liability would assist in the enforcement of the regulations.

There should be something that the defendant can do directly or indirectly, by supervision or inspection, by improvement of his business method or by exhorting those whom he may be expected to influence or control, which will promote the object of the regulation. Unless this is there, there is no reason for penalizing him, and it cannot be inferred that the legislation imposed strict liability merely in order to find luckless victim."

In the present case: The object of the statute was to prohibit the entry of certain people into Singapore. But this could be done only when such a prohibition order was brought to the notice of the person, or at least there was some scope for the person to himself know about it. But here the

immigration officer kept on sitting on the order and also there was no other means (like a Gazette) for the defendant to know about the order.

It is true that 'Ignorantia lex non excusat', but this maxim is limited in its scope to the extent of the person having some means to know the law. The appellant was not liable

Implications of the Judgment:

Adds a new dimension to the rule of construction of a statute in the context of mens rea accepted by earlier decisions. While it accepts the rule that for the purpose of ascertaining whether a statute excludes mens rea or not, the object of the statute with its wordings must be weighed. It lays down that mens rea cannot be excluded unless the person or persons aimed at by the prohibition are in position to observe the law or to promote the observance of the law.

State of Maharashtra v. M. H. George (1965, S. C.)

Facts:

The FERA, 1947, authorised the Central Government to notify order in the gazette prohibiting the bringing or sending of gold, silver, currency notes or bank notes into India except under a general or special permission from the RBI. Subsequently the RBI issued a general permission subject to the conditions that the articles in transit to some other country is not removed from the carrying ships or aircraft except for, transit purposes. The provision as to the punishment [Section 23 (1 - A)] did not mention any specific mens rea requirement, neither did they expressly rule out all mens rea requirement. On Nov. 8, 1962, the RBI published a new notification to the effect that a new clause was added: the article being carried was to be declared in the manifest for transit at the same bottom cargo or transhipment cargo. This notification was published in the official gazette on 24 Nov. 1962, from which date it became effective.

The accused (a smuggler of gold, as established from facts) boarded a Swiss plane at Zurich on Nov 27, 1962. He was bound to Manila but the plane while in transit landed at Bombay. It is also established that the accused did not try to come out of the plane. On prior information the Custom Officers searched the accused and found him carrying 34 kilos of gold on his person hidden inside specially carved out pockets in his jacket. The gold he was carrying was not declared in the manifest. He was arrested and prosecuted.

Accused's Contentions:

- i) Mens rea was an essential ingredient of Section 23(1-A). Since knowledge was absent he is not liable
- ii) RBI notification was a delegated legislation: Hence to be enforced from 24-11-62, when it was published in the gazette. Accused left on 27-11-62 and hence could not have known about the new notification.
- iii) The manifest requirement applied only to the gold handed over to the aircraft and not to the gold carried on the person of a passenger.

Judgment As to contention

The rules of presumption and construction:

Absolute liability is not to be lightly presumed but has to be clearly established. "It is of the utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, unless a statute, either clearly or by necessary implication rules out mens rea as a constituent part of a crime, a defendant should not be found guilty of an offence against the criminal law unless he has a guilty mind."

The rule as to constructing M. R. in Statutes Starting with an initial prescription in favour of the need for mens rea one has to ascertain whether the presumption is overborne by the language of the enactment read in the light of the objects and purposes of the Act, and particularly where the enforcement of the law and the attainment of its purpose would not be defeated in the event of such an ingredient being considered necessary.

Present Case: Absolute embargo on bringing or sending gold without permission: → No mens rea could be imputed. The only qualification that can be made are:

- 1) It should be voluntary
- 2) In exceptional cases when For example the aircraft not land to land in India had to make an emergency landing. The rule is 'Ignorantia lex non excusat' → and here (as opposed to Lim Chin Aik case), the notification was published in the Gazette and it was the duty (having an opportunity) of the accused to know the law of the Indian territory. (Else in India social milieu, there are areas where people don't and cannot, know the new notifications even after several months) → acquitting the accused in the present case would lay down a wrong precedent and any one can come and claim that

he did not know the new rule. Subject matter/object of legislation: \Rightarrow In light of the object (see previous matter) \rightarrow Provision ought to be stringent

Precedents:

- a) Regina/St. Margaret's Trust Ltd. (1958) Denvoian J.: There would be little point in enacting that no one should breach the defence against flood and at the same time excusing anyone who did it innocently.
- b) In R. V. Tolson (1889), Wills. J had held: "Although *prima facie* and as a general rule, there must be a mind at fault before there can be a crime, it is not an inflexible rule, and a statute may relate to such a subject matter and may be so framed as to make an act criminal whether there has been any intention to break the law or otherwise to do a wrong or not."

Held: The very purpose of the Act would be furnished if a condition were to be read in Section 8 (1) OR section 23 (1 – A) as that the accused should be proved to have the knowledge that he was contracting the law.

CHAPTER II: GENERAL EXPLANATIONS

SECTION 6 [S.1(6) BNS]– Definition in the code to be understood subject to exceptions-

Every definition, penal provision and illustration of all the offences covered under this code should be read as a subject to the relatable exceptions, mentioned in chapter IV- General Exceptions.

This section imposes restriction in validating the applicability of offences, without being bothered about chapter IV, by declaring definitions to be a subject to general exception (ch. IV).

POINT TO BE NOTED

- Basically, section 6 is immunity from criminal liability for an offender if he or she does not fall under any provision of chapter IV.
- Instead, of mentioning exceptions repeatedly, it was better to have separate chapter for it. (One single exception would be applicable to more than one offence committed by a single category of offender. Example- children under 7 years of age cannot commit offence like murder, etc)
- This section is to be read as a subject to chapter IV provisions (section-76 to 106).

SECTION 7– Sense of expression once explained-

Every expression talked about in this Code, is confirmed with chapter II.

SECTION 8 [S.2(9) BNS]– Gender-“he”, use for any person, male or female.

SECTION 9 [S.2(22) BNS]– Number- Unless contrary appears from context, words importing:

- The singular number include the plural number and
- The plural number include the singular number.

SECTION 10 [S.2(18) BNS]– “Man”, “Women”

- Man- male human being of any age.
- Woman- female human being of any age.

POINT TO BE NOTED

- Principal significance lies in word “of any age”.
- Thus, women includes infant female (section 354, IPC- assault or criminal force to women with intent to outrage her modesty).

- **SECTION 11 [S.2(26) BNS]**- “Person”-
- Any company or association or body of persons, whether incorporated or not.

POINT TO BE NOTED

- Effect of this section, with expression-
- Any company, whether incorporated or not,
- Any association of persons, whether incorporated or not and
- Anybody of persons, whether incorporated or not.
- Criminal liability of corporations- Those corporations may be:
- Either corporate sole (one person or entity construed by law as an artificial juridical person) or
- Corporations, in aggregate (eg. Companies).
- Officers of corporations-
- Positive effect of section 11- [Syndicate Transport Co. (1963) 66 Bom LR 197]

Corporations may be criminally liable. Section 11 is safeguard when a corporation tends to become victim of an offence, lead offender sentence to imprisonment.

Negative effect of section 11- [Girdharilal V Lal chand 1970 Cr. LJ 987 (Raj.)]

Corporation can be punished, only if offence is punishable with fine.

- Criminal liability of Directors and officers: Technically, offenders is a corporation, director may be liable (on addition to the criminal liability of the corporation), under-
- Section 107 and 108, IPC- If directors or officers tend to be participants in the offence amounts to abatement.
- Some special Acts- Directors and other officers could be charged of affairs of corporation for conduct of affairs declared criminally liable unless they can prove that the offence was committed without their knowledge or they exercised all due diligence to prevent the commission of that offence.
- Criminal liability of partners:

[Sham Sundar V State of Haryana, (Judgment dated 21 August, JT 1989(3) SC 523] Supreme Court held, reference to section 10 of the Essential Commodities Act, 1955, only a partner liable and responsible for conducting, the business of the firm could be convicted unless he proves the contravention took place without her knowledge or the exercised all due diligence to prevent such contravention.

SECTION 12 [S.2(27) BNS]– “Public”-

Includes any class of public or any community, any company, whether incorporated or not.

SECTION 14 [S.2(28)BNS] – “Servant Government”-

Any officer or servant:

- Continues appointment or
- Get employed in India by or under the authority of Government.

SECTION 17 [S.2(11) BNS] - “Government”

- The Central Government or
- Government of the State.

SECTION 18– “India”

Territory of India excluding the State of Jammu and Kashmir.

POINT TO BE NOTED

1. Relatable to section- 108A, 121A, 359, 360, etc of this Code and intended to be connoted by those sections, where territorial effect is crucial element.
2. This section is not Indian as political entity, but geographical territory.
3. It would have been more expressive if began something like this, “India” in relation to the territory.

SECTION 19 [S.2(15) BNS]– “Judge”

Not only every person officially designated as judge or who is one of a body of persons if empowered by law to give judgments (given below), but also every person empowered by law, to give-

1. Any legal proceeding, civil or criminal or
2. Definitive judgment by law to give in any legal proceedings , civil or criminal or

3. Definitive judgment or judgment which, if confirmed by some other authority, would be definitive.

POINT TO BE NOTED

Judge OR not?

- A collector exercising jurisdiction, in suit under 10 of 1859, is judge.
- A magistrate exercising jurisdiction in respect of charge on which he has power to sentence to fine or imprisonment, with or without appeal, is judge.
- A member of panchayat, power under Regulation- VII, 1810 of Madras Code to try and determine suits, is judge.
- A magistrate exercising jurisdiction in respect of charge on which he has power only to committe for trial to another court, not a judge.

SECTION 20 [S.2(4) BNS]– “Court of Justice”

When the following person judicially-

1. A judge, who is empowered by law to act judicially alone and
2. A body of judges, empowered by law to act judicially as a body.

POINT TO BE NOTED

A panchayat acting under Regulation VII, 1816 of Madaras, having power to try and determine suit, is a court of Justice.

SECTION 21 [S.2(28) BNS] “Public Servant”

A person falling under any of the below description-

- Every commissioned officer in Military, Navy or Air Force of India ;
- Every judge or any person empowered by law to discharge my adjudicatory functions by himself or member anybody of person;
- Every officer of Overt (not hidden or open) of Justice (including liquidator, receiver or commissioner) whose duty is:
 - to investigate or report any matter of law or fact,
 - to make, authenticate or keep any document,

- to administer any oath,
- to interpret or preserve order in court,
- specially authorized by court of justice to perform any of such duties.
- Every jury man, assessor or member of panchayat (assisting Court of Justice or public servant);
- Every arbitrator or other person (referred for decision or report by any Court of Justice or other competent one);
- Every person, holding any office by virtue (empowered to keep any person in confinement);
- Every person of the Government, under duty of-
 - Preventing offences or
 - Giving information of offences or
 - Bringing offenders to justice or
 - To protect public health, safety or convenience;
- Every officer, whose duty on behalf of the Government is to-
 - Take, receive, keep or expand any property,
 - Make survey, assessment or contract,
 - Execute any revenue process,
 - Execute any revenue process,
 - Investigate or report any matter affecting the pecuniary interest of Government,
 - Prevent infraction of any law for pecuniary interest of Government;
- Every person, whose duty as an officer is to-
 - Take, receive, keep or expend any property,
 - Make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district,

- Make, authenticate or keep any document for ascertaining of the right of the people of any village, town or district;
- Every person (as miscellaneous)-
 - In service or pay of the Government or remuneration by fees or commission for performance of any public duty by the Government,
 - In service or pay of local authority, a corporation established by or under a central, provincial or state Act or Government company (section 617 of the Companies Act, 1956 (1 of 1956).

POINT TO BE NOTED

- A Municipal Commissioner is a public servant.
- Public servants mentioned in section 34, may be appointed by Government or not.
- A public servant may be under legal defect in his right to hold the situation.
- “Election” denotes selecting members of a Legislative, municipal or other public authority.
- Public servant OR not-
 - Bank employee- Certain specific bank employee, if legislature wants.
 - Banks- Nationalized bank’s employee is a public servant, being employee of a Government company or Corporation controlled by Government of India.
 - President and Secretary of cooperative society- Not a public servant.
 - Private Medical Practitioner- Not public servant even if their names are included in panel of doctors.
 - Surveyor- Surveyor of Insurance claim does not fall under this section.
 - MP- Public servant under section (2) of Prevention of Corruption Act, 1988.
 - MLA – Not a public servant
 - Minister – Are public servant as they:
 - Receive ‘pay’, an expression wider than salary.
 - Appointed by the Governor (Article 164 and 167 of the Constitution of India)

- Perform public functions.
- Co-operative societies- These are not owned or controlled by the state. Their officers are not public servants, not even those on deputation from Government.

SECTION 22 [S.2(21)BNS]– “Movable Property”

Corporate Property of every description, except-

1. Land and thing attached to the earth and
2. Things fastened to anything which is attached to the earth.

SECTION 23 [2(36) BNS] – “Wrongful gain”

- “Wrongful gain”-gain by unlawful means of property to which person gaining is legally entitled.
- “Wrongful loss”- Loss by unlawful means of property to which person losing it is legally entitled.
- Gaining wrongfully – Person said to gain wrongfully, when retains as well as acquired wrongfully
- Losing wrongfully – Person said to loss wrongfully, when kept out as well as deprived wrongfully.

SECTION 24 [2(6) BNS]-

“Dishonestly”-Anything done with an intent of causing wrongful gain to one and wrongful loss to another.

POINT TO BE NOTED

Concealment amounts to dishonesty.

SECTION 25 [2(8) BNS]–

“Fraudulent”- Anything said with an intent to defraud, not anything else.

POINT TO BE NOTED

1. Pecuniary advantage or harm is unnecessary (fraudulent need not to be dishonest)
2. Fraud requires deceiving, but not wrongful gain or loss.
3. No fraud, if neither deceived, nor dishonesty.

SECTION 26 [2(29) BNS]-

“Reason to believe”- There is ‘reason to believe’, only if there is sufficient cause to believe it.

SECTION 27 (S.3 BNS)-

Property in possession of wife, clerk or servant

When wife, clerk or servant is in account of that person.

POINT TO BE NOTED

1. Clerk or servant- Person temporarily employed, on particular occasion in capacity of clerk or servant.
2. ‘On account to that person ‘- Being accountable to that person (to whom they are accountable), not being property in control of them (here, wife specifically)
3. Possession in English Criminal Law- Possession requires mental element.”A person cannot be said to be in possession of some article which he or she does not realize in or may in her handbag, room, etc, over which he has control”.

SECTION 28 [S. 2(3) BNS]-

“Counterfeit”- To create resemblance, with an intent to deceive.

POINT TO BE NOTED

1. Resemblance or imitation does not need to be exact.
2. Until a person is proved counterfeiting, he is presumed to be deceived as if resemblance has been an issue of his own deception.

SECTION 29 [S. 2(7) BNS]-

“Document”-

Letter, figure or marks express matter (materialistic content like, terms and conditions) upon a substance (actual matter over which terms and conditions are made).

1. When those letter, figure or mark, is later on used as evidence, whether it is intently created to be evidence later on or not, is called document.

POINT TO BE NOTED

- Immaterial facts-
 - Substance of document or

- Means of expression (letter or figure or mark) or
 - Intent to create evidence, to be later on presented in Court of Justice.
 - Writing expressing terms of contract, may be used as evidence of the contract, is document.
- For example-
- Cheque upon a banker,
 - Power of attorney,
 - Map or plan, intended to be used as evidence,
 - Directions or instructions in writing.
 - Letter or figure or marks, is deemed to be expressed for this Act, as what has been explained about it in the mercantile or other usage, whether it itself express it or not. Example- negotiable instrument is construed for “Pay to the holder” agenda, according to mercantile usage. So whether it is been mentioned over it or not, still be impliedly taken that way, for the purpose of this section also.

SECTION 29A [S. 2(39) BNS]-

“Electronic record”- In accordance with section 2 (1) (t) of the Information Technology Act, 2000.

SECTION 30 [S. 2(31) BNS]-

“Valuable security”-

An alleged document which tends to acknowledge any person, of his legal liability against it or legal right, which is being created, extended, transferred, retreated, released or extinguished through it.

POINT TO BE NOTED

- Example- bill of exchange, when endorsement intends to transfer the right within.
- Essential conditions of valuable security, is generating legal right or legal liability.
- Exception: “release” through document, because it asserts (declares) rights, not abandon (release) rights.
- Applicability under this Act: Offences against-
 - Human body (section 329- 331, 347, 348),
 - Property (section 420)

- Documents (section 467, 471)
- Conflict of being valuable security OR not-
 - Unregistered document (which is not fully effective until registered), is not valuable security in strict sense but allegedly valuable security, so falls-
 - Under section 467 (forgery of valuable security) and
 - Even amounts to an offence of cheating depending upon the conduct.
 - Exception of section 467- An alleged document is a copy of valuable security.

SECTION 31 [S. 2(34) BNS]-

“A will”- A testamentary document.

POINT TO BE NOTED

Comparing section 31, IPC with section 2(h) of Indian succession Act (39 of 1925).

‘Legal declaration, when testator intends to declare his desire regarding his property, to be carried into effect even after his death.

- Forgery of will- Liability under section 467, IPC.

SECTION 32- words referring to acts include Illegal omissions

- In code, words referring to ‘act’ done, also means of offender undergoing illegal omission.
- Exception- any contradictory intention of the circumstance.
- “act”- Under jurisprudence, any even subject to human will
- Act provides with-
 - Its origin in some mental or bodily activity of door,
 - Its circumstances and
 - Its consequences.
- Omission will be subject to code, if act committed will be illegal. But omission needs not to be intentional. That’s why, an intentional omission does not concern the code because then it would be a conscious illegal conduct.
- Conditional conduct:

- Care:
 - Omission to take care is punishable, if there is duty to take care.
 - Exception- omission to act with care is excused, if that act was product of ‘mental blackout’.
- Volunteer:
 - Conduct not punishable if, influenced by: Fits or sleep walking
- Holmes said “an act is always a voluntary muscular contraction and nothing else”.

SECTION 33 [S. 2(1) BNS]– “Act”, “omission”

1. “Act”- even involves series of acts, as single act.
2. “Omission”- even involves series of omissions, as single omission.

POINT TO BE NOTED

1. A single positive act.
2. Series of acts.
3. Single illegal omission.
4. Series of illegal omissions.

SECTION 34 [S. 3(5) BNS]– Acts done by several persons in furtherance of common intention

Criminal act conducted by several persons, with common intention to each of them, each of such person will be liable in the same manner, as of it has been conducted by him alone.

POINT TO BE NOTED

Essentials of Common Intention

- There must be some act which is criminal in nature.
- The act must be done by two or more persons.
- The act done by persons must be with the common intention of all.
- Every person who is involved in that act is liable for such act.
- Every person shall be liable as if he has done that act alone.

Barendra Kumar Ghose v. Emperor (1925)

- Barendra Kumar Ghosh with 3 other members went for post office robbery and demanded money. In the meantime, they open their firearms, killed the postmaster and start running but somehow Barendra Kumar Ghosh was caught with the gun in his hand and handed over to the police.
- Later on, he was tried with Section 302/34 of the IPC, and the session court and the High Court passed the death sentence. The accused denied his charge on the ground that he was simply standing outside the door and had not fired the deceased.
- The Calcutta High Court held that they also serve those who stand and wait. It is not necessary that the participation of all persons should be equal. One may do more, and one may do less. But that doesn't mean that the person who did less shall be free from liability. His liability is the same.
- Section 149 [S. 188 BNS] of IPC
- Chapter VIII of the IPC deals with the offence against public tranquility (Section 141-160). Section 149 of the IPC deals with the 'common object' as if an offence is committed by any member of an unlawful assembly in the prosecution of the common object of the assembly or such as the member of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.
- The Supreme Court has held that this section doesn't create a separate offence but only declares the vicarious liability of all the members of the unlawful assembly.
- Common Object
- The offence must be committed in accordance with the common object of unlawful assembly. It must be seen that common objects are fulfilled by unlawful assembly.
- The Supreme Court in *Yunis v. Madhya Pradesh State (2002)* held that the presence of the accused as part of an unlawful assembly was sufficient for the conviction to be held. The fact that the accused was a participant of the unlawful assembly and his presence on the spot of the event is adequate to hold him liable even if he is not accused of any overt act. However, mere presence in an unlawful assembly cannot make an individual responsible unless he is acting by common object and that object is one of the objects set out in Section 141.

Essentials of Section 149

- An offence that is committed by members of an unlawful assembly.
- The offence committed must be in the prosecution of the common object.
- The members must know that the offence is likely to be committed.
- The offence must be committed by five or more persons.
- Difference between Section 34 and Section 149 of IPC
- **Definition:** Common intention refers to the agreement among a group of people to commit a criminal act, while common object refers to the goal or objective that the group collectively aims to achieve through their actions.
- **Nature:** Common intention is an agreement or understanding among the group members, while common object is the purpose or objective of their actions.
- **Evidence:** Common intention is typically inferred from the actions and statements of the group members, while common object can be inferred from the nature of the group's actions and the circumstances surrounding them.
- **Prosecution:** Proving common intention is necessary to hold all members of the group liable for the criminal act, while proving common object is necessary to establish the group's liability for certain types of offenses.
- **Example:** Common intention would be if a group of people planning a robbery together, while common object would be the goal of committing robbery.
- **Section:** Common intention is defined under Section 34 of IPC and Common object is defined under Section 149 of IPC.
- **Liability:** All members of the group can be held liable for the criminal act if common intention is proved, while only certain members of the group may be held liable if common object is proved.

SECTION 35 [S. 3(6)BNS]– when such an act is criminal by reason of it's being done with a criminal knowledge or intention

Each of such persons who join in the act with such knowledge or intention is liable for the act in the same manner as if the act is done by him alone with the knowledge or intention.

SECTION 36 [S. 3(7) BNS]– Effect caused partly by act and partly by omission

Where an offence is, when someone by an act or by an omission causing effect or attempt to cause that effect, in case, cause of effect or attempt to cause that effect is partly by an act and partly by an omission, it is even an offense.

Example; A intentionally caused Z's death, partly by illegally omitting to give Z food and partly by beating Z, A has committed murder.

SECTION 37 [S. 3(8) BNS]– Co-operation by doing one of several acts constituting an offence.

Offence committed through several acts, wherever intentionally co-operates in commission of offences by doing any one of those act either singly or jointly with any other person, has said to commit that offence.

SECTION 38 [S. 3(9) BNS]– Persons concerned in criminal act may be guilty of different offences.

When several persons are engaged or concerned in commission of criminal act, everyone could be guilty of different offences by means of that act.

Example:

A and B, killed Z; Under grave provocation that it would only amount to culpable homicide, will only be guilty of culpable homicide.

B- Having ill will towards Z and without any subject to provocation, killed Z, will be guilty of murder.

SECTION 39 [S. 2(33) BNS]-”Voluntarily”- A person is said to cause an effect “voluntarily”-

If he intended to cause it and At time of employing means, he knows or reasonable believe in causing it.

Highlight

Sense of guilt, of the cause, doesn't matter if above give conditions are fulfilled.

SECTION 40 [S. 2(24) BNS]- “Offence” –

Denotes a thing made punishable by this code;

Under section 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word ‘offence’, is

this punishable under the special or local law is punishable under such law with imprisonment for a term of 6 months or upwards, whether with or without fine.

SECTION 41 [S. 2(30) BNS]– “Special law”- Applicable to a particular subject .

SECTION 42 [S. 2(17) BNS]– “Local law”- applicable only to, particular part of India.

SECTION 43 [S. 2(14) BNS] “Illegal”, “Legally bound to do”-

- “Illegal”- everything which is offensive, prohibited by law or furnished ground for a civil action.
- “Legally bound to do”- a person illegal to omit something, doesn’t matter what exactly.

SECTION 44 [S. 2(13) BNS]– “Injury”-

Any harm illegally caused to any person in-

- Body or
- Mind or
- Reputation or
- Property.

SECTION 45 [S. 2(16) BNS]-” Life”-

Explained by word “Life”, as life of a human being is life unless anything contrary appears from the circumstances.

SECTION 46 [S. 2(5) BNS]– “Death”-

Explained by word “Death”, as death of a human being is death unless anything contrary appears from the circumstances.

SECTION 47 [S. 2(2) BNS] - “Animal”- Any living creature, other than human being.

SECTION 48 [S. 2(32) BNS]– “Vessel”- Anything made for conveyance (process for transportation) of human being, or property by water.

SECTION 49 [S. 2(20) BNS]- “Year”, ”Month”- wherever the word “year” or “month” is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

SECTION 50 – “Section”- It denotes one of those portions of a chapter of this code which are distinguished by prefixed numeral figures.

SECTION 51 [S. 2(23) BNS]- “Oath”-

It includes:

- A solemn affirmation substituted by law for an oath or
- Any declaration required or authorized by law to be made before a public servant or
- To be used for the purpose of proof, whether in Court of Justice or not.

SECTION 52 [S. 2(10) BNS]- “Good faith”- Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention.

SECTION 52 A [S. 2(12) BNS]- - “Harbor”

To evade apprehension, when a person is:

- Supplied with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance or
- Assisting with above mentioned things or not.

CHAPTER III: GENERAL EXCEPTIONS

Chapter IV of the Indian Penal Code deals with exceptions to criminal liability. These exceptions cover different acts that, under specific circumstances mentioned in Sections 76 to 106, are not considered offences.

Here are the 7 general exceptions in IPC:

- Mistake of fact (Sections 76, 79).
- Judicial acts (Sections 77-78).
- Accident (Section 80).
- Absence of criminal intention (Sections 81-86, 92-94).
- An act is done by consent (Sections 87-91).
- Trifling Act (Section 95).
- Private defence (Sections 96-106).

The accused person has to prove that their case falls within one of these exceptions. The court assumes the absence of such circumstances unless proven otherwise. On the other hand, the prosecution has the responsibility to prove the accused's guilt.

MISTAKE OF FACT

Act done by a person bound, or by mistake of fact believing himself bound, by law.

SECTION 76 [S. 14 BNS]—

Nothing is an offence which is done by a person who is, or who by reason of mistake of fact, and not by reason of a mistake of law in good faith, believes himself to be, bound by law to do it.

Illustrations

- i) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.
- ii) A, an officer of a court of Justice, being ordered by that court to arrest Y, and, after due inquiry, believing Z to be B, arrests Z. A has committed no offence.

This section excuses a person who has done what by law is an offence, under a misconception of facts, leading him to believe in good faith that he was commanded by law to do it.

Mistake of fact

‘Mistake’ is not mere forgetfulness. It is a slip “made not by design, but by mischance.”

Under Sections 76 and 79 a mistake must be one of fact and not of law. Honest and reasonable mistake stands in fact on the same footing as absence of the reasoning faculty, as in infancy, or perversion of that faculty, as in lunacy. It may be laid down as a general rule that an alleged offender is deemed to have acted under that state of facts which he in good faith and on reasonable grounds believed to exist when he did the act alleged to be an offence.

Ignorantia facti doth excuse, for such ignorance many times makes the act itself morally involuntarily. Where a man made a thrust with a sword at a place where, upon reasonable grounds, he supposed a burglar to be, and killed a person who was not a burglar, it was held that he had committed no offence.

In other words, he was in the same situation as far as regards the homicide as if he had killed a burglar. The accused while guarding his maize field shot an arrow at a moving object in the bonafide belief that it was a bear and in the process caused the death of a man who was hiding there. It was held that he could not be liable for murder as his case was fully covered by Section 79 as well as Section 80 IPC.

Mistake of law

Mistake on a point of law in a criminal case is no defence. Mistake of law ordinarily means mistake as to the existence or otherwise of any law on a relevant subject as well as mistake as to what the law is. If any individual should infringe the statute law of the country through ignorance or carelessness, he must abide by the consequences of his error; it is not competent to him to aver in a court of Justice that he was ignorant of the law of the land, and no court of Justice is at liberty to receive such a plea.

The maxim ‘ignorantia juris non excusat’, in its application to criminal offences, admits no exception, not even in the case of a foreigner who cannot reasonably be supposed to know the law of the land. The legal presumption that everyone knows the law of the land is often untrue as a matter of fact. But why such a presumption subsists. The reason for this seems to be expediency, otherwise, there is no knowing of the extent to which the excuse of ignorance of law might be carried. Indeed, it might be urged almost in every case.

This rule of expediency has been put to use even in a case where the accused could not have possibly known the law in the circumstances in which he was placed. Thus a person who was on the high seas

and as such could not have been cognizant of a recently passed law might be convicted for contravening it.

Whenever, the question of justification of an offence either due to mistake of fact or mistake of law arises, the guiding rules are –

- i) That when an act is in itself plainly criminal, and is more severely punishable if certain circumstances co-exist, ignorance of the existence of such circumstances is not answer to a charge for the aggravated offence.
- ii) That where an act is *prima facie* innocent and proper, unless certain circumstances co-exist, thus, ignorance of such circumstances is an answer to the charge.
- iii) That the state of the defendant's mind must amount to absolute ignorance of the existence of the circumstances which alters the character of the act, or to a belief in its non-existence.
- iv) Where an act which is in itself wrong is, under certain circumstances, criminal, a person who does the wrong act cannot set up as a defence that he was ignorant of the facts which turned the wrong into a crime.
- v) Where a statute makes it penal to do an act under certain circumstances, it is a question upon the wording and object of the particular statute, whether the responsibility of ascertaining that the circumstances exist is thrown upon the person who does the act or not. In the former case, his knowledge is immaterial.

Ignorance of a statute newly passed

Although a person commits an act which is made an offence for the first time by a statute so recently passed as to render it impossible that any notice of the passing of the statute could have reached the place where the offence has been committed, yet his ignorance of the statute will not save him from punishment.

For an Indian law to operate and be effective in the territory where it operates namely the territory of India, it is not necessary that it should either be published, or be made known outside the country. In good faith believes himself to be, bound by law In order to entitle a person to claim the benefit of this section it is necessary to show the existence of a state by facts which would justify the belief in good faith.

For illegal acts, however, neither the orders of a parent nor a master nor a superior will furnish any defence. Nothing but fear of instant death is a defence for a policeman who tortures anyone by order of a superior. The maxim *respondeat superior* has no application to such a case.

The net position appears to be that if superior order is in conformity with the law no further question arises and the subordinate officer is protected by section 76, IPC if he carries out that order.

It is only when the order is not in accordance with the law but the subordinate officer who carries out that order in good faith, on account of a mistake of fact and not on ground of mistake of law, believes himself to be bound by law to carry out such an order, that a further question arises as to whether the subordinate officer will not still get protection of section 76, IPC, because of his mistake of fact.

For a manifestly illegal superior order, that is an order which is illegal on the face of it e.g. to kill an innocent by-stander or to torture an accused in custody or to fire on a group of people who have assembled for a lawful purpose, the superior order affords no protection to the subordinate. Where, however, the order is not manifestly illegal and a soldier or a policeman carrying out that order honestly believes that it is legal, and then superior order would possibly be a good defence as was held in a South African Case.

ACT DONE BY A PERSON JUSTIFIED OR BY MISTAKE OF FACT BELIEVING HIMSELF JUSTIFIED BY LAW: SECTION 79 [S. 17 BNS]–

Nothing is an offence which is done by a person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law in doing it.

Distinction between Section 76 and Section 79 IPC

The distinction between Section 76 and this section is that in the former a person is assumed to be bound and, in the latter, to be justified by law. In other words, the distinction is between a real or supposed legal obligation and a real or supposed legal justification in doing the particular act.

Under both sections, there must be a bonafide intention to advance the law, manifested by the circumstances attending the act which is the subject of charge, and the party accused cannot allege generally that he had a good motive, but must allege specifically that he believed in good faith that he was bound by law (Section 76) to do as he did, or that being empowered by law (Section 79) to act in the matter, he had acted to the best of his judgment exerted in good faith.

Mistake of fact

Where the accused while helping the police stopped a cart which they in good faith believed to be carrying smuggled rice but ultimately their suspicion proved to be incorrect, it was held that they could not be prosecuted for wrongful restraint under Section 341 as their case was covered by Section 79, IPC. Section 79 makes an offence as non-offence.

But where an act is clearly a wrong in itself, and a person, under a mistaken impression as to facts which render it criminal, commits to the act, then according to the ratio decidendi in, Prince's Case, he will be guilty of a criminal offence.

Act of State

An act of state is an act injurious to the person or to the property of some person who is not at the time of that act a subject of the Government; which act is done by any representative of the Government's authority, civil or military, and is either previously sanctioned or subsequently ratified by the Government. Persons carrying out an act of state under proper orders will be protected by the Penal Codes in the same way as if they were carrying out a lawful order under the municipal law:

To support a plea of this nature two things are essential:

- i) That the defendant had authority to act on behalf of the state in the matter, and
- ii) That in so acting, he was professing to act as a matter of policy outside the law, and not as a matter of right within the law.

Mistake of fact

The accused was convicted of bigamy, having gone through the ceremony of marriage within seven years after she had been deserted by her husband. She believed in good faith and on reasonable grounds that her husband was dead. It was held that a bonafide belief on reasonable grounds in the death of the husband at the time of the second marriage afforded a good defence to the indictment and that the conviction was wrong (Tolson).

The accused took an unmarried girl under the age of sixteen years out of the possession, and against the will, of her father. The defence of the accused was that he bonafide and unreasonably believed that the girl was older than sixteen. It was held that as the taking of the girl was unlawful, the defence was bad. (Prince)

This case may be distinguished from Tolson's Case, in which a woman married believing her husband to be dead: There the conduct of the woman was not in the smallest degree immoral, but was, on the other hand, perfectly natural and legitimate.

Cases falling under Section 79 include

- **Chirangi v. State (1952 CrLJ 1212):** In a momentary delusion, the accused mistakenly identified his son as a tiger and tragically killed him.
- **Waryam Singh v. Emperor (AIR 1962 Lah 554):** During the night, the accused mistook a living person for a ghost and caused harm to them.
- **State of Orissa v. Ram Bahadur Thapa (AIR 1961 Ori 161):** In a similar incident, the accused mistakenly believed that a person was a ghost and committed an act resulting in harm.

Sections 77 and 78: Judicial Acts [S. 15 AND 16 BNS]–

The second general exception pertains to the acts of judges and courts. According to Section 77, any act performed by a judge in the course of their judicial duties, which they genuinely believe, in good faith, is authorized by law, is not considered an offence. For instance, even if a judge mistakenly sentences a person to death, they are not liable for causing someone's death.

Similarly, Section 78 states that an act carried out in accordance with the judgment or order of a court of justice, as long as the person involved genuinely believes in good faith that the court has jurisdiction, is not an offence. This means that the executioner who carries out the hanging of a prisoner based on the court's order would not be held accountable for the act.

It is important to note that under Section 78, the person executing the court's order is protected, even if its jurisdiction is questionable. On the other hand, under Section 77, the judge must act within their jurisdiction to benefit from the protection. Therefore, a mistake of law can be used as a defence under Section 78.

Section 80: Accident [S. 18 BNS]

The third general exception deals with acts committed by accident. According to Section 80, no offence is committed when an act is done unintentionally or by misfortune:

- Without criminal intention or knowledge.
- In the process of carrying out a lawful act using lawful means in a lawful manner.
- With the exercise of proper care and caution.

Illustrations

Let's say A is working with a hatchet, and accidentally, the head of the hatchet flies off, killing a person standing nearby. If A took proper caution and there was no negligence, their act is excusable and not considered an offence.

An accident is something that occurs unexpectedly, outside the normal course of events. It involves the idea of something fortuitous and unforeseen. An injury is considered to be caused accidentally when it is neither intentional nor due to negligence.

For example, during a game of cricket, if a ball strikes a person's head resulting in their death, it is considered an accidental death. Similarly, if two wrestlers engage in a bout and during it, one of them falls and breaks their skull, it is also considered an accidental occurrence.

Some other illustrations include:

- A playfully points a gun at B without checking whether it is loaded and accidentally pulls the trigger, causing B's death. In this case, the death is not considered accidental due to the lack of proper care and caution. However, if A had reason to believe the gun was not loaded, the death would be considered accidental.
- If A shoots at a bird in B's house with the intention to steal it but accidentally kills B in the process, A would be held liable as their act of stealing is not a lawful act.

In R vs. Clarke, a woman was charged with theft from a super market. Her defence was that she had taken the goods in a state of absent mindedness resulting from depression. Accepting medical evidence, her mental condition and her conduct in her house, the defence was accepted. Where the accused fired a shot at his assailant who escaped but four other persons were injured and one of them unfortunately expired, it was held that the accused was not liable for the fatal injury to an innocent person as his case fell within the scope of Section 80 read with Section 96 and 100, IPC.

Sections 81-86 and 92-94: Absence of Criminal Intent

Criminal intention refers to the purpose or intention of committing an act prohibited by criminal law without any valid justification or excuse.

ACT LIKELY TO CAUSE HARM, BUT DONE WITHOUT CRIMINAL INTENTION/INTENT, AND TO PREVENT OTHER HARM: SECTION 81

Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of

preventing or avoiding other harm to person or property. Explanation: It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Without any criminal intention Under no circumstances can a person be justified in intentionally causing harm, but if he causes the harm without any criminal intention, and merely with the knowledge that it is likely to ensue, he will not be held responsible for the result of his act, provided it be done in good faith to avoid or prevent other harm to person or property. 'Criminal Intention' simply means the purpose or design or doing an act forbidden by the criminal law without just cause or excuse. An act is intentional if it exists in idea before it exists in fact, the idea realizing itself in the fact because of the desire by which it is accompanied. The motive for an act is not a sufficient test to determine its criminal character. By a motive is meant anything that can contribute to give birth to, or even to prevent, any kind of action. Motive may serve as a clue to the intention; but although the motive is pure, the act done under it may be criminal. Purity of motive will not purge an act of its criminal character.

English Cases

Dudley v. Stephens (1884) 14 Q. B. D. 173

A man, in order to escape death from hunger, kills another for the purpose of eating his flesh, is guilty of murder, although at the time of the act, he is in such circumstances that he believes and has reasonable ground for believing that it affords the only chance of preserving his life. At the trial of an indictment for murder, it appeared that the prisoners D and S, seamen and the deceased, a boy between seventeen and eighteen, were cast away in a storm on the high seas, and compelled to put into an open boat, that the boat was drifting on the ocean and was probably more than 1000 miles from land; that on the eighteenth day, when they had been seven days without food and five days without water.

D proposed to S that lot should be cast as to who should be put to death to save the rest, and that they afterwards thought it would be better to kill the boy, that their lives should be saved, that on the twentieth day, D with the assent of S, killed the boy, and both D and S fed on his flesh for four days, that at the time of the act there was no sail in sight nor any reasonable prospect of relief; that under these circumstances there appeared to the prisoners every probability that unless they then or very soon fed upon the boy, or one of themselves they would die of starvation.

It was held that upon these facts there was no proof of any such necessity as could justify prisoners in killing the boy and that they were guilty of murder. [Dudley and Stephens]

A and B, swimming in the sea after a shipwreck, got hold of a plank not large enough to support both, A pushes off B, who is drowned. This, in the opinion of Sir James Stephen, is not a crime as A thereby does B no direct bodily harm but leaves him to his chance of getting another plank.

The court has established the following three principles:

- a) The law does not recognise a defence of necessity whether arising from wrongful threats of violence to another or from 'objective dangers' (conveniently called duress of circumstances), threatening the defendant or others
- b) Secondly, the defence is available only if the defendant can be objectively said to be acting reasonably and proportionately to avoid the threat of death or serious injury.
- c) It is for the jury to determine whether because of what the defendant reasonably believed he had good cause to fear death or serious injury, and if so, whether a person of reasonable firmness, sharing the characteristics of the defendant, would have responded as the defendant did.

Sections 82-83: Act of Child [S. 20-21 BNS]—

According to the Indian Penal Code, children under seven are considered incapable of committing a crime. Section 82 states that the acts of a child under seven are not offences. It's important to note that this immunity extends not only to offences under the Indian Penal Code but also to offences under any special or local law.

By legal presumption, infants are deemed *doli incapax*, meaning they cannot understand right from wrong, and therefore the question of criminal intent does not arise. If individuals commit crimes through children below seven, they will be held responsible while the child will be exempted.

Under Section 83, acts done by children above the age of seven and below the age of twelve will be protected if it can be shown that the child in question did not possess sufficient maturity of understanding to comprehend the nature and consequences of their conduct on that occasion. It's important to note that after twelve, there is an unlimited liability for punishment.

In a specific case, if a 10-year-old girl enters into a second marriage during her husband's lifetime, with the marriage arranged and performed by her mother, the girl would be liable for bigamy if she was deemed to possess sufficient maturity of understanding.

Similarly, if a 9-year-old child steals a gold necklace and sells it to someone for a meagre amount, the child would be liable if it can be proven that they had sufficient maturity of understanding. The maxim "malitia supplet aetatem" (malice supplies defect of years) applies to Section 83. The circumstances of a case may reveal a level of malice that justifies the application of this maxim.

Section 84: Act of an Insane Person [S.22 BNS]—

Criminal law provides complete protection to individuals who are deemed to be lunatics. Section 84 states that nothing is considered an offence if it is done by a person who, due to unsoundness of mind, is incapable of understanding the nature of the act or that it is wrong or against the law. It's important to note that the legal insanity referred to in this section is distinct from medical insanity.

- Insane individuals cannot be held culpable as they lack free will (Furiosi nulla voluntas est). The term "unsoundness of mind" encompasses various types of individuals, including:
 - Idiot: Someone rendered non-compos mentis due to illness, which may be a temporary failure.
 - Lunatic or madman: A person with a mental disorder.
 - Unconscious person, if proven: This can include cases of sleepwalking or somnambulism.
 - Intoxicated person.
- To determine the insanity of a person, the following tests or principles are important:

It must be demonstrated that the accused was of unsound mind when the offence was committed. If they were not insane then but later became insane, they cannot benefit from Section 84.

Factors such as the accused's history of previous insanity, their behaviour on the day of the incident, and the State of mind before and after the offence are relevant considerations. Evidence of premeditation attempts to evade or resist arrest, confession given shortly after the incident, and other similar factors may undermine an insanity defence (**Queen-Empress v. Gedka Gowala AIR 1937 Pat. 333**).

Section 84 protects against impairment of cognitive faculties of the mind, such as inherent or organic incapacity. However, it does not protect wrong or erroneous beliefs (which may result from distorted illusions), uncontrollable impulses, moral insanity, weak or defective intellect, or eccentric behaviour.

When cognitive faculties are not impaired, and only the will and emotions are affected, insane impulses are not a valid defence (**Queen-Empress v. K.N. Shah 1896**).

Under Section 84, to claim protection, a person doesn't need to be unaware of an act being right or wrong, but rather, they must be incapable of knowing whether the act they have done is right or wrong. If the capacity to distinguish between right and wrong is still present, the individual cannot be protected under Section 84 (**Lakshmi v. State AIR 1959 All 534**).

A related concept to lunacy is known as insane delusion, considered a borderline case. Delusions are false beliefs that can be complete or partial. Whether a person who commits an offence under the influence of an insane delusion is excused depends on the nature of the delusion. The law regarding insane delusions is well-discussed in **McNaughten's case (1843)**.

In the case of **A. Ahmed v. King (AIR 1949 Cal 182)**, the accused killed his 5-year-old son by thrusting a knife into his throat under the delusion and belief that he had received a command to do so from someone in paradise in his dream. He was held to be protected under Section 84.

For example, if a person suffering from an insane delusion that X and Y were persecuting him buys a knife to seek revenge and later goes to their club and stabs them to death, it shows that he intended to kill. In this case, A would be guilty of murder.

In another case, where a father and his relatives sacrificed their 4-year-old son to propitiate a deity, the Supreme Court held that this act alone does not prove insanity (**Paras Ram v. State of Punjab, 1981**).

When acts of violence are committed by a person without any apparent motive, especially towards their close relatives with whom they had previously been affectionate, and when there is a history of lunacy, the benefit of the doubt may favour the accused.

Individuals who are occasionally possessed by spirits or experience visions/images during fits of delirium can benefit from Section 84. However, in cases of delirium tremens (a type of madness caused by habitual excessive alcohol consumption or illness), they would be criminally liable if the patient is aware of their actions.

Sections 85-86: Act of an Intoxicated Person [S. 23-24 BNS]

Drunkenness is considered a form of voluntary madness for which the individual is responsible. If a person chooses to get drunk, it is their own voluntary act, distinct from the madness not caused by any voluntary action.

The Latin maxim **“Qui Pecat Ebrius Luat Sobrios”** means “Let him who sins when drunk be punished when sober.” However, Sections 85 and 86 protect an intoxicated person if they became intoxicated by mistake (e.g., taking the wrong medicine) or against their will through fraud or force.

Section 85 states that an act done by a person who, due to intoxication, is incapable of knowing the nature of the act or that it is wrong or contrary to law is not an offence, provided that the substance that caused the intoxication was administered without their knowledge or against their will.

The test for drunkenness is the capacity to form an intention to commit the offence, whereas the test for insanity is the capacity to know the nature of one's act. However, if insanity is produced by drunkenness, it can be considered a defence under Section 84.

Section 86 establishes a presumption for certain offences committed by intoxicated persons. Suppose an act is an offence only when done with a particular intention or knowledge, and an intoxicated person commits it. In that case, they will be presumed to have the requisite knowledge for the offence unless they can demonstrate that they were intoxicated without their knowledge or against their will. It should be noted that there is no presumption regarding the person's intention.

Alcohol, medicines, bhang, ganja, etc., can cause intoxication. If the accused drank liquor at the persuasion of their father to alleviate pain, it could not be considered that the liquor administration was against their will. Therefore, they could not claim the benefit under Section 85.

In **Basdev v. State of Pepsu (AIR 1956 SC 488)**, it was held that drunkenness is generally neither a defence nor an excuse for a crime. By law, an intoxicated person is presumed to have the same knowledge as a sober individual. However, the accused's intention must be determined from the circumstances of the case, taking into account the degree of intoxication.

If the accused's mind was so affected by drink that they more readily gave in to violent passion, it could not be argued that they did not intend the natural consequences of their actions. To claim the benefit under Section 86, the accused must be so drunk that they could not form the intent (**Director of Public Prosecutions v. Beard, 1920**).

Test of drunkenness

In cases of drunkenness, the focus is on whether the accused was capable of forming an intention to commit the offence. Insanity produced by drunkenness can be considered a defence under Section 84.

The correct test is whether, due to drunkenness, the accused was incapable of forming the intention to commit the offence. It is presumed that a person intends the natural consequences of their acts.

However, this presumption can be rebutted in the case of a drunken person by showing that they did not know their actions were dangerous or that they were incapable of forming the specific intent required for the crime **[Director of Public Prosecutions v. Beard (1920) AC 479]**. The accused can present evidence of their drunkenness affecting their understanding and ability to form the necessary intent **(Dasa Kandha v. State of Orissa, 1976 Cr LJ 2010)**.

Section 86 states that a voluntarily intoxicated person will be deemed to have the same knowledge as if they were not intoxicated. The section does not presume the same intention as if the person had not been intoxicated; it only presumes the same knowledge. Therefore, there is no presumption regarding intention under Section 86 (only the presumption of knowledge is provided). The accused's intention must be determined based on the facts and circumstances of each case, taking into account the degree of intoxication.

Suppose the existence of a specific intention is necessary for the commission of a crime. In that case, the fact that the offender was drunk at the time of the act, which would constitute the crime if coupled with that intention, should be considered in determining whether they had the necessary intention (Sir James Stephen).

Voluntary drunkenness can be an excuse only with regard to intention, so it is a complete excuse in crimes where the presence of intention is required. However, voluntary drunkenness is not an excuse for a crime that only requires knowledge, not intention. If a person was completely out of their mind at the time of the crime, holding them accountable may not be possible.

Section 92: Bona fide Act for Another's Benefit [S.30 BNS]

Under Section 92 of the Indian Penal Code, an act is not considered an offence if it causes harm to a person for whose benefit it is done in good faith, even without that person's consent, under emergent circumstances. This provision protects individuals who act in the best interests of others in urgent and life-threatening situations.

For example, it would not be considered an offence if a surgeon performs an immediate operation on an accident victim without the victim's consent but in good faith to save their life. Similarly, if someone drops a child from a housetop during a fire, knowing that the fall may kill the child but not intending to kill the child and intending to secure the child's benefit in good faith, they would not be held liable for any offence.

In an example where a person fires at a tiger that has carried off someone, knowing that the shot may kill the person but not intending to kill them, and doing so in good faith for their benefit if the bullet

fatally wounds the person, the individual who fired the shot would not have committed an offence under Section 92.

This provision recognizes that in emergencies when immediate action is necessary to protect or benefit someone, the harm caused in the process is exempted from criminal liability. It focuses on the intention and good faith of the person performing the act to benefit another.

Section 93: Communication Made in Good Faith [S. 31 BNS]–

Under Section 93 of the Indian Penal Code, any communication made in good faith to a person for their benefit is not considered an offence, even if it causes harm to that person. This provision protects individuals who communicate information honestly and with good intentions, even if the outcome is unfortunate.

For example, if a surgeon, in good faith, communicates to a patient that they cannot survive a certain condition, and the patient subsequently dies due to the shock caused by the information, the surgeon would not be held liable for any offence. Despite knowing that the communication might lead to the patient's death, the surgeon's actions would be considered legal because they were made in good faith for the patient's benefit.

Section 93 recognizes that sometimes difficult information needs to be conveyed honestly for the welfare of individuals, even if it may cause harm. The provision focuses on the intention behind the communication and protects individuals who act in good faith to provide necessary information for the benefit of others.

Section 94: Act Done under Compulsion or Threat [S. 32 BNS]–

Under Section 94 of the Indian Penal Code, if a person commits an offence under compulsion or threat, they may be excused if the threat is to cause instant death. However, there are certain limitations to this provision. The person under threat cannot commit murder or an offence against the State that is punishable by death, such as treason, to avail themselves of the benefit of Section 94. Additionally, the person must not have voluntarily or reasonably placed themselves under such constraint due to a fear of harm short of instant death.

If a person voluntarily joins a gang of dacoits on their own accord or due to the threat of being beaten, they would not be entitled to the benefit of Section 94. However, if a person is seized by a gang of dacoits and forced, under the threat of instant death, to commit an illegal offence, such as breaking open a door, they would be entitled to the benefit of Section 94.

It is important to note that the threat must be to cause instant death. Merely threatening with future death or any other injury that is not instant death would not be a valid excuse under Section 94. For example, if someone threatens another person with a stick to harm someone else, the person threatened cannot plead the defence under Section 94. However, if the threat involves a loaded revolver or a dagger held at the person's throat, causing them to believe they would be instantly killed if they did not commit the offence, this would be a valid defence under Section 94.

Sections 87-91: Act Done by Consent [S. 25-29 BNS]

Sections 87-91 of the Indian Penal Code outline the circumstances in which an act done with the victim's consent will be excused or not considered an offence. Consent is a crucial factor that distinguishes between innocence and criminal liability in various situations.

Section 90 of the Indian Penal Code specifies instances where consent is not considered valid. These include:

- Consent is given under fear of injury or misconception of fact.
- Consent is given by a person who cannot understand the nature and consequences of the act due to unsoundness of mind or intoxication.
- A person under the age of 12 gives consent.
- It is important to note that mere submission by a person who does not understand the nature of the act is not considered valid consent. Consent and submission are not synonymous.

Section 87 states that if an act, not intended or known to cause death or grievous hurt, causes harm to a person above 18 years of age who has given consent to suffer it, it is not an offence. This section applies to injuries during games, sports, or similar activities. It is based on the principle of volenti non-fit injuria, which means that he who consents cannot complain. However, consent cannot justify acts that are likely to cause death or grievous hurt.

Section 88 states that an act done in good faith for the benefit of the victim, with the victim's consent, is not an offence. This section protects surgeons performing surgical operations and reasonable acts of teachers, such as corporal punishment, to enforce discipline. However, it does not protect unqualified medical practitioners (quacks).

Section 89 protects acts done in good faith for the benefit of a child or an insane person or with their guardian's consent.

Section 92 clarifies that the term “benefit” mentioned in Sections 88 and 89 does not include mere pecuniary benefits.

Section 91 specifies that the exceptions in Sections 87-89 do not extend to acts that are offences independently of any harm caused to the person giving consent. For example, causing a miscarriage (unless done in good faith to save the woman’s life) is considered an independent offence, and the consent of the woman or her guardian does not justify the act.

Section 95: Trifling Acts/ Acts Causing Slight Harm [S. 33 BNS]

The sixth general exception in IPC is laid down in Section 95. This exception is based on the principle of *de minimis non-curat lex*, which means that the law does not concern itself with trifles or minor matters.

According to Section 95, if a person causes harm, even intentionally or knowingly, and that harm is so slight that a person of ordinary sense and temper would not complain about it, then it is not considered an offence.

This section applies to acts that result in negligible or trifling harm, including accidental and deliberate acts. The harm can include actual physical injury as well. It recognizes that certain acts, while technically falling within the scope of the penal law, are inconsequential and do not warrant criminal prosecution.

Examples of such trivial acts mentioned in your explanation, such as picking up a wafer from another person’s plate without permission, lighting one’s cigar with someone else’s matchbox without consent, or a light blow given with an umbrella, illustrate the types of acts that would fall within the purview of Section 95. These acts may technically meet the criteria for an offence, but they are considered insignificant and not deserving of legal consequences.

Section 95 prevents the law from being overly burdensome by exempting trivial matters from criminal liability, focusing instead on more substantial offences that warrant attention and prosecution.

Sections 96-106: Right of Private Defence[S. 34-44 BNS]

The right of private defence is defined in the [Indian Penal Code](#).

The right of private defence allows individuals to protect themselves and their property against unlawful aggression by others.

Section 96 of the Indian Penal Code states that nothing is an offence when it is done in the exercise of the right of private defence.

The doctrine of private defence is based on the following principles:

- A person facing grave danger to their life does not have to wait for state aid if it is not readily available.
- Private defence is a preventive measure rather than a means of punishment, although punitive consequences may occur.
- The right of private defence should not be used for self-gratification or to satisfy malicious or sadistic urges. It should not involve deliberate retaliation.

The right of private defence can be exercised when there is a real and immediate threat and reasonable apprehension. Future or hypothetical threats do not justify the use of this right.

The right of private defence arises when there is a reasonable apprehension of danger, even if the offence has not yet been committed. Mistaken apprehension is valid if it is real and reasonable.

The force used in self-defence must be proportionate to the danger faced and should not exceed the necessary limits. However, in situations of imminent danger, a person may not be expected to calculate the proportion of force required precisely.

The right of defence ceases when the necessity for it ends. Pursuing and attacking a fleeing aggressor is not justified.

The law does not require a person to avoid injury by running away if they have the right to exercise self-defence.

Private Defence of Body

Every individual has the right to protect their own body or another person's body from any offence that harms the human body. This right extends to defending someone even if they are a stranger, unlike the English law that requires an existing relationship like master and servant or husband and wife.

The mental or physical capacity of the attacker, whether they have a guilty mind (mens rea) or not, does not prevent the exercise of the right of private defence. For example, if a lunatic, minor, intoxicated person or someone acting under a mistaken belief tries to kill someone, they are not

guilty of an offence. However, the person being attacked has the same right to defend themselves as they would if the attacker were sane.

General Restrictions on the Right of Private Defence

There is no right of private defence against an act that does not reasonably cause the fear of death or serious injury if done by a public servant acting in good faith under the pretence of their official duties, even if the act may not be strictly justifiable by law.

However, a person is not deprived of the right to defend themselves against an act by a public servant unless they know or have reason to believe that the attacker is a public servant or is acting under the direction of a public servant (explained in Section 99).

The distinction between Illegal Acts and Acts Not Strictly Justifiable by Law

There is a distinction between completely illegal acts (*ultra vires*) and acts that may not be strictly justifiable by law (irregular acts). In a situation where the police illegally arrested a person, and certain villagers, to rescue that person, launched an attack on the police only after a constable had fired at them, it was held that the villagers acted to exercise their right of private defence. The firing by the constable caused a reasonable fear of death or serious injury in their minds. However, if a police officer, acting in good faith under the authority of his office, arrests a person without proper authority, the person being arrested has no right to self-defence against the officer.

Absence of Right of Defence When Time for Recourse to Public Authorities Exists

There is no right of defence in situations where there is sufficient time to seek the protection of public authorities. However, this does not mean that a person must run away to seek public authorities' help when attacked instead of defending themselves.

Limitation on Inflicting Harm

The right of private defence does not extend to causing more harm than is necessary for defence. Section 100 lists six serious acts of aggression that authorize the defender to even cause the assailant's death. These acts include reasonable fear of death or serious injury, assault to commit rape or unnatural lust, kidnapping and abduction, or wrongfully confining a person. In other cases, the defender may cause harm other than death (Section 101).

In cases where there is a reasonable fear of death if the defender is in a situation where exercising the right of self-defence would risk harm to an innocent person, they may even choose to take that risk (Section 106). For example, if a mob attacks a person and cannot use a firearm without the risk of harming young children who are mixed within the mob.

Commencement and Continuation of Right of Self-Defence

According to Section 102, the right of self-defence begins as soon as there is a reasonable fear of danger to the body and continues as long as that fear persists, even if the offence itself has not been committed.

Therefore, if the accused continues to assault the victim after falling and are no longer a threat, the right of private defence would not be available. Similarly, if a group of individuals strangle a thief and subject him to severe mistreatment when he is completely under their control, the right of private defence would not be justified.

Private Defence of Property

Every person has the right to defend their property or the property of others against theft, robbery, mischief, criminal trespass, or any attempt to commit such acts (Section 97). This right also applies when dealing with individuals who are mentally incapacitated, minors, intoxicated persons, or those acting under a misconception of fact (Section 98).

However, the right of private defence of property is subject to certain limitations as specified in Section 99.

The right of private defence of property comes into effect when there is a reasonable apprehension of danger to the property. It continues under the following circumstances:

- In cases of theft, until the offender has escaped with the property, until the assistance of public authorities is obtained, or until the property is recovered.
- In robbery cases, as long as the offender causes or attempts to cause death, hurt, or wrongful restraint, or as long as there is a fear of immediate death, hurt, or personal restraint.
- In cases of criminal trespass or mischief, as long as the offender continues to commit such offences.
- In cases of house-breaking by night, as long as the trespassing continues. However, if a person follows a thief and kills them in the open after the house-trespass has ended, they cannot claim the right of private defence (Section 105).

Section 103 lists the specific cases where the right of private defence extends to causing the wrongdoer's death. These cases include:

- Robbery
- House-breaking by night
- Mischief by fire to a building, tent, or vessel used as a dwelling or for property custody
- Theft, mischief, or house trespass under the circumstances causing a reasonable apprehension of death or grievous hurt. In other cases, the right of private defence extends to causing harm other than death (Section 103-104).

CHAPTER IV: ABETMENT

The term ‘abettment’ in criminal law indicates that there is a distinction between the person abetting the commission of an offence (or abettor) and the actual perpetrator of the offence or the principal offence or the principal offender.

Chapter 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 chapter on abetment contains 15 sections. Abetment basically means the action of instigating, encouraging or promoting a person into committing an offence. It can also mean aiding the offender while he is committing a crime.

When more than one person contributes to committing an offence, each person’s involvement may vary. This variation may be either in the manner or in the degree to which the involvement occurs.

Definition of Abetment

Section 107-120 (S.45-60 BNS) of Indian Penal Code 1860, talks about abetment. According to section 107 which explains the meaning of abetment, in general to abets means to instigate, to help, to encourage to put in execution his criminal intention. Abetment consists of three acts which are laid down in section 107

In the case of *Sanju v. State of Madhya Pradesh* (2002) 5 SCC 371, the honorable Supreme court defined ‘abet’ as meaning to aid, to assist or to give aid, to command, to procure, or to counsel, to countenance, to encourage, or encourage or to set another one to commit. The definition of ‘abet’ as laid down, makes it clear that abetment only occurs when there are at least two persons involved, which further directs us towards the arrangement and operation of the act.

Types of Abetment:

The Section says that abetment basically takes place when a person abets the doing of a thing by:

- (1) instigating a person to do that thing; or
- (2) engaging with another person (or persons) in a conspiracy to do that thing; or
- (3) intentionally aiding a person to do that thing.

When any of these requirements exists, the offence of abetment is complete. Sometimes a person may commit more than one of these three circumstances in a single offence.

(1) Abetment by Instigation

Instigation basically means suggesting, encouraging or inciting a person to do or abstain from doing something. Instigation may take place either directly or indirectly, by written or oral words, or even by gestures and hints.

The instigation must be sufficient to actively encourage a person to commit an offence. It should not be mere advice or a simple suggestion. The Instigator need not even possess mens rea (a guilty intention to commit the crime).

Explanation 1 of this Section throws some lights on what instigation may mean in this context. It says that instigation may generally happen even by:

- (a) wilful misrepresentation; or
- (b) willful concealment of a material fact which a person is bound to disclose.

For example, a court directs Amit, a police officer, to arrest Raj under an arrest warrant. Brijesh informs Amit that Chandan is Raj despite knowing that he is not. Under this misrepresentation, Amit ends up arresting Chandan instead of Raj. In this case, Brijesh is guilty of abetting Amit in wrongfully apprehending Chandan.

(2) Abetment by Conspiracy

Conspiracy basically means an agreement between two or more persons to commit an unlawful act. Merely intending to commit an offence is not sufficient for this purpose.

Thus, the conspirators must actively agree and prepare themselves to commit that offence, it becomes a conspiracy. Furthermore, the act which the conspirators conspire to commit itself must be illegal or punishable.

For example, in dowry death cases, the in-laws of the victim are often guilty of abetment by conspiracy. They may do so by constantly taunting, torturing or instigating the victim. Even suicides may take place in this manner through abetment by conspiracy.

(3) Abetment by Aiding

The third manner in which abetment may take place is by intentionally aiding the offender in committing that offence. This generally happens when the abettor facilitates the crime or helps in committing it. The intention to aid the offender is very important.

Aid by Act

For example, A instigates B to commit suicide and C puts poison in the hand of B. Here A and C both are abettors. A is liable by instigation and C by intentional aiding.

Aid by illegal omission

For example, a policeman has a legal duty to interfere if an offence is being committed in front of him. If he remains a silent spectator on this, then he will be liable as himself to encourage the commission of the offence.

Who is an Abettor ?

The definition of the term Abettor is mentioned in Section 108 of the Code. According to this Section, an abettor is a person who abets the commission of such a wrongful act that will be deemed as an offence in the eyes of law. An abettor can be an instigator, or a conspirator, or helper in the commission of a crime as defined in section 107.

It is important that the Abetment shall necessarily be for the commission of a legal offence. For example, A instigate B to run away all the street dogs from the city. B did the same. This is not an offence of Abetment as running away the street dogs is not a legal offence.

The exclusive scope and clear interpretation of the term Abettor is mentioned in 5 explanations of Section 108 which includes –

- **Abetment of illegal omission** – This states that the person may be held liable for abetting a person for an act which he is legally required to do and the abettor is legally exempted for it.

For example, a police constable will be guilty of an illegal omission of his duty by not interfering in a fight whereas a private individual cannot be held guilty of such offence.

- **The effect of Abetment is immaterial.**

As per this explanation, it is not necessary that the act abetted must give the intended effect or result. For example, An instigated B to kill M by way of stabbing. B did so but M recovered as the wound was not sufficient to cause death. Now, A is guilty to abet B for committing the murder.

3. A person abetted need not necessarily be capable of committing the offence.

It is not necessary that the person abetted must be capable in the eyes of the law to commit offence. For example, a person can employ a child below the age of seven years to commit the offence. In this case, the child is not punishable as he is exempted under section 82 of IPC and

would be treated as an innocent, where the person that directs him to do the act would be liable as an abettor.

4. Abetment of Abetment is an offence.

Sometimes, there is a series of abetments that led to the commission of the offence. In that case, all the people will be held equally liable for the same. For example, X instigates Y to murder M. Y again instigated Z to kill M. In the influence of Instigation, Z does so and M was murdered in the end. Now, X and Y are equally liable for the offence of Abetment.

5. Engagement in the conspiracy on account of which the offence is committed is enough to make him liable as an abettor.

For example. Ram makes a plan with Mohan to kill Raju. It was decided that Ram will give the poison. Mohan explains the plan to Ravi who arranges the poison and delivers it to Mohan. Ram gave the poison and Raju dies in consequence. Here, Ravi has committed the offence although he did not conspire with Ram he engaged himself in the conspiracy to kill Raju.

Abetment of offences outside India:

Section 108A was added in the Penal Code with a view to overrule a decision of the Bombay High Court in the case of *Queen Empress v. Ganapatrao Ramachandra 47 (1984) ILR 19 Bom 105.* in which it was held that the abetment in India by an Indian citizen of an offence committed in a foreign country was not punishable under the Code. 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.

- **Gurcharan Singh vs. State of Punjab (2017) 1 SCC 433** – In this recent case, the Apex Court observed that the basic ingredients of Section 306 of IPC are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment.

PUNISHMENT FOR ABETMENT

For the public at large, the very concept of Abetment being tried as a separate offence and being punishable might sound really bizarre because it is so imbibed in most people that only the perpetrators of the crime will be punished. The Penal Code in its abetment laws clearly lays down the sections, explaining extensively, the different walks of punishments that the abetment laws notify. They are covered as follows:

In Section 109 [S. 49 BNS] of the Indian Penal Code, the one who abets an offence is given the same punishment as that of the principal perpetrator of the crime if the actus reus of the principal offender has occurred as a result of the inducement made by the abettor. Section 109 of the Penal Code is applicable in case no separate provision is made for the punishment of such an abetment.

Section 109 of the Penal Code ends up being relevant regardless of whether the abettor is absent when the offense abetted is committed given that he has instigated the commission of the offense or has connected with at least one or more different people in a conspiracy to commit an offense and in accordance with that conspiracy, some unlawful act or unlawful exclusion happens or has purposefully helped the commission of an offense by an act or illicit oversight.

This section explains that if the Penal Code has not independently accommodated the punishment of abetment as such then it is punishable with the discipline accommodated for the original offense. Law does not expect instigation to be in a specific structure or that it should just be in words. The instigation might be by behaviour or conduct. Whether there was instigation or not, is an inquiry to be settled on the distinct facts of each case.

It isn't essential in law for the prosecution to demonstrate that the real intention in the brain of the individual abetting was instigation and that was it, provided there was instigation and the offense has been committed or the offense would have been committed if the individual who was the main offender had the same intention and knowledge as the thing that was likely to have been done by the person who is instigated.

It is only if this condition is satisfied that an individual can be blameworthy of abetment by instigation. Further the actus reus abetted ought to be done as a consequence of the abetment or in pursuance as given in the Explanation to this Section.

Section 110 [S. 50 BNS]

Of the Indian Penal Code gives that even if the individual abetted commits the offense with an intention different than the intention possessed by the main perpetrator of the crime, yet the abettor

will be charged with the punishment provided for the offence abetted. The liability of the individual abetted isn't influenced by this section.

Section 111 [S. 51 BNS] of the Indian Penal Code continues the development on abetment laws around the phrase “each man is deemed to intend the corollary outcomes of his act.” If one man actuates another to execute specific wrongdoing, and that other, in pursuance of such instigation, executes not just that wrongdoing but carries out another wrongdoing in the advancement of it, the former is criminally liable as an abettor in regard of such last-mentioned wrongdoing, in the event that it is one which, as a person with the intelligence of a reasonable man, at the time of inducement would have known to be committed in order to carry out the original crime.

Section 112 [S. 52 BNS] of the Indian Penal Code expands the guidelines articulated in the previous section. Under it, the abettor is held liable for the offense abetted and also the offense committed.

Joint scrutiny of Sections 111, 112 and 133 make it richly evident that if an individual abets another in the commission of an offense and the chief goes further from there on and accomplishes something more which has an alternative outcome from that planned by the abettor and makes the offense an aggravated one, the abettor is liable for the consequences of the acts of his principal.

The essence of the issue is an enquiry of this sort is whether the abettor as a sensible man at the time that he is being instigated or has been purposefully supporting the main perpetrator would have predicted the likely results of his abatement.

Section 113 [S. 53 BNS] of the Indian Penal Code ought to be read together with Section 111. Section 111 accommodates the doing of the actus reus which is not the same as the one abetted, though this section manages the situation when the actus reus done is equivalent to the guilty act abetted however its impact is not the same.

Section 114 [S. 54 BNS] of the Indian Penal Code is possibly only brought into activity when conditions adding up to abetment of specific wrongdoing have first been proved, and after that, the presence of the accused at the commission for that wrongdoing is demonstrated furthermore.

Section 114 talks about the case, where there has been the wrongdoing of abetment, however, were additionally there has been real commission of the wrongdoing abetted and the abettor has been present there, and the manner by which it manages such a case is this. Rather than the wrongdoing being still abetment with circumstances of aggravation, the wrongdoing turns into the very wrongdoing abetted. The section is clearly not punitory.

Section 114 isn't relevant for each situation in which the abettor is present at the commission of the offense abetted. While Section 109 is a section which talks about abetment, Section 114 applies to those cases in which not only is the abettor present at the time of the commission of the offense but abetment was done beforehand and done independently of his presence.

There is a very fine line between Section 34 of the Indian Penal Code and Section 114 of the Indian Penal Code.

As per Section 34, where a criminal act is done by numerous people, in promotion of the basic aim of all, every one of them is liable as though it were finished by himself alone; so that if at least two or more people are present, helping and abetting in the commission of the murder, each will be tried as the main perpetrator of the crime, however, it probably won't be clear which of them really perpetrated the crime.

Section 114 alludes to the situation where an individual by abetment, prior to the commission of the wrongful act, renders himself obligated as an abettor, is present when the actus reus takes place, however, takes no active part in its doing. A joint act falling under Section 34 however does not include a mere order from one person to another and the carrying out of that order by the other which may only be the instigation of the latter's act.

Section 115 [S. 55 BNS] of the Indian Penal Code criminalizes the abetment of specific offenses which are either not committed at all, or not committed in pursuance of abetment or only in part committed.

The detainment discussed in this section is for a term which may stretch out to seven years, and will likewise be obligated to fine. What's more is that, if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years and shall also be liable to fine.

DIFFERENCE BETWEEN ABETMENT AND COMMON INTENTION

ABETMENT	COMMON INTENTION
Abetment is a stand alone offence and can be punished all by itself.	Common intention is no offence on its own and has to be read with in consonance of other crimes.
The accused may not be present at the crime scene .	Common Intention, his presence is an indispensable element and participate whether actively or passively.
The crime need not be committed.	The crime must be committed.

Intolegal

CHAPTER V: CRIMINAL CONSPIRACY

- Section 120A [S. 61(1) BNS] of the Indian Penal Code, 1860 states: “when two or more persons agree to do, or cause to be done, an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.
- Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.
- Generally, the accused is charged with the offence of criminal conspiracy along with the charge of some other substantive offence under the Indian Penal Code, 1860 or any other law.
- Chapter V-A of the Indian Penal Code, 1860 as inserted in 1913 deals with the offence of criminal conspiracy.

Essentials of Criminal Conspiracy

- ✓ There must be at least two persons who conspire.
- ✓ Joint evil intent to do an illegal act or an act that is not illegal by illegal means is necessary.
- ✓ The agreement may be expressed or implied or partly expressed and partly implied.
- ✓ As soon as the agreement is made, the conspiracy arises, and the offence is committed.
- ✓ The same offence is continued to be committed so long as the combination persists.
- ✓ Proof of Conspiracy
- The offence of criminal conspiracy can be proved by either direct or circumstantial evidence.
- A conspiracy is usually hatched in a secret and private setting which is why it is almost impossible to produce any affirmative evidence about the date of the formation of the criminal conspiracy, the persons involved in it, or the object of such conspiracy, or how such object is to be carried out.
- It was believed that agreement or meeting of minds is one of the main evidence to prove the conspiracy under this section and also it is one of the hardest one to prove because as we

know the fact that offender by himself does not agree to a fact that he is involved with someone.

- It is only a matter of circumstances that one can prove that there is a meeting of minds or an agreement between those two. Hence, criminal conspiracy is based on circumstantial evidence as in most cases there is no direct evidence to prove the same.
- There is no conspiracy between husband and wife because they are considered as the one person.

Punishment of Criminal Conspiracy

- Section 120B (S. 62) of Indian Penal Code, 1860 provides that “whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence”.
- Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

Case Laws

- **Kehar Singh and others v. State (Delhi Administration) (1988):**
 - The Supreme Court, in this case, has held that the most important ingredient of the offence of conspiracy is an agreement between two or more persons to do an illegal act.
 - Such an illegal act may or may not be done in pursuance of the agreement, but the very agreement is an offence and is punishable.
- **Major E.G. Barsay v. The State of Bombay (1962):**
 - The Supreme Court held that an agreement to break the law constitutes the gist of the offence of criminal conspiracy under Section 120A of Indian Penal Code, 1860.
 - The parties to such an agreement are guilty of criminal conspiracy even if the illegal act agreed to be done by them has not been done. The court also held that it is not an ingredient of the offence of criminal conspiracy that all the parties should agree to do a single illegal act and a conspiracy may comprise the commission of several acts.

- **Ram Narain Popli v. C.B.I. (2003):**

- In this case, the Supreme Court held that mere proof of the agreement between two or more persons to do an unlawful act or an act by unlawful means is enough to convict the parties for criminal conspiracy under Section 120B.

CHAPTER VI: OFFENCES AGAINST STATE

Section 121 [S.145 BNS] of the Code deals with Waging or attempting to wage war or abetting waging of war, against the Government of India and whoever does any of this shall be punished with death, or imprisonment for life and shall also be liable for fine.

The essentials that are required to be proved for an accused in order to constitute an offence for waging war against the Government of India:

1. Waged war; or
2. Attempted to wage war; or
3. Abetted (encouraged or assisted) the waging of war
4. Must be against the State.

For example, a person joins an insurrection against the Government of India, then that person has committed an offence defined under this section.

The acts amounting to any of the above mentioned three- actual war, abetted or attempted war will amount to waging war. So, all three activities have been sanctioned with the same punishment. The reason behind the same punishment is because such acts are condemned to be the highest offences against the State.

It should be noted that the offence of abetment comes into motion when any person translates his inciteful recitations or hatred against the state into action. In the case of *Mir Hasan Khan v. State of Bihar*, it was seen that for a person to be convicted under this section it should be proved that the person had planned to obtain possession of armoury and used such rifles and ammunitions against the troops of the State and the seizure of these armouries was part of the planned action.

The offence under this section is cognizable, non-bailable, non-compoundable and triable by the Sessions court.

Waging war is different than rioting. Waging war against the state is when the rising is for a general-purpose which affects the whole community and is directed against the government whereas rioting occurs when the rising is for accomplishing some private purpose which affects only the ones who are engaged in it without questioning the government irrespective of how numerous or outrageous it is. In the case of waging a war, intention and purpose are considered to be a very important factor behind the aggression against the Government.

The accused persons are not limited to just Indians but foreign nationals also who enter into the territory of India to disrupt the functioning of the government as the case of the Mumbai Terror Attacks, the attack was by foreign nationals and was aimed at the country and the Indians.

Waging war does not include overt acts like a collection of men, arms and ammunition and inter-country wars which involve military operations between countries is also not included under it but joining or organising a rebellion against the government is a form of war.

Section 121A [S. 146 BNS] was not a part of the original Indian Penal Code of 1860 but it is added later by an amendment in the Code in 1870. After Independence, it was amended in 1951 just for replacing ‘British India’ with ‘State’. This section deals with conspiracy to commit offences punishable by Section 121.

This section deals with two kinds of conspiracies:

1. Conspiring to commit any offence punishable under Section 121 within in or out of India.
2. Conspiring to overawe, intimidate by criminal force or a show of criminal force against the government.

An act which does not constitute abetment will still be considered an offence under this Section when two or more persons enter an agreement to commit an illegal act or a legal act through illegal means.

Punishment under this section includes imprisonment for ten years or life imprisonment with fine and these punishments can be given by the Central and State governments.

For constituting a conspiracy under this section is not necessary that any act or illegal omission takes place.

Section 122 [S. 147 BNS] of the Code deals with collecting arms, etc., with intention of waging war against the Government of India. It deals with the preparation of war.

Following are the essentials required under this section:

1. A person collects men, arms or ammunition, or prepares to wage war;
2. Does it with intention of waging the war against the Government of India or for preparing to wage war against the Government of India.
3. The accused must be a participant in such collection of men, arms or ammunition.

Nevertheless, the existence of intention must be concurrent with such preparation. The punishment under this section is life imprisonment or ten years imprisonment with fine. The offence under this section is cognizable, non-compoundable, non-bailable and triable by the Sessions court.

Section 123[S. 148 BNS] of the Code deals with concealing with intent to facilitate design to wage war by any act or illegal omission.

Following are the essentials of this section:

1. A person conceals the existence of a design which is prepared to wage war against the Government of India.
2. He intends by such concealment to facilitate the waging of the war or knows that such concealment is likely to facilitate such war.

The punishment under this section is imprisonment of ten years along with fine. The offence under this section is cognizable, non-bailable, non-compoundable and triable by the Sessions court. In the case of Parliament attacks, the accused had information of conspiracy along with the plan of terrorists and this illegal omission by him made him liable under this section.

Section 124[S. 149 BNS] of the Code deals with assaulting the President, Governor, etc., intending to compel or restrain the exercise of any lawful power. Under this section, the person assaults or restrains or wrongfully restrains utilizing a criminal force or through the show of criminal force. This section is an extension of Section 124A.

The primary motive behind this section is to create a fearless atmosphere for the high officials to function and discharge their duties efficiently with no apprehension to their bodies. The punishment under this section is imprisonment for seven years along with fine. The offence is cognizable, non-bailable, non-compoundable and triable by the Sessions court.

Section 124A [S. 150 BNS] of the Code deals with Sedition. This section was carved out as Section 113 of Macaulay's draft Penal Code of 1837 but later it was enforced due to unreasonable reasons in the Indian Penal Code, 1870.

Sedition means an attempt made by meetings or speeches or publications to disturb the tranquillity of the State or to bring hatred or contempt or dissatisfaction against the State. This dissatisfaction or hatred may be done by words either spoken or written or the use of signs, representations, etc. Sedition is a crime against society.

The term dissatisfaction in this section includes disloyalty and feelings of enmity.

Under this section Bonafide criticism of the Government is possible. So, the use of strong words to express disapproval of the measures or policies of the Government with a view to improvements without exciting or attempting to excite hatred, contempt or dissatisfaction does not come under sedition.

The punishment for sedition under this section is life imprisonment to which a fine might be added or imprisonment up to three years along with fine or just a fine. The offence is cognizable, non-bailable, non-compoundable and triable in the Sessions court.

In the case of **Queen Empress v. Bal Gangadhar Tilak** [1897] ILR 22 Bom 112, the High court of Bombay had observed that Sedition means hatred, enmity, dislike, disloyalty, hostility, contempt and every form of ill-will toward the government.

The constitutional validity of Section 124A has been in controversy since the Constitution came into force. In the case of **Tara Singh v. State AIR 1951** East Punjab 27 there was the contention that Section 124A was ultra vires to the Constitution as it violates Article 19(1) (a) which talks about freedom of speech and expression. The court in this case had said that Section 124A does not hold relevance in modern India's polity pattern. But then in 1951 Constitutional amendment 19(2) was added which was reasonable restrictions to freedom of speech and expression with the terms 'in the interest of' and 'public order'.

This judicial problematic unrest for Section 124A was put to rest by the Supreme Court in the landmark case of **Kedar Nath v. State of Bihar**. In this case, the apex court said that the security of the State, which is dependent on law and order is the basic consideration that legislation has to consider to punish any offence undertaken against the State. Such legislations have, on one hand, a right to fully protect and guarantee the freedom of speech and expression, which is the sine quo non of a democratic form of govt that our constitution of India has established. But freedom has to be guarded against becoming a tool against the government which has been established by law by using any words which incite violence or might have a tendency of creating public disorder or unrest.

Section 125 [S. 151 BNS] of the Code deals with waging war against any Asiatic Power which is in alliance with the Government of India. This section is based on an international obligation that a nation must respect other nations and commit to peaceful co-existence. Since India all along has been friendly with all the other countries, this section has been kept for this purpose only in the Code.

The essentials of this section are as follows:

1. An Asiatic state with an international influence.

2. The state should be other than India.

3. The state should be in an alliance or at peace with the Government of India.

The punishment under this Section is life imprisonment or imprisonment for seven years with fine or only fine. The offence is cognizable, non-bailable, non-compoundable and triable in the Sessions court.

Section 126 [S. 152 BNS] of the Code deals with committing depredation on territories of Power at peace with the Government of India. Depredation refers to an act of attacking or which amounts to plundering when the menace is caused in general to everyone in the territory. Unlike Section 125 which applies only to Asiatic powers whereas this section applies to nations who are in peace with the State.

The essentials of this section are as follows:

1. Accused should have committed or prepared to commit depredation.
2. The act must be done on the territories in peace with the government.

The punishment under this section is imprisonment for a term of seven years along with fine and any property used or acquired for committing such offence can also be forfeited. The section punishes both the act and its preparation with the same punishment. The offence is cognizable, non-bailable, non-compoundable and triable in the Sessions court.

Section 127 [S. 153 BNS] of the Code deals with receiving property taken by war or depredation under Section 125 and 126.

The essentials of the section are as follows:

1. Accused must have received any property.
2. The property must have been received by waging war or depredation against the Government of India

The punishment under this section is imprisonment for seven years with fine and property will be forfeited. So, any property received by waging war against any Asiatic power or committing depredation on territory at peace with the Government of India is made punishable under this section. The offence is cognizable, non-bailable, non-cognizable and triable in the Sessions court.

One of the primary objects of this section is to not allow the Indian territory to be used a safe place for such persons who have received such properties by committing an offence under sections 125

and 126 of the Code. For conviction under this section, it is not necessary that the offender must be prosecuted or convicted under Section 125 or 126.

Escape of a State prisoner:

State prisoner refers to a person whose imprisonment is necessary to preserve the security of India from internal disturbance as well as foreign hostility.

Section 128 [S. 154 BNS] of the Code deals with a public servant voluntarily allowing a prisoner of war or state to escape. When being a public servant and having custody of a prisoner and voluntarily allowing him to escape any such place where he is confined, then he will be punished for life imprisonment or imprisonment for a term of ten years and will also be liable to fine.

The offence is cognizable, non-bailable, non-cognizable and triable in the Sessions court. The term public servant used here has the same meaning as given under Section 21 of the Code and the word voluntarily has the same meaning as given under Section 39 of the Code.

Section 129 [S. 155 BNS] of the Code deals with public servant negligently suffers such prisoner of war to escape who is under his custody and negligently allows such prisoner to escape from that custody or confinement where that prisoner is confined.

The public servant is punished with simple imprisonment for a term up to three years and also will be liable to fine as the offence is on account of negligence. The offence under this section is cognizable, bailable, non-compoundable and triable by Court of Session, Metropolitan Magistrate and Magistrate of First class.

Section 130 [S. 156 BNS] of the Code deals with aiding the escape of, rescuing or harbouring such prisoners of war. Any person who knowingly aids or assists any prisoner of State or the war to escape from custody or rescues or attempt to rescue or harbours or conceals any such prisoner or attempts or attempt to offer resistance of recapturing of that prisoner then such person will be punished with imprisonment for life or with imprisonment up to ten years and will also be liable to fine. The offence under this section is cognizable, non-bailable, non- compoundable and triable in the Sessions court.

This section is a general provision which applies to all and not limited just to the liability of public servants only which is the case in sections 128 and 129 of this Code. This provision has also a very wide ambit as it says that if knowingly aiding or assisting, or rescuing or attempting to rescue, or harbouring or concealing, or offering or attempting to offer resistance have all been made an offence under this section.

If any State prisoner is allowed to be at parole within certain limits of the Indian territory, then he will be deemed to be escaped custody if he goes beyond that limit in which he is allowed.

OFFENCES AGAINST PUBLIC

TRANQUILITY

COMMON OBJECT – SECTION 149 (OFFENCE AGAINST PUBLIC TRANQUILLITY)

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence. This section creates a specific and distinct offence.

Ingredients

- a) Commission of an offence by any member of an unlawful assembly.
- b) Such offence must have been committed in prosecution of the common object of the assembly, or must be such as the members of the assembly knew to be likely to be committed.

Section 34 and Section 149

Section 149 is wider than Section 34. In it the joint liability is founded on ‘common object;’ in Section 34 on ‘common intention’. Both sections deal with liability for an offence not committed by the person charged. Section 149 creates a specific offence and deals with the punishment of that offence alone.

Section 149:

It postulates an assembly of five or more persons having a common object – namely one of those named in Section 141 and then doing of acts by members of it in prosecution of that object. There is a difference between object and intention, for though their object is common, the intentions of the several members may differ and indeed may be similar only in respect that they are all unlawful, while the element of participation in action, which is the leading feature of Section 34, is replaced in Section 149 by membership of the assembly at the time of the committing of the offence.

Both sections deal with combinations of persons, who become punishable as sharers in an offence. Thus, they have a certain resemblance, and may to some extent overlap, but Section 149 cannot at

any rate relegate Section 34 to the position of dealing only with joint action by the commission of identically similar criminal acts, a kind of case which is not in itself deserving of separate treatment at all.

A common object is different from a common intention in that it does not require prior concert and a common meeting of minds before the attack, and an unlawful object can develop after the people get there. In a case under Section 149 there need not be a prior meeting of minds. It is enough that each has the same object in view and that their number is five or more and that they act as an assembly to achieve that object. Section 34 refers to cases in which several persons, both do an act and intend to do that act; it does not refer to cases where several persons intend to do an act and some one or more of them do an entirely different act. In the latter class of cases, Section 149 of the code may be applicable but Section 34 is not. Once the court find that an offence has been committed by some member or members of an unlawful assembly in prosecution of the common object, then whether the principal offender has been convicted for that offence or not, upon the plain wording of this section, the other members may be constructively convicted of that offence, provided they are found to have had the necessary intention or knowledge.

Members of an unlawful assembly may have a community of object only upto a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object will vary, not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of this section may be different on different members of the same unlawful assembly.

In prosecution of the common object

This phrase means that the offence committed was immediately connected with the common object of the unlawful assembly, of which the accused were members. The act must be one which must have been done with a view to accomplish the common object attributed to the members of the unlawful assembly where the common object is established, the unlawful assembly does not cease to be so by merely splitting itself into two groups for launching the attack.

Where the common object of the unlawful assembly was to beat the men of the opposite party and one of them thrust a spear in the abdomen of a member of the opposite party and killed him and his act was unpremeditated and not contemplated by any member of the unlawful assembly, the other members of the assembly could not be held guilty of murder. The words “in prosecution of the common object” do not mean “during the prosecution of the common object of the assembly”.

It means that the offence committed was immediately connected with the common object of the assembly or the act is one which upon the evidence appears to have been done with a view to accomplish the common object attributed to the members of the assembly. The words “in prosecution of the common object” have to be strictly construed as equivalent to “in order to attain common object”. There must be a nexus between the common object and the offence committed and if it is found that the same was committed to accomplish the common object; every member of the same will become liable for the same. Even where the common object is not developed at the initial stage, it may develop on the spot, co instanti.

Unlawful Assembly – Section 141(offence against the public tranquillity)

“An assembly of five or more persons is designated an ‘unlawful assembly’ if the common object of the persons composing that assembly is –

- a) To overcome by criminal force, or show of criminal force, the Central or any State Government or Parliament or the legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or b) To resist the execution of any law, or of any legal process; or
- c) To commit any mischief or criminal trespass, or other offence, or
- d) By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of mater or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right, or
- e) By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do. Explanation: An assembly, which was not unlawful when it assembled, may subsequently become an unlawful assembly.”

The essence of an offence under this section is the combination of five or more persons, united in the purpose of committing a criminal offence, and the consensus of purpose is itself an offence distinct from the criminal offence which these persons agree and intend to commit.

Ingredients

An ‘unlawful assembly’ is an assembly of five or more persons if their common object is:

- a) To overawe by criminal force

- The Central Government, or
- The State Government, or

- The Legislature, or
 - Any public servant in the exercise of lawful power
- b) To resist the execution of law or legal process.
- c) To commit mischief, criminal trespass, or any other offence.
- d) By criminal force
- i) To take or obtain possession of any property, or
 - ii) To deprive any person of any incorporeal right, or
 - iii) To enforce any right or supposed right.
- e) By criminal force to compel any person –
- i) To do what he is not legally bound to do, or
 - ii) To omit what he is legally entitled to do.

1. Five or more

The assembly must consist of five or more persons having one of the fine, specified objects as their ‘common object’. The Supreme Court has endorsed the view that the number of injuries caused and the number of persons who were inflicted with those injuries (in this case three persons were attacked and they sustained 13, 12 and 7 injuries respectively) caused gives a clue to the fact that more than three persons must necessarily have participated in the attack. If out of an unlawful assembly consisting of seven named persons, four are acquitted, the other three cannot be convicted of rioting as members of an unlawful assembly. They may, however, be convicted of the principle offence with the aid of Section 34, IPC.

1. Common object

The essence of the offence is the common object of the persons forming the assembly whether the object is in their minds when they come together or whether it occurs to them afterwards, is not material. But it is necessary that the object should be common to the persons who compose the assembly, that is, they should all be aware of it and concur in it.

Mere presence in an assembly does not make a person a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of the unlawful assembly or unless the case falls under Section 142.

Second Clause: Under this clause, the act resisted must be a legal act.

Third Clause: It specifies only two offences – viz, mischief and criminal trespass, but the words ‘or other offence’ sum to denote that all offences are included though only there are enumerated in a haphazard way.

Fourth Clause: The act in this clause is made punishable owing to the injurious consequences which are likely to cause to the public peace.

Fifth Clause: This clause is very comprehensive and applies to all the rights a man can possess, whether they concern the enjoyment of property or not.

Explanation: An assembly which is lawful in its inception may become unlawful by the subsequent act of its members. It may turn unlawful all of a sudden and without previous consent among its members.

Being Member of Unlawful Assembly –

Section 142 shows that it is sufficient for the offence to be proved against an individual that the individual should remain in an unlawful assembly as soon as he is aware that the assembly is unlawful or joins it knowing the purpose of the assembly. The word ‘continues’ in the section means physical presence on a member of the unlawful assembly, that is, to be physically present in the crowd. It does not mean that mere presence as a curious onlooker or by-stander at the scene of the unlawful assembly without sharing its common object would make a person liable under Section 142 IPC for being a member of an unlawful assembly. For being a member of unlawful assembly it is not necessary that a person must commit some overt act towards the commission of the crime. The test is whether he knows of its common object and continues to keep its company due to his own free will. If a person gets hurt and retires from the assembly physically, then he will be liable for only those acts which were done while he was a member of the assembly but not for acts done after he retired. Whether the person has retired or continued as a member of an unlawful assembly depends upon two things:

- i) Physical possibility of rejoining.
- ii) Intention to rejoin.

To determine these, we will have to make three tests:

i) **Physical part**

If he is physically present being aware of the facts and common object, then it can be said that he continued in it.

ii) **No physical part**

If the person is not physically present; means due to some hurt, he is outside or somewhere near the crowd of the unlawful assembly, then we have to see “did he disavow” to join. If it is yes, then the presumption is in favour of the accused.

iii) **Totally helpless**

If the person is totally in a helpless position or unconscious, then even if he did not disavow, the presumption is in favour of the that person i.e. accused.

RIOTING COGNIZABLE, BAILABLE, ANY MAGISTRATE: SECTION 146 [S. 189 BNS]

A riot is an unlawful assembly in a particular state of activity, accompanied by the use of force or violence. It is only the use of force or violence that distinguishes rioting from unlawful assembly.

Ingredients:

- a) That the accused persons, being five or more in number formed an unlawful assembly.
- b) They were animated by a common object.
- c) That force or violence was used by the unlawful assembly or any members of it in prosecution of the common object.

The word violence is not restricted to force used against persons only, but extends also to force against inanimate objects. It is not necessary that the force or violence should be directed towards a particular person or particular property. Even the slightest use of force is constitutes to frame the offence under rioting. To constituting rioting there should be actual use of force.

The offence of rioting is independent of the effect of force. For example, when a member of an unlawful assembly gives a blow to a person or throws a stone on a cow, he is said to use the force even the harm caused is a slight one.

Even, the inducement to move is also a force. If a person by his act makes an animal to move or if he stops the bus, he is said to use force and such case of unlawful assembly comes under this section. Resistance to the execution of an illegal warrant within reasonable bounds does not amount to rioting.

For example, if a municipal commissioner with an illegal warrant comes to demolish the building, then, the resistance to such a demolition will not amount to rioting. In a free fight there cannot be any

formation of an unlawful assembly and common intention. Each individual will be responsible for his individual acts. Because, freefight is without premeditation.

Section 149 is broadly presented (likelihood) whereas Section 146 is stricter and narrower (only in prosecution of common object). For rioting, the punishment is 2 years in cases where it cannot be ascertained about the quantum of force used by any individual but under Section 149 with any substantive offence punishment can be more. The force or violence must be used in prosecution of the common object of the unlawful assembly. That means the force or violence is to be used in order to achieve the purpose or common object of any member of the unlawful assembly uses any force, which unknown to the members of unlawful assembly, then that person himself will be liable for that force and other members are not held liable for his act.

SECTION 148 [S. 189 BNS]

Whoever is guilty of rioting, armed with deadly weapons or anything which is used as a weapon of offence, is likely to cause death shall be punished with an imprisonment which may extend to 3 years or fine or with both. This is a cognizable offence and bailable and triable by Magistrate of 1st class.

This is an aggravated form of offence compared to rioting. Under this section the person who is armed even though a member of person, is punishable alone and for his having armed does not make other persons liable jointly. The punishment for this offence is 3 years. The weapon used or armed must be of such a nature that if it is used it is capable of causing death.

AFFRAY:

The word ‘affray’ is derived from the French word “affraies” to terrify and in a legal sense it is taken for a public offence to the terror of the people.

Ingredients:

- a) Two or more persons must fight.
- b) Fight must be in a public place.
- c) They must disturb the public place.
 - Public place is a place where the public go, no matter whether they have a right to go or not. → E.g. an omnibus, a railway station, a railway platform, a public urinal and a goods yard of a railway station are public places.
 - A private chabutra adjoining a public through fare, a railway station and platform at a time when no train is due, except a goods train are not public places.

- There must be clear evidence of fighting in a public place and mere words do not constitute fighting for less any assault or breach of the peace. And if one person uses force and other person if he remains passive, in such a case there is no fighting and hence no affray.
- In India for affray both parties should be fighting and both are held liable but in England only one party can be held liable. Even a single person in a public place constitutes public. When two persons were fighting in a public and a third person defends himself, even in such cases the offence of affray is committed.

Affray and Riot:

- i) Affray cannot be committed in a private place but a riot can be.
- ii) An affray can be committed by two or more persons whereas a riot by five or more persons.

Affray and Assault:

- i) Affray can be committed only at public place whereas assault can be committed anywhere.
- ii) Affray is regarded as an offence against the public peace, whereas an assault is an offence against the person of an individual.

CHAPTER VII: OFFENCES RELATED TO ELECTION

MEANING OF OFFENCES RELATED TO ELECTIONS

The Indian Penal Code, 1860(IPC) lays down provisions that define various offences related to elections. Offences related to Elections include various corrupt practices such as bribery, undue influence, personation, and other fraudulent activities that are aimed at influencing the outcome of elections. These provisions aim to ensure free and fair elections by penalizing such offences.

PROVISIONS FOR OFFENCES RELATED TO ELECTIONS

Some of the important offences relating to elections in the IPC are described below:

Bribery: According to Section 171B [S. 168 BNS] of the IPC, bribery refers to the offering, giving, accepting or soliciting of any undue advantage or gift as a reward for, or with a view to, influencing the election result.

Undue influence: Section 171C [S. 169 BNS] of the IPC, 1860 defines undue influence as the use of force, coercion, or pressure to induce a person to vote in a particular manner or to refrain from voting.

Personation: Section 171D [S. 170 BNS] of the IPC defines personation as pretending to be someone else to cast a vote or to interfere with the right of another person to vote.

Illegal payments in connection with an election: Section 171E[S. 171 BNS] of the IPC makes it an offence to make illegal payments in connection with an election, such as payment of money or providing any other advantage for the purpose of inducing someone to vote or refrain from voting.

False statement in connection with an election: Section 171F[S. 172 BNS] of the IPC, 1860 makes it an offence to make a false statement in connection with an election, such as publishing false news or making false statements about a candidate or political party.

Bribery under Section 171B [S. 168 BNS]

Bribery is defined under Section 171B of the Indian Penal Code as the offering, giving, accepting, or soliciting of any undue advantage or gift as a reward for, or with a view to, influencing the election result. This provision covers a wide range of activities that are aimed at influencing the electoral process, including the offering of bribes to voters, candidates, or election officials.

Bribery is considered a corrupt practice that undermines the integrity of the electoral process and is therefore penalized under the IPC. The provision is aimed at ensuring free and fair elections by preventing the undue influence of money or other benefits on the electoral outcome.

Any person who is found guilty of bribery under Section 171B can face imprisonment, fines, or both. The punishment may vary based on the severity of the offence and the circumstances in which it was committed. The objective of this provision is to ensure that elections are conducted in a fair and transparent manner and that the outcome reflects the genuine will of the voters.

The key elements of Section 171B of the Indian Penal Code, 1860 are as follows:

Offering, giving, accepting, or soliciting: This provision covers a wide range of activities related to bribery, including the offering of bribes, the giving of bribes, the accepting of bribes, and the soliciting of bribes.

Undue advantage or gift: The key element of bribery under Section 171B is the offering, giving, accepting, or soliciting of an undue advantage or gift. This could be in the form of money, goods, or any other form of reward that is intended to influence the election result.

Influence on election result: The central purpose of Section 171B is to prevent any undue influence on the election result. The provision aims to ensure that elections are conducted in a free and fair manner, without the influence of bribes or other corrupt practices.

Punishment for bribery under Section 171E:

Section 171E of the Indian Penal Code outlines the punishment for the offence of bribery under Section 171B. According to the provision, anyone who is found guilty of bribery, as defined in Section 171B, shall be punished with imprisonment for a term that may range from 6 months to 2 years, or with a fine, or with both.

Undue influence at an election of Section 171C

Section 171C of the Indian Penal Code, 1860 defines the offence of undue influence at an election. According to the provision, it is an offence to use undue influence or to cause fear or alarm to voters in order to affect the result of an election.

The key elements of Section 171C are as follows:

Use of undue influence: The provision prohibits the use of any form of undue influence, such as the use of force, coercion, or intimidation, in order to affect the outcome of an election. This includes the use of physical force, threats, or any other form of pressure that is intended to influence the voters.

Causing fear or alarm: The provision also prohibits the causing of fear or alarm among voters in order to affect the outcome of an election. This could be in the form of spreading false information or making false threats, for example.

Personation at elections under Section 171D

Section 171D of the Indian Penal Code defines the offence of personation at elections. According to the provision, it is an offence to impersonate another person with the intent of voting in their place or to prevent them from voting.

The key elements of Section 171D are as follows:

Impersonation: The provision prohibits the act of impersonating another person with the intent of voting in their place or to prevent them from voting. This could be in the form of using someone else's identity to cast a vote, or preventing the rightful voter from casting their vote.

Intent: The provision requires the intent to impersonate another person in order to be considered a violation. This means that the act of impersonation must be deliberate and intentional, and not a mistake or an accident.

Punishment for undue influence or personation at an election

Section 171F of the Indian Penal Code, 1860 outlines the punishment for the offences of undue influence at an election (Section 171C) and personation at an election (Section 171D). According to the provision, anyone who is found guilty of either of these offences shall be punished with imprisonment for a term that may range from 6 months to 2 years, or with a fine, or with both.

The punishment for undue influence or personation at an election under Section 171F is intended to serve as a deterrent against the corrupt practices that can influence the outcome of an election. The provision is designed to ensure that elections are conducted in a free and fair manner, without the influence of undue influence or impersonation.

In addition to the punishment under Section 171F, a person who is found guilty of undue influence or personation at an election may also face other penalties, such as disqualification from holding public office, debarment from participating in future elections, or forfeiture of assets.

These penalties may be imposed in addition to the punishment outlined in Section 171F and are intended to serve as a further deterrent against undue influence and personation in the electoral process.

False statement in connection with an election

Section 177[S. 210 BNS] of the Indian Penal Code deals with the offence of making false statements in connection with an election. According to the provision, it is an offence for anyone to make a false statement with the intention of affecting the result of an election.

The key elements of Section 177 are as follows:

False statement: The provision prohibits the making of false statements with the intention of affecting the result of an election. This could include making false statements about a candidate, their qualifications, their political views, or other relevant information.

Intent: The provision requires the intent to affect the result of an election in order to be considered a violation. This means that the false statement must be made with the deliberate intention of influencing the outcome of an election, and not by mistake or by accident.

Illegal payments in connection with an election

Section 171F of the Indian Penal Code, 1860 deals with the offence of illegal payments in connection with an election. According to the provision, it is an offence for anyone to make or accept a payment that is illegal or forbidden under the Representation of the People Act, 1951.

The key elements of Section 171F are as follows:

Illegal payment: The provision prohibits the making or accepting of any payment that is illegal or forbidden under the Representation of the People Act, 1951. This could include payments for votes, gifts or other forms of inducement intended to influence the outcome of an election.

Intent: The provision requires the intent to influence the outcome of an election in order to be considered a violation. This means that the payment must be made or accepted with the deliberate intention of affecting the result of an election, and not by mistake or by accident.

Failure to keep election accounts

According to Section 171-I [S. 175 BNS] of the IPC:

“Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.”

Representation of the People Act, 1951

Section 77 of the Representation of the People Act, 1951 deals with the offence of failure to keep election accounts. According to the provision, candidates and political parties must maintain proper

accounts of their election expenses and submit a report of their election expenses to the Election Commission of India within a specified timeframe after the conclusion of the election.

The key elements of Section 77 are as follows:

Maintenance of accounts: The provision requires candidates and political parties to maintain proper accounts of their election expenses, including the details of all contributions received and the expenses incurred during the election.

Submission of report: The provision requires candidates and political parties to submit a report of their election expenses to the Election Commission of India within 30 days of the declaration of the election results.

Landmark Judgments for offences related to elections

The landmark cases dealing with offences related to elections are:

• **E Anoop v State of Kerala, 2012**

The petitioner allegedly appeared at the polling station at Mokeri Government U.P. School in Peringalam constituency, changed his name, and presented himself in the polling booth as Kuttikkattu Pavitharan. He did so in order to obtain a voting paper, despite the fact that he was not the person he claimed to be, nor was he a member of that constituency/booth. The court found him guilty of personation under Sections 171D and 171F.

• **Veeraghavan v. Rajnikanth, 1997**

Mr. Rajnikanth is a well-known film actor with a large fan base throughout India, particularly in Tamil Nadu. The petitioner, a Supreme Court lawyer, accused him of wielding undue influence over people because, on the eve of the election, the respondent gave a tele-campaign presentation in which he urged voters to accept Rs 500 or Rs. 1000 from the petitioner while still voting for him.

The question was whether this would fall under IPC, 1860 Sections 171B, which deals with bribery, and 171C, which deals with undue influence.

The speech, as translated, stated that the voters of Tamil Nadu could not be swayed by these tactics and could not be corrupted; therefore, if the opponent offered money as a bargain for votes, accept it without hesitation, but exercise their legal rights freely because the people of Tamil Nadu could not be bought.

According to the Court, the respondent never advised in his speech to demand and receive a bribe. The offending speech wasn't so bad, and there was no mandate or imposition of restraint on voters to

refrain from doing what they wanted. Because the relevant sections of the IPC were not applicable, the respondent was found not guilty of any offence and the case was dismissed.

- **Iqbal Singh v. Gurdas Singh, 1975**

In this case, the respondent was elected as a Member of Parliament from a Punjab constituency. The petitioner claimed that at least 15,000 invalid votes were cast, resulting in the respondent being declared elected, and that the accused allegedly distributed large sums of money to Harijans under the guise of assisting them in the construction of Dharamshalas, as well as gave out several gun licences as bribes to induce voters to vote for them.

The appellant contended that this gratification was a corrupt practice of bribery and that voters' free legal rights had been influenced and tampered with.

Since there was no evidence regarding the bargaining of votes in exchange for gun licenses, the issues did not stand ground and the case was dismissed.

- **Raj Raj Deb vs Gangadhar, 1962**

The respondent was the Raja of Puri in Odisha's younger brother. The petitioner claimed that the appellant improperly used this fact to his advantage during election campaigning in the Satyapadi district, where he claimed to be "Chalanti Bishnu" himself and induced people to vote for him by claiming that if they did not, they would be displeasing Lord Jagannath himself and that every vote cast for him was a vote cast for Lord Jagannath. He threatened Divine and spiritual wrath if his instructions were not followed. Aside from that, he was accused of appealing to the villagers to vote for him on the basis of his caste, Khandayat.

OFFENCES AGAINST RELIGION

Section 295 of IPC [S. 296 BNS]

The offence of “injuring or defiling a place of worship with intent to insult the religion of any class” is dealt with in Section 295 of the Indian Penal Code. This provision makes it a crime to harm or degrade any place of worship or object held sacred by a specific religious group with the goal of offending that community’s religious emotions.

This offence contains the following elements:

1. The accused must have harmed or desecrated a place of worship or any object considered sacred by a religious group.
2. Damage or pollution must have been done on purpose.
3. The goal underlying the conduct has to be to offend the religious emotions of a certain religious group.
4. The accused must have known or should have known that his or her acts would offend the religious sensitivities of a certain religious group.
5. If an individual is found guilty of committing this offence, he or she may face imprisonment for a term of up to two years, a fine, or both.

Section 295A of IPC [S. 297 BNS]

Section 295A prohibits “deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.” This clause criminalizes any conduct designed to offend a community’s or group’s religious sensibilities.

Section 295A of the Indian Penal Code contains the following provisions:

1. Intentional and malicious acts: The act of insult or provocation must be intentional and done with the goal of offending the religious emotions of a certain religious community.
2. Meant to incite religious sentiments: The conduct must be meant to incite religious feelings in any class of Indian residents. Religious sentiments might encompass a person’s religious beliefs, customs, and practises.
3. Insulting a religion or religious beliefs: The conduct must be intended to offend a specific faith or religious beliefs. Words, gestures, or any other kind of communication can be used.

4. Intended against a class: The act must be intended at a specific class of Indian people who practise a specific religion. Religious beliefs, practises, or customs can be used to define the class.

The penalty for violating Section 295A is up to three years in jail, a fine, or both. The offence is non-bailable, which means that the accused is not entitled to bail and must request authorization from the court. The section's goal is to prevent any form of communal conflict or disturbance that may occur as a result of inflammatory remarks or acts directed towards a certain religion or religious community.

Section 296 of IPC [S. 298 BNS]

The offence of disrupting a religious gathering is dealt with under Section 296 of the Indian Penal Code. Anyone who willfully causes a disturbance or disruption during a religious gathering or ritual is charged under this clause. The section's goal is to ensure the peaceful performance of religious rites and to avoid any interruption to the people's religious feelings.

The following are the elements of the offence of disrupting a religious gathering under Section 296 of the Indian Penal Code:

1. The offence can only be committed if there is a religious assembly, which is defined as any gathering or congregation of individuals who have gathered for the purpose of religious worship or ritual.
2. The accused must purposefully make a disturbance: The accused must purposefully produce a disturbance or disruption during the religious gathering. The mere presence of the offender or an unintentional disruption will not be enough to constitute the offence.
3. The accused must cause a disturbance to the assembly: The accused must cause a disturbance to the assembly as a whole, not to any individual.
4. The disruption must occur during the meeting, not before or after. Only while the assembly is in session is the offence committed.
5. The accused must have knowledge of or intend to incite a commotion: The accused must have knowledge of or intend to disrupt the religious assembly. If the disruption is unintended or accidental, the offence will not be committed.

If the foregoing conditions are satisfied, the offence of disrupting a religious assembly is committed under Section 296 of the Indian Penal Code. The offence is punished by imprisonment for a term not exceeding one year, a fine, or both.

Section 297 of IPC [S. 299 BNS]

The offence of trespassing on burial grounds is addressed under Section 297 of the Indian Penal Code. This clause makes it a crime to access or remain in any site where the deceased are disposed of without valid authorization or consent.

The following are the major components of this offence:

1. Entry or remaining in any location used for the disposal of the dead: A person commits the offence if he or she enters or remains in any place used for the disposal of the dead. This includes cemeteries, burial grounds, cremation sites, and other similar locations.
2. Without lawful authority or permission: The admission or continued presence in such a location must be without lawful authority or permission. This implies that the individual does not have a valid justification or authority to be in the location.
3. Aim to offend anyone's religion or emotions: The offence is compounded if the person entering or remaining in such a location does so with the aim to insult anyone's religion or feelings. This implies that entering a religious burial place with the goal of disrespecting or insulting the faith or beliefs of individuals buried there is a more severe offence.
4. Mischief: The offence is enhanced if the perpetrator commits any mischief while in such a location. This includes destroying or defacing graves or other property, as well as indulging in any other conduct that harms or damages the location or the persons affiliated with it.

Trespassing on burial grounds is punishable by imprisonment for up to three months, a fine, or both under Section 297 of the Indian Penal Code. However, if the offence is done with the aim to offend someone's faith or sensibilities, or to cause damage, the punishment may be more severe, including imprisonment for up to two years, a fine, or both.

In summary, Section 297 of the Indian Penal Code is intended to protect the sanctity and dignity of burial places, as well as to ensure that those who enter or remain in such places do so with lawful authority or permission, and with no intention of disrespecting or insulting any person's religion or feelings.

Section 298 of IPC [S. 300 BNS]

Section 298 of the Indian Penal Code criminalises “uttering words, etc., with deliberate intent to wound religious feelings.” This clause was included to the IPC to safeguard persons’ religious sensibilities and to prevent intentional insult or harm to their religious beliefs.

The ingredients of Section 298 are as follows:

1. Uttering words/sounds: The provision applies to anybody who utters words, produces sounds or gestures, or displays any object with the goal of insulting a certain group or class of people’s religious beliefs.
2. Deliberate intent: The words or acts must be done with the deliberate goal of injuring a person’s or a group’s religious emotions. This section does not cover criticism of religious beliefs or practises that are not intended to offend or hurt religious emotions.
3. Wounding religious sentiments: The words or acts must be such that they are likely to injure a person’s or a group’s religious sensibilities. The offence is not complete if the individual does not feel insulted or if the words or acts do not have the potential to injure the person’s or group’s religious emotions.
4. Religion or religious beliefs: The offence encompasses all religions and religious beliefs. It makes no difference whether the religion or religious belief is minority or majority.

Section 298 offences are punishable by imprisonment for up to three years, a fine, or both. If the offence is done with the aim to incite a riot, the sentence may be increased to up to five years in jail, a fine, or both.

Section 298 of the Indian Penal Code is an essential clause that protects persons’ religious sensibilities and punishes those who intentionally insult or injure religious beliefs. To promote communal harmony and peace in society, it is important to respect the views and emotions of individuals and communities.

OFFENCES WHICH AFFECT THE PUBLIC

HEALTH, CONVENIENCE, MORALS,

DECENCY AND SAFETY

The Indian Penal Code's Chapter XIV deals with offences against public health, safety, convenience, decency, and morals.

Nuisance can be categorized into two parts:

1. Public Nuisance
2. Private Nuisance

A private nuisance is an act that annoys or disturbs one or more individuals, whereas a public nuisance is a public wrong that affects the rights of the entire public. This article focuses on public nuisance in particular.

Section 268 [S. 268 BNS]

The IPC section 268 deals with public nuisance. It is described as an act that seeks to annoy the general public or disregards everything that is necessary for the common benefit. The public nuisance is based on the principle "sic utere tuo ut rem publikum non laedas," which means "enjoy your property without injuring the people's rights."

The term "public" is defined in Section 12 of the IPC, and it refers to any type of community or public. The term "public" can refer to any group or class of people who live in a given area.

Only when an omission is illegal will it be considered a public nuisance. The accused cannot claim that the nuisance he created was to safeguard his own interests or to prevent or mitigate any harm to his property or crops.

The presence of danger, annoyance, or injury to the public, or the person who may have the occasion to utilise public right, is one of the most crucial components in establishing conviction under this clause.

Section 269 and 270

Section 269 [S. 269 BNS] of the IPC includes negligent activities that are likely to transmit disease that is life-threatening. A malignant conduct likely to transmit infection of a disease that is life-threatening is covered by Section 270 of the IPC [S. 270 BNS].

The purpose of Sections 269 and 270 is to prosecute those who conduct such activities with knowledge or reason to believe that their actions would lead to the spread of the disease.

Under Section 269 of the IPC, a person can be sentenced to six months in jail, a fine, or both, however under Section 270 of the IPC, such people can be sentenced to two years in prison, a fine, or both, as Section 270 is an aggravated form of Section 269.

Section 271 [S. 271 BNS]

Section 271 states that anyone who wilfully disobeys any rule enacted with the intent of isolating areas where infectious disease is present from other areas will be held liable under this provision. This provision stipulates that there must be disobedience with knowledge of a government-made and promulgated rule.

The offender will be punished with imprisonment that can end up to 6 years or with fine or both.

Section 272 and 273

Adulteration of food or drink intended for sale is covered by section 272 of the IPC. The selling of noxious food or drink is covered by section 273 of the IPC. A simple act of adulteration does not constitute a violation of Section 273 unless the adulteration is severe enough to render the product poisonous. This Section primarily prohibits the sale of noxious products such as food or drink, rather than the sale of the noxious article itself. The term “noxious as food” refers to food that is harmful to one’s health or has a negative impact.

A person who violates sections 272 and 273 of the IPC is subject to imprisonment for up to six months or a fine of up to a thousand rupees, or both.

Section 274 [S. 274 BNS]

The IPC section 274 deals with drug adulteration. This section takes effect when the efficacy of pharmaceuticals is reduced or the effects of drugs are altered or rendered noxious as a result of adulteration.

A person found guilty under this section shall be punished either with simple or rigorous punishment that can be an imprisonment for a term of up to six months, a fine of up to one thousand rupees, or

both. The offence is available, non-cognizable, and non-compoundable, and it can be tried by a Magistrate of the First Class.

Section 275 (S. 275 BNS)

The sale of contaminated pharmaceuticals, as well as their issuance from any dispensary, is prohibited under Section 275 of the IPC. The phrase “exposes it for sale” does not necessarily imply that the drug must be visible; under this section, it is sufficient if it is concealed in a packet or other wrappings. The Drugs and Cosmetics Act of 1940, a restrictive statute, presently regulates the manufacture, distribution, import and sale of drugs and cosmetics.

A person found guilty under this section faces a maximum penalty of six months in prison or a fine of one thousand rupees, or both. The offence is available, non-cognizable, and non-compoundable, and can be tried by a Magistrate of the First Class.

Section 276 (S. 276 BNS)

The prosecution must show that the drug or medical preparation was sold knowingly, or that it was offered or exposed for the purpose of sale, or that it was given from a dispensary for some medical purpose as a separate drug or medical preparation, according to Section 276 of the IPC. Adulteration is not referred in this section.

A person found guilty under this section is subject to either simple or harsh imprisonment for up to six months, or a fine of up to one thousand rupees, or both. The offence is bailable, non-cognizable, and non-compoundable under this section, and it is tried by a Magistrate of the First Class.

Section 277 (S. 277 BNS)

The individual who knowingly contaminates any public spring or reservoir that belongs to all members of the community is subject to Section 277 of the IPC. This action must be taken in order to make it unfit for the function for which it is commonly utilised. The act must be performed willingly.

A person who violates this section is subject to either simple or harsh imprisonment for up to three months, or a maximum fine of five hundred rupees, or both. The offence is bailable, non-cognizable, and non-compoundable under this section, and it is tried by a Magistrate of the First Class.

Section 278 [S.278 BNS]

The punishment for rendering the atmosphere toxic to health and affecting the general public's health is dealt with under Section 278 of the IPC. A person who violates this clause is subject to a fine of up to five hundred rupees.

Section 278 is a bailable, non-cognizable, and non-compoundable offence that is tried by a Magistrate. In most cases, an offence and summons should be issued first.

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CHAPTER VIII: CULPABLE HOMICIDE

AND MURDER

Homicide:

Homicide is derived from Latin words “homo” [man] and “cido” [cut]. Homicide is the killing of human being by a human being.

[Stephens Digest, Nanavathi K.H.’s Case 1962]

Types

- i) Lawful – (a) Excusable (b) Justifiable [General Exceptions]
- ii) Unlawful –
- iii) Section 299
- iv) Section 300
- v) Section 304 A
- vi) Section 304 B
- vii) Section 305, 306

Unlawful Homicide: Culpable homicide is the first kind of unlawful homicide. When there is a homicide, there arises a question of culpability or this result of human conduct i.e. actus in this case killing punishable/culpable which is forbidden by law i.e. reus.

Actus is culpable only if there is a reus coupled with mens rea. The reus of actus depends on the presence or absence of mens rea. It is mens rea that determines whether the actus is reus or not. Under the Scheme of the Code, Culpable homicide is genus and murder is species. Every murder is culpable homicide but not vice-versa.

The Code recognizes three degrees of culpable homicide:

1. Culpable homicide of the first degree This is the gravest form of culpable homicide which is defined in Section 300 as murder, punishable under Section 302.
2. Culpable homicide of the second degree This is lower or lesser form of homicide not amounting to murder as defined in section 299. This is punishable under the first part of section 304 [Except 299 (c)].

3. Culpable homicide of the third degree This is the lowest type of culpable homicide. This is punishable under the second part of Section 304.

State v. Rayavarapee Punnayya, AIR 1977 SD 45

“In the cases of culpable homicide, the punishment varies not according to acts but according to mind”.

The reason behind the classification of culpable homicides provided under Section 299, 300, 300 exceptions, 304 A, 304 B, 305, 306, is that they vary in degrees of mental element. As the mental degree increases the punishment increases.

It is clear by the punishment provided under Section 304 part I and part II. There it is amply clear that there is a distinction between the part I, where intention is the main criteria and punishment more, and in the part II, knowledge is the criteria where punishment is quite less. But, the actus is same i.e. death which is the result of the human conduct. But here ‘reus’ is varied according to the degree of mens rea.

So → 304 A → Two years of fine or both → 304 B → 7 years < imprisonments for life 305 → < 10 years 4 fine 306 → < 10 years 4 fine

Punishment: The punishments for murder is specifically given in Section 302. **Culpable homicide**

Culpable homicide not amounting to murder are of two kinds:

- i) Culpable homicide which never became murder. It felts short of murder. Section 299.
- ii) Culpable homicide which actually would have become murder but for the exceptions, reverts back to culpable homicide. [Section 300, Exceptions].

So, Section 304 deals with both these kinds of situations. It contains two parts, giving importance to specific kind of mens rea, providing different punishments for different mens rea.

Section 304: [S. 103 BNS]

Punishments for culpable homicide not amounting to murder:

“Whoever commits culpable homicide not amounting to murder,

→ shall be punished with imprisonment for life, or imprisonment of either description for a term which may extends to ten years and shall also be liable to fine,

- if the acts by which the death is caused is done with intention – of causing death or – of causing such bodily injury as is likely to cause death; or
- with imprisonment of either description for a term which may extend to ten years, or with fine, or with both,
- if the acts done is with knowledge – that it is to cause death but without intention – to cause death or – to cause such bodily injury as is likely to cause death.

COMPARISON BETWEEN SECTION 299 AND SECTION 300

In Reg v. Govinda (1876)

CULPABLE HOMICIDE (S.299) [S. 98 BNS]

- A person commits culpable homicide if the act by which the death is caused is done.

INTENTION

- With the intention of causing death; [Illustration (a)]
- With the intention of causing such bodily injury as is likely to cause death; [Illustration (b)]

KNOWLEDGE

- with the knowledge that the act is likely to cause death [Illustration (c)]

MURDER (S.300) (S. 99 BNS)

- Subject to certain exceptions, culpable homicide or murder, if the act by which the death is caused is done.

INTENTION

- With the intention of causing death; [Illustration (a)]
- With the intention of causing such body injury as the offender knows be likely to cause the death of the person to whom the harm is caused; [Illustration (b)]
- With the intention of causing bodily injury to any person, and bodily injury intended to be inflicted or sufficient in the ordinary course of nature to cause death [Illustration (c)]

KNOWLEDGE

- With the knowledge that the act is so imminently dangerous that it must, in all probability cause death, or such bodily injury as is likely to cause death. [Illustration (d)]
- From the above distinction, it becomes clear that –

- Clause (1) of Section 299 corresponds to clause (1) of Section 300
- Clause (2) Section 299 corresponds to clause (2) and (3) of Section 300
- Clause (3) Section 299 corresponds to clause (4) of Section 300
- “Except in the cases herein after excepted”
- Section 300 begins with these words. It means that culpable homicide is not murder if the case falls within any of the exceptions.

Kishore Singh, [SIR 1977 SC 2267],

“Culpable homicide is not murder when the case is brought within five exceptions to Section 300, IPC. But even though none of the said five exceptions are pleaded or *prima facie* established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299, IPC.”

CULPABLE HOMICIDE IS MURDER

Section 300(S. 99 BNS) deals with murder. It does not define ‘murder’. Section 299 explains “culpable homicide. Section 300 sets out circumstances when culpable homicide amounts to murder and when it does not amount to murder.

Hidayatullah J. in Anda (1966), Said; “Murder is an aggravated form of culpable homicide.”

The existence of one of the four conditions turns culpable homicide into murder while special exceptions reduce the offence of murder again to culpable homicide not amounting to murder. **[State v. Rayavarappn Punnayya, AIR 1977 SC 45]**

An offence cannot amount to murder, unless it falls within the definition of culpable homicide; for, this section merely points out the cases in which culpable homicide amounts to murder. But an offence may amount to culpable homicide and yet may not amount to murder.

In **Pasput Gope v. Ram Bhagan Ojha [1897]** it was held that “ in deciding the question whether culpable homicide amounts to murder, it will be erroneous to convict the accused of murder, simply because there is nothing to being him under any of the exceptions reducing the offence to one not

amounting to murder, and it is the duty of the Court to consider, in the first place, whether the elements or elements which constitute the offence of murder, as defined in the Section”.

In Queen v. Sheikh Bexu, (1867) Peacock C. J. observed: “It does not follow that a case of culpable homicide is murder, because it does not fall within any of the exceptions in section 300. To render culpable homicide murder, the case must come within the provisions of clause 1, 2, 3, and 4 of Section 300.”

Culpable Homicide is genus and murder is specie: In the scheme of the Penal Code ‘Culpable homicide’ is genus and ‘Murder’ is specie. All murders are culpable homicides but not vice-versa Speaking generally, ‘culpable homicide’ sans ‘special characteristics of murder’ is ‘culpable homicide not amounting to murder’.

For the purpose of fixing punishment, proportional to the gravity of this generic offence, the code practically recognizes three degree of culpable homicide [299, 300, 300(exceptions)]

In the leading case of State v. Rayavarappn Punnayya, [AIR 1977] SC, Sarkaria J. Stated: “It emerges [from the scheme] that whenever a Court is confronted with the question whether the offence is ‘murder’ or ‘culpable homicide’ not amounting to murder, on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done act by doing which he has caused the death of another.

Proof of such a casual connection between the act of the accused and the death leads to the second stage for considering whether that act of the accused amounts to ‘culpable homicide’ as defined in Section 299. If the answer to this question is *prima facie* found in the affirmative, the stage for considering the operation of Section 300, is reached. **This is the stage of which the Court should determine whether the facts proved by the prosecution brings the case within the ambit of any of the four clauses of the definition of ‘murder’ contained in Section 300.**

If the answer to this question is in the negative the offence would be “*culpable homicide not amounting to murder*”, punishable under first or the second part of Section 304, depending, respectively on the second or the third clause of Section 299 is applicable.

If this question is found for the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be “culpable homicide not amounting to murder; punishable under the first parts of Section 304, Penal Code”. The Court, however, rightly added; “The above are only broad guidelines and not last iron imperatives. In most cases, their observance will facilitate the task of the Court. But sometimes, the facts are so intertwined and the second and the third stages so

telescoped into each other, that it may not be convenient to give a separate treatment to the matters involved in the second and third stage”.

Both culpable homicide and murder fall under the broad category of unlawful homicide. Whenever a homicide is committed, it becomes unlawful under a few conditions.

The actus reus for all unlawful homicides is the same, i.e. the killing of a human being by a human being. It is basically on the basis of the difference in the degree of the mental involvements that a homicide might amount to a mere culpable homicide not amounting to murder or murder. The difference between these two lies in the difference in the degree of mens rea as compared to culpable homicide.

A brief comparison of Section 299 and 300 would suffice to prove that culpable homicide is the genus and murder is specie.

1. Intention to cause death Cl. (1) of Section 299 and Cl. (1) of Section 300

The first clause of Section 300 enacts that culpable homicide is murder of the act by which the death is caused is done with the intention of causing death. This clause thus reproduces the first clause of Section 299. Intention is one of the essential elements of murder. An intention to kill a person beings the matter so, clearly within the general principle of mens rea as to cause no difficulty.

The presumption of law is that a man intends the natural and inevitable consequences of his own acts. It is, therefore, not necessary to take information consideration the accused's state of mind, at the time of committing the act in question, for the purpose of determining whether he intended to cause death or not. What he intends can only be judged by what he does or says, and if he says nothing, then his act alone must guide the decision. To determine what the intention of the offender is, each case must be decided on its own merits. Where it is proved that the accused fired a gun shot at such a close range that it could not have had other than a fatal effect and it is indicative of the intention of the accused that after firings at one person he reloaded the gun and fired another person there is a clear indication of his intention to commit murder.

The first clause in Section 299 is added only as a technical matter of the intention to cause death has not been put under section 299, then it would have resulted into something falling under section 300 via Cl. (1) without falling under section 299 that is to say something would have amounted to the offence of murder without first becoming a culpable homicide. This would have been violation of the starting words of section 300 and the scheme of the code and also the principle on which they are based.

2. Intention to cause bodily injury likely to cause death: Cl (2) of Section 299 & Cl (2) of Section 300

So, 299 Cl (2) ha following ingredients:

- a) Intention to cause a particular bodily injury.
- b) The bodily injury likely to cause death.
- c) The offender's knowledge about this likelihood.

Here, the knowledge to be read with respect to the likelihood of the injury causing death.

Drawing clue from the fact that in every murder culpable homicide is implicit, it can be said that whatever be the requirements for any clause of Section 299, they have to be read as implicit in the corresponding clauses of Section 300, plus something more has to be read in that clause under Section 300. Accordingly, culpable homicide falling under clause (2) of Section 299 may amount to murder under Cl (2) of 300, if two more additional requirements are fulfilled, viz.,

i) the offender knows of the likelihood of causing death &

ii) such likelihood of causing death is to the person to whom the harm is caused.

The distinguishing feature of the mens rea required under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or the state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary course of nature be sufficient of cause death of the person in normal health or condition.

3. Intention to cause bodily injury likely to cause death: Clause (2) of Section 299 & clause (3) of Section 300

The difference between clause (2) of Section 299 and clause (3) of Section 300 is one of degree of probability of death resulting from the intended injury. It is the degree of probability of death which determines whether the culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause (2) of Section 299 conveys the sense of 'probable' as distinguished from a mere possibility.

In **State v. Rayavarapn Punnavya (1977)** it was stated that: " The destination is fine but real, and if overlooked may result in miscarriage of justice". The words, "bodily injury sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury having regard to the ordinary cause of nature. The emphases here is on the sufficiency of the injury

in the ordinary course of nature to cause death. So, this sufficiency is to be observed objectively and not subjectively.

It is important to note that in the comparison between Cl (2) of Section 299 and Cl (3) of Section 300, the difference does not lie in mens rea. Because the difference lies the degree of actus reus and under clause (3) of Section 300, objectively it has to be proved that a particular injury was sufficient. In the ordinary course of nature and not likelihood.

It is also very important to note that in Section 3, Cl (3), the knowledge should be regarding only the likelihood of causing death, and not regarding the sufficiency of causing death, because, otherwise, it will amount to an intention to cause death & will fall under Clause (1) of Section 300.

Intention to cause a bodily injury + known that it is sufficient to cause death = Intention to cause death.

The would not have been the intention of the legislature. The legislature would never want to give the same meaning to two clauses in the same Section and therefore, there has to be a harmonious constitution between Cl (1) and Cl (3) of Section 300. Cl (1) of Section 300 has got a purely subjective test and Cl (3) of Section 300 has got subjective and objective tests.

In Rajwant Singh [AIR 1966], the Supreme Court stated:

“The third clause discards the test of subjective knowledge. It deals with acts done with the intention of consign bodily injury to a person and the bodily injury to a person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. In this clause the result of the intentionally caused injury must be viewed objectively. If the injury that the offender intends causing and does cause is sufficient to cause death in the ordinary way of nature, the offence is murder whether the offender intended causing death or not and whether the offender has subjective knowledge of the consequences or not.”

When there are several injuries, and even if none of the injuries is sufficient in the ordinary course of nature to cause death of the deceased but cumulatively they are sufficient in the ordinary course of nature to cause death, the offence will be murder and not culpable homicide not amounting to murder.

3. Knowledge of probability of death:

Cl. (3) of Section 299 & Cl. (4) of Section 300 Cl. (1) of Section 29 and Cl (4) of Section 300 both require knowledge of the probability of the act causing death.

Cl. (3) of Section 299 takes about the knowledge of likelihood of causing death irrespective of the fact whether a bodily injury is caused or not.

The requirements of Cl. (3) of Section 299 are –

- a) some act or illegal omission by the offender &
- b) knowledge of the offender that he is likely by his act to cause death.

Clause (4) of Section 300, apart from the above two points, the knowledge should require –

- i) that the act is imminently dangerous;
- ii) that in all probability it will cause death or such bodily injury as is likely to cause death, or such bodily injury as is likely to cause death, and
- iii) that the act is done without any excuse for incurring the risk.

“Usually it applies to cases in which there was no intention of causing death or of causing any bodily injury”.

As regards Cl. (3) of Section 299, Peacock C. J. observes in *Gora Chand Gopee* (1866):

“there are many cases falling within the words of Section 299 or with knowledge that he is likely by such act to cause death that do not fall within the 2nd, 3rd or 4th clauses of Section 300, such for instance as the offences described in Sections 279, 280, 281, 282, 284, 285, 286, 287, 288 & 289, If the offender knows that his act or illegal omission is likely to cause death, and if in fact it does cause death. But, although he may know that the act of illegal omission is so dangerous that it is likely to cause death, it is not murder, even if death is caused thereby, unless the offender knows that it must in all probability cause death, or such bodily injury as is likely to cause death, or unless he intends thereby to cause death or such bodily injury as is described in clause 2 and 3 of section 300”.

Case: Emperor v. Ht. Dhiragia in AIR 1940 All 486

Facts: A village women of twenty was ill treated by her husband. There was a quarrel between the two and the husband had threatened that he would beat her. All night time the woman, taking her six months old baby in her arms, slipped away from the house. After she had gone some distance she heard somebody coming up behind her, and when she turned round and saw her husband was pursuing her she got a panic and jumped down a well nearby with the baby in her arms. The result was that the baby died and the woman recovered. She was charged with murder of the child.

Held: An intention to cause the death of the child could not be attributed to the accused, though she must be attributed with the knowledge. However, primitive or frightened she might have been that such an imminently dangerous act as jumping down the well was likely to cause the child's death, but culpable homicide did not amount to murder because, considering the state of panic she was in, there was "excuse for incurring the risk of causing death within the preview of this clause."

SUPPOSED CIRCUMSTANCES:

Sometimes the death is caused under circumstances, the accused where gives a blow, the person becomes unconscious. The accused thinking that he is dead, in order to hide the things, hangs him and the person died because of the strangulation.

The position may be understood in light of the following cases:

1. Queen v. Khandee (1950) Bom.

Facts: A man struck another on the head with a stick, and believing him not be dead set fire to the hut with a view to remove all evidence of the crime and it was found that the blow only stunned the deceased and the death was really caused by the injuries from the burning when the accused set fire to the hut.

Held: the offence committed was that of attempt to murder. Parsons J. [Dissent]: Offence of murder.

2. Queen v. Dalu Sardar (1915) Cal.

Facts: The accused assaulted his wife and gave her kicks, blow and slaps The kicks were given below the navel. The woman fell down and became unconscious. In order to create an appearance that the woman had committed suicide, the accused took up the unconscious body of his wife, thinking it to be a dead body, and hung it by a rope. The post mortem examination showed that death was due to hanging.

Held: The accused could not have intended to kill his wife, if he thought that she was already dead, and he could not be convicted of murder, and that the offence committed was one under

Section 325 for having given her kicks, blows, and slaps before she fell down.

3. Palani Goundan Case [1920] Mad.

Facts: The accused struck his wife a blow on her head with a ploughshare which, though not shown to be a blow likely to cause death, died in facts render her unconscious and, believing her to be dead, in order to lay the foundation of a false defence of suicide by hanging, he handed her on a beam by a rope and thereby caused her death by strangulation.

Held: Guilty of grievous hurt.

So, by looking at these cases, it is clear that none of these cases have given solution to the problem, whether the person is to be made liable by looking at the initial intention or final intention or initial actus reus or final actus reus.

In fact Palani Goundan case seems to uphold the contentions of the accused. Had the facts of Palani Goundan case been different, had the initial mens rea of the accused denied to cause death of the victim, then on the reasoning of the decisions of the Palani Goundan, the accused would still have been liable for grievous hurt which would not have been a correct decision.

After perusal of all relevant case laws, in light of basic elements of criminal liability the following principles come out in order to govern such situations.

- i) The initial actus reus and the subsequent actus reus are said to be a part of the same transaction i.e., the subsequent actus reus is an extension of the initial actus reus. It can be said that owing to the circumstances the initial actus reus is aggravated to a higher degree by the subsequent actus reus.
- ii) The mens rea also accordingly get extended to the subsequent actus reus, that is to say, the presence or absence of the mens rea at the time of hanging is immaterial. What is important to be examined is what was the mens rea initially.

Transferred Malice (Section 301) [S. 100 BNS]

Section 301 of the IPC says: "If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person, whose death he intended or knew himself to be likely to cause."

This section incorporates with respect to the offence of culpable homicide what is known as ***the doctrine of transferred malice or transmigration of motive or transferred intention in English law***. Mens rea is ordinarily an essential ingredient of proof of crime. It cannot be used on a plea to escape punishment when due to entirely fortuitous circumstances the actus reus with mens rea brings a result not foreseen by the criminal.

A shoots at B with the intention to kill him but misses B and kills C. Here C would not have been killed had the fatal shot prompted by malice towards B not been fired. Therefore, the malice towards B is said to have been transferred to C.

However, the doctrine has to be taken cum grano salis. The actus reus and mens rea must be of the same crime. Thus:

- (a) A shoots B (human being) – mistakes C for B and kills C – liable.
- (b) A shoots B (human being) – misses – kills C – A liable only when C is a human being.
- (c) A shoots B (a dog) – misses – kills C (a human being) – not liable as he had the mens rea to kill a dog.
- (d) A shoots B (human being) – kills D (a dog) – not liable as the actus reus for culpable homicide not there (a human being is not killed).

Illustrations from cases:

(1) Regina vs. Faulkner (1877) – The appellant, intending to steal some rum caused destruction of the complete ship by fire which flared up when he lit a match to light up the dark hole in which the rum was stored.

Held: Arson was not the mens rea for theft. There was no mens rea for arson – not liable.

(2) Karan Singh's Case (1965) – A hit B, a man, with a 9 month old infant in his lap, with a stick – infant hit and dead.

Held: Intention to teach B a lesson – not culpable homicide as the mens rea and actus reus must be for the same offence. Here, the mens rea was just to hit with a stick to teach a lesson and not to kill. The likely effect for which the accused is to be held liable has necessarily to be judged with respect to the intended and not the unintended victim.

(3) Churnath Case – Churnath swung a stick at A – wife of A came in between – a child in her arms hit and killed.

Held: Only as much of malice can be transferred as is actually there against the intended victim. Here, Churnath was liable only for simple hurt. Karan Singh Case and Churnath Case also go on to illustrate the rule on the quantum of transferred malice: only as much malice is to be transferred as intended with respect to the intended victim.

(4) Queen vs. Latimer – There was a quarrel in a public house kept by Ellen Rolston between Latimer and one Thomas Evanchappel. Latimer swung a belt and hit Thomas. The belt rebounded and hit severely on the face of Ellen Rolston.

Held: Liable for hurt (transferred malice).

(5) Ballan vs. The State (AIR 1955 All 626) – A person wanted in 3 dacoity cases on being challenged by the police, fired at a Sub-Inspector who ducked. The bullet hit and killed a constable standing behind the Sub-Inspector.

Held: Benson, J.'s observations in S.N. Moorthy Case quoted with approval. The need for Section 301 was by way of mere caution as the rule was already deducible from Sections 299 and 300. These sections use the words 'cause death' and 'any person' and not any particular person liable.

Causation

Both sections 299 and 300 use the word 'cause' with respect to the intention as well as the bodily injury. A question arises as to what is cause? It is the reason that brings about the effect or consequences. But more often than not the consequences are brought about by a chain of causes. Only the real/proximate/efficient/dominant/cause of causes can be held liable. Such a cause is called 'causa causans'. The other cause or causes can be called 'causa sine qua non'.

Illustrations –

(1) X pushes Y who falls on a stone and is hit. Who is to be held liable? X or the person who kept the stone over there or no one?

(2) On a bright sunny day, the room is quite lighted. The doors and windows are bolted and it becomes dark. Which can be said to be the cause of light in the room – the sun or the doors and windows?

In the above cases (1) Z (who kept the stone) is 'causa sine qua non' and X is the causa causans (he is liable). In case (2) the sun is the causa causans and the doors and windows are the causa sine qua non. Causa causans is the cause without which the effect would not have been there: liability is based only on the causa causans.

In the case of ***The Public Prosecutor vs. Mushumooru Suryanarayana Moorthy***, the accused gave A poisoned halwa to eat (with the intention to kill him) which A threw after eating a part of it. B (a child) picked it up and ate it and also gave some to C (also a child).

The two children died whereas A survived. The question was whether the accused is to be liable or A is liable or B is liable?

In this case, three causes act together:-

(1) Accused mixed poison into the halwa and gave it to A to eat.

(2) A threw away the halwa.

(3) B picked it up and ate herself and gave it also to C.

Through out the web of criminal jurisprudence, no one can be held liable for the acts of others. No cause can be held liable until it is alone capable of causing the death.

In the present case only the accused (cause 1) could cause the death independently Accused liable (causa causans).

Explanation 2 to Section 299 says: "Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death although by resorting to proper remedies and skilful treatment the death might have been prevented.

It basically refers to cases where the primary cause is set by the accused but the death occurs due to some ensuing cause or causes e.g.

(1) A causes a minor injury to B but B dies due to Gangrene. Here A is liable as the primary cause initiated by A, which resulted into gangrene. [Nagar Paro Case

(AIR 1936 Rangoon 643)]

(2) Mc Intyre Case (1847 Vol. II Cox's Criminal Cases, 379) – A hits wife who is rendered unconscious. A doctor B gives her brandy through a pipe while she is unconscious. Unfortunately, some brandy enters her lungs and she dies.

Here the cause of death was the entering of brandy into lung pipe but the primary cause was set by A which necessitated the saving of brandy hence A liable.

(3) Davis' Case [(1883), 15 Vol. Cox, 174] – A injures B who was allergic to anesthesia. D, a doctor, serves anesthesia to B in order to operate upon him. B dies of this hence A liable.

(4) A causes a slight scratch to B. B is negligent and does not have it attended by a doctor. Later B dies of gangrene. Here the secondary cause is more prominent then the primary cause hence A not liable.

(5) *Sobha vs. Emperor* (AIR 1935, Oudh HC 446) – A hits B and runs away. C takes unconscious B to a quak who renders a wrong treatment and B dies of that. Here, A is liable and not C as A set the primary cause plus C did have no mens rea.

However, such cases can be distinguished from cases where C deliberately takes the deceased to a quak i.e. malice or intention can be attributed to C.

Thus, in cases relating to Explanation II the primary cause and the secondary cause have to be seen. If the secondary cause is more prominent the secondary cause only is to be held liable.

CRIMINAL LAW: PRINCIPLES OF LIABILITY

Doctrine of Transferred Malice/Transferred Intention (Section 301, IPC)

A shoots at B with the intention to kill him. He misses. The bullet passes over the head of B and kills C. Can A plead the lack of mens rea in the case of killing C? Solution The actus reus is there. Malice/criminal intent towards B is accepted. Unless the malice existed the fatal shot would not have been fired. C would not have been killed had the fatal shot prompted by the malice towards B had not been fired. Therefore, the malice towards B is said to have been transferred to C. This is called the doctrine of transferred malice.

Definition

So long as there was malice aforethought if some one other than the original object was the victim of it even without the criminal intending this it is to be held that the malice aforethought was transferred to the victim. However, the doctrine has to be taken *cum grano salis*. The actus reus and mens rea must be of the same crime. Thus:

1. A shoots B (human being) – mistakes C for B and kills C – liable.
2. A shoots B (human being) – misses – kills C – A liable only when C is a human being.
3. A shoots B (a dog) – misses – kills C (human being) – not liable, as he had the mens rea to kill B, a dog and not a human being.
4. A shoots B (human being) – kills D (a dog) – not liable as the actus reus for culpable homicide not there (a human being is not killed). Illustrations from cases:

1. *Regina vs. Faulkner*: The appellant, intending to steal some rum, caused the destruction of the complete ship by fire which flared up when he lit a match to light up the dark hold in

which the rum was stored. Judgment: Arson was not the actus reus of theft. There was no mens rea of arson. Acquitted.

2. Karan Singh's case: A hits B, a man with a 9 month old infant in his lap, with a stick – infant hit – dead. Judgment: Intention – to teach B a lesson – not culpable homicide as the mens rea and the actus reus must be for the same offence. Here, mens rea was just to hit with a stick to teach a lesson and not to kill.

The language of the Acts relating to statutory offences sometimes creates problems, viz. in Section 11 of Offences Against The Person Act, 1828 (England) – “such person”. This was later changed to “any person” by the legislature. However, in India, Section 30 of IPC leaves no ambiguities in this regard.

DEATH BY RASH OR NEGLIGENT ACT

Section 304 A (S.104 BNS): Causing death of negligence

“Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.”

This section deals with causing of act by rash or negligent act. This section is provided to cover those cases, which does not fall under Section 299 or Section 300. The object of this section is to make criminally liable a person, by whose act the death is covered. The cause of death must be the direct cause of the act and it should not be too remote in causing death.

Actus reus and mens rea

The act of causing death is the actus reus and causing such death by the rash or negligent attitude is the mens rea. The act to be prohibited by law must be that very act of the accused which is the direct cause of the death. The act should *prima facie* indicate the death. And if there is slight deviation is the cause and is quite remote then that act is not culpable. Another important aspect is that the act should be the result of the rash or negligent attitude. The rashness or negligence should be in existence at the time of the commission of the act. If the guilty mind of rashness or negligence is absent at the time of the commission of the act then that act will not come under this section. So both actus reus and mens rea, i.e. the act of causing death and rashness or negligence must concur to each other.

For example, a person A, is driving a car, and while negligently driving he hits a person on the road, causing hurt, immediately he reverse the car, and becomes conscious, then the car moves itself and without subjection to his control, and even without his intention, causes the death of the person.

In this example, the accused, when he caused hurt was negligent and that act of causing hurt is culpable under this section. But, when he took the car back and became conscious, he was not negligent and even beyond his control, it caused the death of the person. Here, his act rather his unintentional act was not coupled with mens or rashness or negligence. Moreover, the death was caused due to some supervening act independent of his control. So, he will not be liable for causing death, he will only liable for causing hurt.

Ingredients:

1. Death is caused by an act of the accused.
2. The act was caused or committed rashly or negligently.
3. The death must not be culpable homicide or murder.

1. The death is caused by the act of the accused

Firstly, there should be a death of a human being. The act of the accused must cause the death and not any other act or any supervening act. The word “act” is very important because the actus reus and the mens rea both have to be examined vis-a-vis this very ‘act’.

Example is that of car driver.

2. The act must be caused negligently or rashly

Rashness – Rashness is hazarding a dangerous or wanton act with the knowledge that it is so that it may cause injury; but without the intention to cause injury or knowledge that injury will probably caused, with positive hope that it will not be caused. It is a faint awareness and not a direct knowledge. The positive hope that if anything unusual happens, then he will definitely manage such a situation. Culpability in the matters of Section 304 A in rashness lies in the fact that one acted despite the consciousness. It is an over hasty act as opposed to a deliberate act.

For example, when a person is moving in a car, he sees a person standing in the middle of the road. Even then he moves his car and causes his death. This is the direct knowledge that death is possibly going to occur. So, the knowledge is imputed upon him. Because, any reasonable man, will not dare to take his car; and there is acknowledge that he is likely by his act to cause death. So liable under Section 299 clause (3).

But, when a person is moving in a car and another person in the pavement is trying to move downwards and even the car driver takes his car and causes death of that person, he will be liable for (negligently) or rashly causing death. Because, any reasonable man can think that it is manageable, bend chance of managing – is more whereas in the earlier case it was less, and risk involved was more. So, here it was only a faint knowledge of causing hurt or any other harm. So, he will be liable for having faint knowledge of causing death and will be liable under this Section 304 A and not under Section 299 clause (3).

Negligence – Negligence is the failure to exercise proper care and caution, to guard against injury to public in general or to a particular individual. Consciousness is absent but duty to take care has been neglected.

Negligence in tort and negligence under this Section:

1. In tort, the scope of examination of negligence is a bit abroad. The test is very rigid.

But, in IPC, negligence has to be very strictly examined at the point of time when the death was committed.

2. In tort, even passive negligence might amount to a tortious negligence. Whereas in IPC, an active negligence has to be seen, as was observed in B. P. Ram vs. State of M. P. (1991 SC).

For example, if a boy enters into the swimming pool without the knowledge of the chowkidar and creeps into it and dies. Here, the chowkidar is imputed with passive knowledge, and will be liable for tort of negligence. But, if a chowkidar throws the child so that he teaches swimming, thinking that if the child would not swim, he will catch him. Here, the negligence is active negligence.

Section 304 A does not apply to the cases of voluntary commission of an offence as in that case, either intention or knowledge is involved.

3. The act must not come under culpable homicide or murder

Section 299 states that if a person causes the death, with the knowledge that he is likely by his act to cause death, is punishable for culpable homicide not amounting to murder.

Section 300 clause (4), states that the culpable homicide is murder if the person causes death with the knowledge that, it is imminently dangerous and in all probability will cause death.

This, Section 304 A, expressly excludes the cases falling under Section 299 (3) and

Section 300 clause (4). So, it is said that, Section 299 involves direct knowledge, whereas Section 304 A requires faint awareness of causing death, of direct knowledge is proved then Section 304 A must give way to Section 299 (3).

One more point that strengthens the fact that the mens rea required in Section 304 A than that of Section 299 clause (3) is punishable under Section 304 Part II, Section 304 A itself provides for punishment. Section 304, Part II provides for maximum 10 years of imprisonment and Section 304 A provides for maximum 2 years of imprisonment. So, there is 8 years of difference in punishment. This clearly shows, that the mens rea should be less than that is required for Section 299 clause (2).

Because, the purpose of criminal law is to punish not only the mens rea but also the degree of mens rea.

Case – Cherubin Gregory vs. State of Bihar (1962) – The accused set live electric naked wire on the passage to his latrine so that no trespasser should come and use the latrine, there was no warning that the wire was live. The deceased, a trespasser, managed to pass into the latrine without contracting the wire and while she was coming out, her hand happens to touch the wire and she got a shock as a result of which she died soon after.

It was held by the Supreme Court that the knowledge was not direct and proximate, and therefore not liable for culpable homicide but liable under Section 304 A.

Hussain S. N. vs. State of A. P. (1972) – The appellant; a bus driver, had tried to pass through a level-crossing on finding the gates open, but before he could clear the crossing, a goods train had come and dashed against the rear side of the bus with the result that the bus was thrown off causing serious injuries to passengers, of whom some died.

It was held that where a level-crossing was protected by a gate-man as in this case, and a gate-man had negligently kept the gates open at a time when an unscheduled train was passing by, there was no duty cast upon the driver to stop the vehicle and look out before crossing the level crossing. The knowledge constituting negligence or rashness was too remote and is not direct cause for death. So, the driver was held not liable.

Hurt (Section 319) and Grievous Hurt (Section 320)

Section 319 [S.112 BNS] – Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. Act neither intended nor likely to cause death is hurt even though death is caused – where there is no intention to cause death or knowledge that death is likely to be caused from the harm

inflicted, and death is caused, the accused would be guilty of hurt only if the injury caused was not serious.

Section 320 [S.114 BNS] – The following kinds of hurt only are designated as “grievous”:-

- (1) Emasculation.
- (2) Permanent privation of the sight of either eye.
- (3) Permanent privation of the hearing of either ear.
- (4) Destruction of any member or joint.
- (5) Destruction of permanent impairing of the powers of any member or joint.
- (6) Permanent disfigurement of the head or face.
- (7) Fracture or dislocation of a bone or tooth.
- (8) Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

Grievous hurt is a hurt of a more serious kind. To make out the offence of voluntarily causing grievous hurt, there must be some specific hurt, voluntarily inflicted; and coming within any of the eight kinds enumerated under this section.

The line between culpable homicide not amounting to murder and grievous hurt is very thin line. In the one case, the injuries must be such as are likely to cause death, in the other the injuries must be such as endanger life.

The mere fact that a man has been in hospital for twenty days is not sufficient. It must be proved that during that time he was unable to follow his ordinary pursuits. A disability for twenty days constitutes the offence of grievous hurt, if it continues for a smaller period, then the offence is hurt.

Act neither intended nor likely to cause death may amount to grievous hurt even though death is caused. Where there is no intention to cause death or no knowledge that death is likely to be caused from the harm inflicted, and death is caused, the accused would be guilty of grievous hurt if the injury caused was of serious nature, but not of culpable homicide.

Emperor v. Indu Beg:- The husband while engaged in a verbal wrangle with his wife struck her a blow on the left side of the face with great force as a result of which she bled from the nose and died within an hour. Held, the accused was liable for voluntarily causing grievous hurt and not of culpable homicide not amounting to murder. Since he had no culpable intention to cause death.

Voluntarily causing hurt Section 321 [S. 113 BNS] –

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

Voluntarily causing grievous hurt Section 322 [S. 115 BNS] –

Whoever voluntarily causes hurt, if the hurt he intends to cause or knows himself to be likely to cause is 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 he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt.

But he is said to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

CHAPTER: IX ASSAULT

Meaning of Assault

Section 351 [S. 128 BNS] of IPC defines assault. It provides that when a person makes any gesture (sign or indication), or any preparation with the intention, or is aware that such gesture or preparation will cause any other person in fear; and that the person who makes such a gesture or preparation is about to use criminal force (means intentional use of force to create annoyance, fear or injury) to that person; in such a case, that person commits the offence of assault.

Explanation: ‘Only words’ do not amount to assault unless such words are accompanied by such gestures or preparation.

Let us understand assault with the help of a few examples.

Examples of Assault

Example 1: Ankush shakes his fist at Rohan with the intention of causing Rohan to believe that Ankush is about to strike Rohan. Ankush has committed an assault.

Example 2: Rohit begins to unloose the muzzle of a wild dog, intending or knowing it to be likely that he may cause Sanjay to believe that Rohit is about to cause the dog to attack Sanjay. Rohit has committed an assault on Sanjay.

Example 3: Nikhil takes a stick, saying to Pankaj, “I will give you a beating”. Though the words used by Nikhil could in no case amount to an assault, and though the mere gesture, by reason of not being accompanied by any other circumstances, might not amount to an assault. But, the gesture explained by the words may amount to an assault.

Essentials of Assault

These are the essentials of the offence of assault:

- Any gestures should be given, or any preparation should be made by one person in the presence of another.
- Such gestures or preparation should be intended or known to be likely to cause any person to be apprehended.
- Such apprehension is of such a nature that the person is about to use criminal force on another person.

- Apprehension means understanding, anxiety or fear that something bad or unpleasant will happen.

Case Laws Related to Assault

Here are three important case laws related to assault.

Muneshwar Bux Singh vs State Through Raghunandan Prasad (1955): In this case, the court held that a person shall not be held guilty of assault if his gestures or preparation do not cause apprehension of harm to another person.

AC Kama vs HF Morgan (1864):

In this case, the court held that 'only words' cannot be considered an assault if such words clearly show that there was no intention to use criminal force.

R vs St George (1840):

In this case, the court held that if an unloaded pistol is shown from a reasonable distance, it may amount to an assault.

Punishment for Assault

Punishment for assault is provided in section 352 of the Indian Penal Code. Whoever commits the offence of assault under section 351 of IPC shall be punished under section 352 of IPC, with the imprisonment of either description for a term that may extend to 3 months, or with fine that may extend rupees 500, or both.

Exception: As a general rule, any offence committed under grave and sudden provocation is a defence under IPC. However, assault made under grave and sudden provocation is not a defence. Thus, whoever commits assault out of grave and sudden provocation will be liable for the same punishment as generally provided for the offence.

FORCE AND CRIMINAL FORCE

Section 349 [S. 126 BNS] IPC – Force Defined

According to section 349 of the Indian Penal Code, when a person causes motion (to make someone move), change of motion (to change the direction or speed), or cessation in motion (to stop a moving person), it is called force.

Further, section 349 IPC says that there are three modes to use such force. Those are:

1. By using one's bodily power, that is, A with his hands pushes B from the top of the building. Here, A has used his bodily power.

2. By disposing of any substance, that is, A throws water on B while he is sleeping. Here, A used a substance – water. It includes such contact that affects the sense of feeling.
3. By inducing any animal, that is, A induces (makes) his dog bark on B and create annoyance. And the dog barks. Here, A has induced his dog.

Example: Rohan throws cold water on Pratap, his brother, while he is sleeping. Here, it is a use of simple force as it was unintentional nor harms or creates any legal injury to Pratap.

Ramakant Rajaram vs Manual Fernandes (1969): In this case, it was made clear that section 349 IPC uses the word ‘another.’ Thus, motion or change of motion or cessation of motion caused to property without affecting the human being is not the use of force to another within the meaning of this section. The force must be used with a human being and not an object.

Section 350 [S.127 BNS] IPC – Criminal Force Defined

Suppose Abdul intentionally and in a non-consensual way uses force on any other person to cause fear, injury, or annoyance to that person. Here, Abdul has committed the offence of criminal force.

Essentials of Section 350 IPC

The essentials of section 350 IPC which must be fulfilled for an action to be called criminal force are:

1. There must be the intentional use of force on any person.
2. Such force must be used without the consent of the person. Here, consent means as defined under section 90 of IPC.
3. That such force should be used:
 - o (a) to commit an offence, or
 - o (b) to cause or knowingly to be likely to cause any injury, fear or annoyance to the person to whom the force is used.

Example: A is having a personal grudge to cause serious injuries to B. A pulls B’s chair when he is about to sit. As a result, B falls, causing him several fractures. Here, A with malice intent to cause injury to B committed the offence defined under section 350 IPC.

Bihari Lal vs Emperor (1934): In this case, the court held that the physical presence of the person is necessary and must be proved to prove criminal force.

Kalar Din vs Emperor (1941): In this case, the court held that criminal force must be directed against a person and not a thing.

Note: Bihari Lal vs Emperor case is from the book PSA Pillai's Criminal Law: Citation AIR 1934 Lah 454: 152 Ind Cas 162.

Difference Between Force and Criminal Force

To meet the ends of justice, it is necessary to differentiate between force and criminal force.

Force: Defined in section 349 of IPC.

Criminal Force: Defined in section 350 of IPC.

Force: It does not create a substantive offence.

Criminal Force: It creates a substantive offence.

Force: Not punishable.

Criminal Force: Punishable under section 352 IPC.

Force: It does not cause any legal injury due to the absence of a mental element.

Criminal Force: Due to the presence of a mental element, it affects the legal injury.

Force: It is a species.

Criminal Force: It is a genus.

WRONGFUL RESTRAINT AND

WRONGFUL CONFINEMENT

The offences of wrongful restraint and wrongful confinement involve not a direct physical harm, but a restriction upon the right to movement of a person. The actus reus in three cases lies in the actual obstruction of the person by the accused from moving in a direction in which he had right to move. The mens rea lies in the causation of this effect of obstruction voluntarily by the accused.

Wrongful Restraint (Section 339) [S. 124 BNS]:

“Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person”.

Exception:

The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration:

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

General:

Wrongful restraint means keeping a man out of a place where he wishes to be, and has a right to be. Thus, ‘wrongful restraint’ implies abridgement of the liberty of a person against his will. Where he is deprived of his will-power by sleep or otherwise he cannot, while in that condition, be subjected to any restraint. (Fateh Muhammad, 1928)

Examples:

1. A builds a wall across a path along which Z has a right to pass. Z is thereby prevented from passing. A wrongfully restrains Z.
2. A illegally omits to take proper order with a furious buffalo which is in his possession, and thus voluntarily deters Z from passing along a road along which Z has a right to pass. A voluntarily restrains Z.
3. A threatens to set a savage dog at Z, if Z goes along a path along which Z has a right to go. Z is thus prevented from going along that path. A wrongfully restrains Z.

4. In the last example, if the dog is not really savage, but if A voluntarily causes Z to think that it is savage and thereby prevents Z from going along the path. A wrongfully restrains Z.

From these illustrations, it will appear that a person may obstruct another by causing to appear to that other it to be impossible, difficult, or dangerous to proceed, as well as by causing it actually to be impossible, difficult, or dangerous for that other to proceed.

Thus, where the accused removed a ladder and thereby detained a person on the roof of a house, he was held to have committed ‘wrongful restraint’.

Ingredients:

1. Voluntarily obstructing a person.
2. The obstruction must be such as to prevent that person from proceeding in any direction in which he has a right to proceed.

I. Voluntarily obstructs a person:

Voluntarily is defined in section 39 of I. P. C. as “a person is said to cause an effect ‘voluntarily’ ” when –

- (a) He causes it by means whereby he intends to cause it or
- (b) By means which, at the time of employing those means
 - i) He knew or
 - ii) Had reason to believe to be likely to cause it.

‘Voluntarily’ is defined in relation to causation of effects. When a person causes any effect intentionally by means or knowingly or had reason to believe at the time of employing the means that the means used by him are likely to cause that effect, is said to cause that effect voluntarily.

‘Reason to believe’ is defined in section 26 as “a person is said to have ‘reason to believe’, a thing if he has sufficient cause to believe that thing but not otherwise”.

This section (339) voluntarily can be proved in any of the following three ways:-

1. Intention to cause obstruction.
2. He knew to be likely to cause obstruction.
3. Had reason to believe to be likely to cause obstruction.

The means by which the obstruction has been caused can be any kind of means that is a direct physical force or a psychological fear of apprehended danger. Even if there are more ways and he restraints all, but one is a wrongful restraint. The test for wrongful restraint is that the person is disallowed from moving in one or several directions but atleast at one direction he should be free to move. The moment the last option is closed this wrongful restraint amounts to wrongful confinement.

Person:

The obstruction should be to any person. Obstruction of a vehicle alone when no men are obstructed is not a wrongful restraint. Under this section, the criminal restraint to a person is punishable and not any obstruction whatsoever caused for plying/parking of a vehicle at a particular place. The Madras High Court held that, the voluntary obstruction of a vehicle in which persons are travelling would amount to restraint.

So, the obstruction should be caused to persons i.e. human beings and not to the vehicles or animals.

Prevents:

The section requires that the obstruction should be as complete and successful as to prevent the person obstructed from proceeding in any direction in which he has a right to proceed. In a case where the complainant was going in a cart and the passing of bullock cart was obstructed but there was no obstruction for him to pass. In this case, it was held that there was no wrongful restraint because there was no prevention.

Proceeding in any direction:

The Madras High Court has held that these words mean proceeding in that direction and not in any direction, much less in the reverse direction. The offence to be punishable under Section 341 need not necessarily constitute absolute prevention of one's personal movements but the slightest unlawful interference with his lawful movements would suffice. It must be established that the person was obstructed from proceeding along a particular direction.

The word “proceeding” in this section and Section 340 is not confined to the case of a person who can walk on his own legs or can move by physical means within his own power. It includes the case of proceeding by outside agency, which in the case of a baby; the agency is its natural guardian or protector.

Public streets:

All members of the public have rights in public streets and no one section of the community can interdict another section of it from the lawful use of such streets. Every citizen has a right to use

public road in a lawful manner and will have a right to take a corpse along the public road. It would not be a valid defence to plead that the obstruction caused was only to the carrying of the corpse and not to the persons who carried it.

The persons who prevented processionists from proceeding along a high way were held to constitute an unlawful assembly and each member of that unlawful assembly was held under Section 341 read with Section 149.

Bonafide claim – When the person in good faith that it is justified by law, does an act, he will not be liable under this section.

Exception:

The section provides exception only in case of a private way. So, it is not an offence to erect a wall on front of one's premises to prevent other persons from passing over it.

WRONGFUL CONFINEMENT

Section 340 [S. 125 BNS]:

“Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said ‘wrongfully to confine’ that person”.

Illustrations:

- (a) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.
- (b) A places men with fine arms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

Wrongful confinement is a species of wrongful restraint. Wrongful confinement can be distinguished from wrongful restraint in that whereas in wrongful restraint there is only a partial suspension of liberty of a person and he is restrained from proceeding in a particular direction, in wrongful confinement, such prevention is total and the person is restrained from proceeding in any direction. For completion of either offence, the period is immaterial.

Ingredients:

1. Wrongful restraint of a person.
2. Such restraint must prevent that person from proceeding beyond certain circumscribing limits.

Wrongfully restrains:

Wrongful confinement which is a form of wrongful restraint is keeping a man within limits out of which he wishes to go, and has a right to go.

Prevents:

The insistence by words of mouth or mere rotting around a person would not satisfy the requirements of wrongful confinement which requires that there must be voluntary obstruction to that person so as to prevent that person from proceeding in any direction in which that person has a right to proceed.

Proof of actual physical obstructions is not essential to support a charge of wrongful confinement. It must, in each case, be proved that there are atleast such an impression produced in the mind of the person detained as to lead him reasonably to believe that he was not free to depart and that he would be forthwith restrained if he attempted to do so.

The mere threat of future harm in case of departure would not suffice if he knew that it was open to him to go away and restrained from doing so lest he should suffer such harm. But if circumstances were such as to justify and to create the belief that he could not depart without being seized immediately, then it would be proper to hold that he was obstructed and confined.

From proceeding:

There can be no wrongful confinement where a desire to proceed has never existed, nor can a confinement be wrongful if it was consented to by the person affected, or if an escape is open to a person if he wished to avail himself of it.

For example, if a person is locked in a room, and there was a window through which he could have proceeded, it is never said that he was confined, even if he never chased to pass.

When a person is sleeping in the night and the door was locked from outside. Here, if he did not have the knowledge that he was locked and even if he did not desire to open it, then it cannot be said that he was confined. Because, he was not prevented from proceeding. The retaining of a person in a particular place or the compelling of him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action, is an imprisonment on the part of him who exercises that exterior will.

In a case, that is Hamid & A. vs. Sudhirmohan Ghosh (1929), the accused, a District Traffic Superintendent, being under the bonafide impression that the complainant had travelled without ticket seized the hand of the complainant and dragged him to the ticket collector and ordered the

ticket collector to realise the full fare. It was held that the accused was guilty of wrongful confinement.

Absence of desire to move on the part of the person confined no doubt detracts from it being an offence under this section but mere omission of an attempt to run away when there is no watch does not mean the absence of desire. Proof of actual physical obstruction is not essential to support a charge of wrongful confinement. It must be proved that there was at least such an impression produced in the mind of the person detained as to lead that person reasonably to believe that he was not free to depart and that he would be forth with restrained if he attempted to do so.

[Joggayya (1951), St. vs. Keshavlal Magenbai Jogani (1993)]

Physical presence of the obstruct is not necessary, nor any actual assault necessary and fear of immediate harm restraining a man out of a place where he wishes to be has a right to be is sufficient to constitute an offence.

Beyond certain circumscribing limits:

A prison may have its boundary large or narrow, visible and tangible, or though real, still in the conception only. It may itself be movable or fixed, but a boundary should be there. Confounding imprisonment of the body with mere loss of freedom also is a confinement.

Moral force:

Detention through the exercise of moral force, without the accompaniment of physical force or actual conflict i.e. sufficient to constitute this offence.

Malice:

Malice is not an essential ingredient in the offence of wrongful confinement. It is the actus reus which actually constitutes the offence. In case of wrongful confinement the actus reus required is higher than that of wrongful restraint.

Distinction Between Wrongful restraint and wrongful confinement:

1. Whereas wrongful restraint keeps a man out of place where he wishes to be or has right to go, wrongful confinement keeps him within limits out of which he cannot go.
2. In the wrongful restraint, a person is restrained from proceeding in a particular direction, while in the wrongful confinement; he is restrained from proceeding in any direction.
3. In wrongful restraint, the curtailment of liberty is partial but in wrongful confinement, curtailment of liberty is total.

4. Wrongful restraint is less serious offence, but the wrongful confinement is more serious offence. Because, the mens rea required for both is similar. But, the actus reus is higher in wrongful confinement.
5. Punishment is less in wrongful restraint – one month imprisonment or 500 rupees fine or both is more in wrongful confinement i.e. one year imprisonment (maximum) or Rs. 1000 fine or both.

KIDNAPPING AND ABDUCTION

Both serious offences, kidnapping and abduction are two separate crimes even though they often get lumped together. It's important, however, to understand the differences between the two and the consequences that come from them.

The main difference you should understand about the two crimes is that kidnapping means the victim does not need to be a child. Defendants, however, will receive harsher punishments if the victim is below 14 years of age in a kidnapping. Most people charged with abduction or custodial interference is members of the child's family, whereas kidnappers can be anyone.

Kidnapping Under Indian Penal Code

Section 359 [S. 135 BNS] of the Indian Penal Code deals with what actually 'Kidnapping' is. According to this section, kidnapping can be classified into two types 'Kidnapping from India' or 'Kidnapping from Lawful Guardianship'. Section 360 of this Code says that when a person is conveyed beyond the limits of India without the consent of the person, the person who takes such a person is said to kidnap that person from India.

Section 361 of this Code provides that when a person entices a minor (16 years for male and 18 years for female) or a person of unsound mind, the person so enticing will be held liable for kidnapping such minor or person from lawful guardianship. Kidnapping involves taking away or enticement by the kidnapper. The means used for such a purpose are irrelevant.

Case law- **State of Haryana v Raja Ram** (2017) 8 SCC 570

In this case, the accused induced the prosecutor who was of 14 years of age away from her lawful guardianship. The Supreme Court in this case held that the persuasion by the accused created a will on the part of the minor who kept her away from her lawful guardianship and therefore it resulted in 'kidnapping'.

Exception

This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child or who in good faith believes himself to be entitled to lawful custody of such child unless such act is committed for an immoral or unlawful purpose.

The object of this Section

The purpose of this section is to protect minors and persons of unsound mind from being exploited and protect the rights of guardians who have the lawful charge or custody of their wards. Thus the absence of consent of the parent or guardian is the main ingredient of this section.

Ingredients

The following are the ingredients of Section 361:

- Taking away or enticing of a minor or a person of unsound mind

Enticing is inducing hope or desire in the mind of a person to make him do things which he wouldn't do otherwise. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of a lawful guardian would be sufficient to attract the section.

The expression used in Section 361, I.P.C. is "whoever takes or entices any minor". The word "takes" does not necessarily connote taking by force and it is not confined only to the use of force, actual or constructive. This word merely means, "To cause to go," "to escort" or "to get into possession".

- *Such minor must be under 16 years of age if a male and under 18 years of age if a female*
- *The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.*
- *The taking or enticing must also be without the consent of the guardian.*

The act of taking is not a continuous act and as such when once the boy or girl has been actually taken out of the keeping, the act is complete.

Case law- Vardargan v. State of Madras [1964] INSC 191, in this case, the court, highlighted the dichotomy between 'taking' and 'allowing a minor to accompany a person'. Stating that the two are not synonymously held that where the minor having capacity to understand the consequences of her actions voluntarily joins the accused of her free will, the accused cannot be held liable for taking her away from the keeping of a lawful guardian.

Case law- Pradeep Kumar v. State of Bihar and Anr [2007] Insc 834, in this case, Supreme Court held that the consent obtained by lying to the father of the girl regarding the purpose of taking his minor daughter away cannot be termed as consent under the purview of this section and such taking away would amount to kidnapping.

In the most basic sense, kidnapping means taking another person against their will to an undisclosed location. Although the title may cause some confusion, this crime does not have a minimum age. The authorities also consider adults taken against their will as kidnapped. Someone may kidnap another for ransom or to further another crime.

Abduction under Indian Penal Code

Abduction has been defined under Section 362 of the Indian Penal Code which states that if a person either by force compels a person or induces another person to go from any place is said to abduct such person.

Case law- Bahadur Ali v King Emperor [1965] INSC 270

In this case, the accused misrepresented himself as a police constable and kept a girl in his house for a certain time regarding money. The court in this case held that his act amounted to abduction.

In the offence of abduction, there must be on the part of the offender either an element of compulsion by force or an element of inducement by deceitful means. The word 'force' has the same meaning as given under section 349 of the Code. To induce means to lead into; there must be an active suggestion on the part of the abductor making the victim agree to move to a place where he would not go but for this suggestion.

A change of mind of the victim takes place in cases of inducement. The expression 'deceitful means' suggests that the means employed by the offender must be such as to practice deception on the victim. The expression has a wide import and includes a misleading statement.

Mere abduction has not been made punishable under any section of the Code. In other words, abduction by itself is not an offence. It is punishable only when it is coupled with one or the other intent as stated in certain subsequent sections. In cases of abduction committed by compulsion by force, actual force must be used and a mere threat of use of force is not enough.

Difference between Kidnapping and Abduction

1. Age of Aggrieved Person

In the case of Kidnapping, it is committed only in respect of a minor i.e. the age of the aggrieved person as per Section 361 of the IPC is 16 in case of males and 18 in case of females or the person of unsound mind as can be seen in the case of *State of Haryana v Raja Ram*.

Whereas,

In the Abduction, It is committed in respect of any person of any age. There is no bar to any specific age of the person, i.e. there is no such thing as age specified. Any person either by force has

compelled or induced any other person to go from any place irrespective of the age, shall be charged with abduction as can be seen in the case of Bahadur Ali v King Emperor.

2. Removal from Lawful Guardianship

The person kidnapped is removed from lawful guardianship. Here the lawful guardianship shall include any person who has been authorized by law to take care of the person who has yet not attained the age of majority. A lawful guardian may be the parents, in-laws, etc.

A child without guardianship can't be kidnapped. Kidnapping takes into consideration the age of the person being kidnapped, the crime involves the taking away from the guardianship of a lawful person who has been authorized by law to take care of such minor.

Whereas,

Guardianship is immaterial to determine the offence of abduction. It has reference exclusively to the person abducted. Abduction considers only the person who has been abducted; lawful guardianship does not come into the picture.

3. Means used

In kidnapping, the minor is simply taken away. The means used to kidnap a child may be innocent. Kidnapping involves taking away or enticement by the kidnapper. The means used for such a purpose are irrelevant.

Whereas,

The means used in case of abduction may be force, compulsion, or deceitful means. The means employed in abduction are force, compulsion or deceitful methods.

4. Consent

In the case of Kidnapping, the consent of the person kidnapped is immaterial as the person being kidnapped is a minor and according to law, such a person is unable to provide for free consent. The consent of the person enticed is immaterial. The consent obtained from the person shall be a tainted one for example in the case of State of Haryana v Raja Ram.

Whereas,

In the case of Abduction, the consent of the person abducted condones the accused from the offence so charged against him/her. Consent of the person matters i.e. if a person is removed with free consent in that case offence of abduction is said to be not committed.

5. The intention of the Accused

In Kidnapping the intent of a person is immaterial i.e. he would be liable in all the circumstances irrespective of the valid motive and good intention. The intention of the person kidnapping a minor is immaterial so as to the crime committed by the accused as observed in the case of Queen v Prince.

Whereas,

In the case of Abduction, the intention of the person abducting is a very important factor in determining the guilt of the accused person. The intention is very important to determine the offence. Hence, a person would be liable only if there is ill intention behind the act.

6. Continuity of the Crime

Kidnapping is not a continuing offence. The offence is done as soon as the person accused removes the person from his/her lawful guardianship. The offence is completed as soon as the minor is removed from the custody of his or her/his guardian.

Whereas,

Abduction is a continuing process and in this, the person so abducted is removed from one place to another. The offence is in continuation as the place of the abducted person changes from one to another.

7. Kind of offence

Kidnapping from guardianship is a substantive offence, punishable u/s 363, IPC.

Whereas,

An abduction is an auxiliary act, not punishable by itself unless accompanied by some intent specified u/s 364-366. Hence, a particular purpose is necessary to punish an accused.

Punishment For Kidnapping And Abduction

Kidnapping is a substantive offence. Section 363 of the IPC provides for a punishment for kidnapping for a descriptive term which may extend to seven years and he/she shall also be liable for fine. Some specific punishments as provided for kidnapping under the Indian Penal Code are:

- Kidnapping for purpose of begging- section-363A, punishment- 10 years + Fine
- Kidnapping in order to murder- section 364, punishment- 10 years + Fine
- Kidnapping for ransom- section 364A, punishment 10 years + Fine
- Kidnapping with intent to wrongfully confine a person- section 365, punishment 7 years + Fine

- Kidnapping so as to compel a woman to marry- section 366, punishment 10 years + Fine
- Kidnapping so as to subject a person to grievous hurt- section 367, punishment 10 years + Fine
- Kidnapping a child under 10 years of age in order to steal from a person- section 369, punishment 7 years + Fine

Abduction is only an auxiliary act and is not punishable in it. Therefore, there is no general punishment for abduction in the Indian Penal Code.

But some specific types of abduction attract the following punishments:

- Abduction in order to murder- section, punishment 10 years + Fine
- Abduction with intent to wrongfully confine a person- section, punishment 7 years + Fine
- Abduction so as to compel a woman to marry- section, punishment 10 years + Fine
- Abduction so as to subject a person to grievous hurt- section, punishment 10 years + Fine
- Abducting a child less than 10 years of age in order to steal from a person- section, punishment 7 years + Fine

CHAPTER X: OFFENCES AGAINST PROPERTY

Theft – Section 378 [S. 301 BNS]

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

Explanation 1 – A thing so long as it is attached to earth not being movable property, is not subject of theft, but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2 – A moving affected by the same act which effects 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 move that 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 having for that purpose authority, either express or implied.

Ingredients

- (1) Dishonest intention to take property.
- (2) The property must be movable.
- (3) It should be taken out of the possession of another person.
- (4) It should be taken without the consent of that person, and
- (5) There must be some moving of the property in order to accomplish the taking of it.

Intending to take dishonestly

Intention is the gist of the offence. The intention to take dishonestly exists when the taker intends to cause wrongful gain to one person or wrongful loss to another person.

Taking without any dishonest intention is not theft.

The intention to take dishonestly must exist at the time of the moving of the property [illustration (h)]. The taking must be dishonest. It is not necessary that the taking must cause wrongful gain to the taker; it will be sufficient if it causes wrongful loss to the owner. It makes no difference in the accused's guilt that the act was not intended to procure any personal benefit to himself.

It is not necessary that the taking should be permanent or with an intention to appropriate the thing taken [illustration (l)]. There may be theft without an intention to deprive the owner of the property permanently. In this respect, the Penal Code differs from the English Law, where a bonafide claim of right exists; it can be a good defence to a prosecution for theft.

When a person takes another man's property believing under a mistake of fact and in ignorance of law, that he has a right to take it, he is not guilty of theft because there is no dishonest intention, even though he may cause wrongful loss.

A person can be convicted of stealing his own property if he takes it dishonestly from another [illustration (j) and (k)].

A creditor, who takes movable property out of his debtor's possession, without his consent, with the intention of coercing him to pay his debt, is guilty of theft.

Explanations 1 and 2 state that things attached to the land may become movable property by severance from the earth, and that the act of severance may of itself be theft [illustration (a)].

Human body whether living or dead (except bodies, or portions thereof, or mummies preserved in museums or scientific institutions) is not movable property. The property must be in the possession of the prosecutor. Thus, there can be no theft of wild animals, birds, or fish, while at large, but there can be a theft of tamed animals. Where property dishonestly taken belonged to a person who was dead, and, therefore, in nobody's possession, or where it is lost property without any apparent possessor, it is not the subject of theft, but of criminal misappropriation [illustration (g)]. A moving thing is said to be in the possession of a

person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need.

The person from whose possession the property is taken may or may not be the owner of it and may have his possession either rightful or wrongful. Mere physical control of the person over the thing is quite enough [illustration (j) and (k)].

Where there are several joint owners in joint possession, and any one of them, dishonestly takes exclusive possession, he would be guilty of theft.

Animals found in reserve forests are ferae naturae and incapable of possession. The thing stolen must have been taken without the consent of the person in possession of it.

Explanation 5 says that the consent may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied [illustration (m) and (n)]. Consent obtained by a false representation which leads to a misconception of facts will not be a valid consent.

The offence of theft is completed when there is a dishonest moving of the property, even though the property is not detached from that to which it is secured.

Explanations 1 and 2 state that the moving by the same act which affects the severance may constitute theft. Carrying away of trees after felling them is theft but mere sale is not.

There is no presumption of law that husband and wife constitute one person in India for the purpose of criminal law. If the wife removes her husband's property with dishonest intention, she is guilty of theft. A Hindu woman who removes from the possession of the husband and without his consent, her stridhan (woman's property) cannot be convicted of theft because this species of property belongs to her absolutely.

Pyarelal Bhargava v. State of Rajasthan:- It is not necessary that the taking should be of a permanent character or that the accused should have derived any profit. A temporary removal of an office file from the office of a Chief Engineer and making it available to a private person for a day amounts to the offence of theft.

K.M.Mehta v. State of Rajasthan:- The offence of theft is committed if the property of another person is taken away from him without his consent with a dishonest intention. Even a temporary retention or deprivation is enough to show that the offence has been committed

English and Indian Law on theft

- Under the English law, the property must be taken to deprive another permanently of his property but this is not so under the Indian law where removal of movable property with intent to deprive another temporarily of his property would also amount to theft.
- Under the Indian Law, a piece of land can never be a subject-matter of theft but this is possible at least in some cases under the English Law.

Extortion – Section 383 [S. 306 BNS]

Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or

valuable security of anything signed or sealed which may be converted into a valuable security, commits extortion.

The offence takes a middle place between theft and robbery.

Ingredients

(1) Extortion is committed by the wrongful obtaining of consent. In theft the offender takes without the owner's consent.

(2) The property obtained by extortion is not limited as in theft to movable property only.

Immovable property may be the subject of extortion.

(3) In extortion the property is obtained by intentionally putting a person in fear of injury to that person or to any other, and thereby dishonestly inducing him to part with his property. In theft, the element of force does not arise.

Puts any person in fear of any injury

The 'fear' must be of such a nature and extent as to unsettle the mind of the person on whom it operates and takes away from his acts that element of free voluntary action which alone constitutes consent.

The terror of criminal charges, whether true or false, amounts to a fear of injury. The guilt or innocence of the party threatened is immaterial.

Dishonestly induces the person – to deliver to any person any property

Delivery by the person put in fear is essential in order to constitute the offence of extortion, where a person through fear offers no resistance to the carrying of his property, but does not deliver any of the property to those who carry it off; the offence committed will be robbery and not extortion. The offence of extortion is not complete before actual delivery of the possession of the property by the person put in fear.

To any person

It is not necessary that the threat should be used, and the property received, by one and the same individual.

Difference Between Theft and Extortion

Both theft and extortion are crimes against property but they differ in various aspects. Here are points of difference between Theft and extortion:

- **Definition:** Theft involves dishonestly taking someone's movable property without their consent, with the intent to permanently deprive them of it. On the other hand, extortion is the act of obtaining property, money or services from someone by using threats, coercion or intimidation.
- **Nature:** Theft is a crime against property, while extortion is a crime against property rights and personal liberty.
- **Type of Property:** In Theft, movable properties are subjected to Theft, while in extortion, the victim can deliver both movable and immovable properties to avoid the harm that may be inflicted upon them.
- **Consent:** In Theft, the victim does not consent to taking their property. In extortion, the victim may give up their property or valuables, but it is done under duress or fear of harm.
- **Intent:** The intent of Theft is to dishonestly take and permanently deprive the owner of their property. In extortion, the intent is to obtain property or valuables through fear or intimidation.
- **Presence of Threat:** Theft does not involve any threats or coercion towards the victim. In contrast, extortion relies on the use of threats or intimidation to force the victim into compliance.
- **Subject Matter:** Theft is limited to the taking of movable property only. In contrast, extortion can involve the taking of both movable and immovable property.
- **Number of Offenders:** Theft can be committed by one person acting alone. On the other hand, extortion can be committed by one or more persons acting together.
- **Force:** Theft does not involve the use of force or compulsion. However, in extortion, force or compulsion exists as the victim is put in fear of injury to themselves or others.
- **Element of Fear:** In Theft, the element of fear is absent; the act is committed without instilling fear in the victim. In extortion, the element of fear is present, and the perpetrator uses threats or coercion to induce compliance.
- **Delivery of Property:** In Theft, the victim is not required to deliver the property voluntarily. However, in extortion, the victim delivers the property or valuables to avoid the harm threatened upon them.

- **Punishment:** Both Theft and extortion are punishable with imprisonment of either description for a term that may extend to 3 years or with a fine or with both, as per the respective sections of the Indian Penal Code.
- **Relationship:** Theft is usually an isolated act where the perpetrator has no specific relationship with the victim. In extortion, the perpetrator often targets someone they know or have a connection with.
- **Level of Harm:** In Theft, the primary harm is the loss of property. In extortion, the harm extends beyond property loss, as the victim experiences fear, psychological distress and potential harm.
- **Criminal Elements:** Theft requires the act of taking the property without consent. At the same time, extortion includes the additional element of threats or coercion to induce the victim to comply with the perpetrator's demands.

Robbery– Section 390 [S. 307 BNS]

In all robbery there is either theft or extortion.

When theft is robbery

Theft is 'robbery' if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender for that end, voluntarily causes or attempts to cause to any person's death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery

Extortion is 'robbery' if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion, by putting that person in fear of instant death, or instant hurt, or of instant wrongful restraint to that person, or to some other person, and by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation – The offender is said to be present if he is sufficiently near to put other person in fear of instant death, or instant hurt, or of instant wrongful restraint.

Robbery is a special and aggravated form of either theft or extortion. The chief distinguishing element in robbery is the presence of imminent fear of violence.

There can be no case of robbery which does not fall within the definition either of theft or of extortion, but in practice it will perpetually be a matter of doubt whether a particular act of robbery was a theft or extortion.

It is by no means improbable that Z's right arm bracelet may have been obtained by theft and left arm bracelet by extortion, that the rupees in Z's girdle may have been obtained by theft and those in his turban by extortion. Probably in nine-tenths of the robberies which are committed, something like this actually takes place, and it is probable that a few minutes later neither the robber nor the person robbed would be able to recollect in what proportions theft and extortion were mixed in the crime, nor is it at all necessary for the ends of justice that this should be ascertained.

Carrying away

Even if death, hurt or wrongful restraint, or fear of any of these, is caused after committing theft, in order to carry away the property obtained by theft, this offence would be committed.

For that end

Death, hurt or wrongful restraint is a must, caused in committing theft, or in carrying away property obtained by theft. Where a person caused hurt only to avoid capture when surprised while stealing, it was held that theft, and not robbery was committed. The use of violence will not convert the offence of theft into robbery, unless the violence be committed for one of the ends specified in this section.

Voluntarily causes

An accidental infliction of injury by a thief will not convert his offence into robbery. But where in committing theft, there is undoubtedly an intention seconded by an attempt to cause hurt, the offence is robbery. In order to make an offence of theft, a robbery, there must be either theft and injury or threat of injury while committing theft.

Person

The word 'person' cannot be so narrowly construed as to exclude the dead body of a human being who was killed in the course of the same transaction in which theft was committed. A dead body is not a person. Removal of ornaments from a dead body is not taking ornaments out of the possession of a person.

Dacoity – Section 391 [S. 308 BNS]

When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present

and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

Dacoity is robbery committed by five or more persons, otherwise there is no difference between dacoity and robbery. The gravity of the offence consists in the terror it causes by the presence of a number of offenders. Abettors who are present and aiding when the crime is committed are counted in the number.

Dacoity is perhaps the only offence which the legislature has made punishable at four stages. When five or more persons assemble for the purpose of committing a dacoity, each of them is punishable under Section 402, merely on the ground of joining the assembly.

Another stage is that of preparation and if any one makes preparation to commit a dacoity, he is punishable under Section 399. The definition of 'dacoity' in this section shows that the other two stages, namely the stage of attempting to commit and the stage of actual commission of robbery, have been treated alike and same within the definition. Attempt to commit dacoity is also dacoity.

It is possible to commit the offence of dacoity by merely attempting to commit a robbery by five or more persons without being successful in getting any booty whatsoever. If in a case, the dacoits are forced to retreat due to stiff opposition from the inmates or villagers without collecting any booty, and then it must be held that the offence of dacoity is completed the moment the dacoits take to their heels without any booty.

Conjointly

It refers to united or concerted action of the persons participating in the transaction. It is only when their individual action can be properly referred to their concerted action that the question of conviction under this section can arise. Fear of instant death or of hurt, or of wrongful restraint – imminent fear of death hurt etc. will be sufficient to bring the section into operation.

CRIMINAL MISSAPPROPRIATION OF PROPERTY

- The word ‘**misappropriation**’ means a **dishonest appropriation and use of another person’s property for one’s own use**.
- **Section 403[S. 312 BNS]** of the **Indian Penal Code, 1860** states that whoever **dishonestly misappropriates or converts to his own use any movable property**, shall be punished with **imprisonment** of either description for a term which may extend to **two years**, or with **fine, or with both**.

Illustrations

- A takes property belonging to Z out of Z’s possession, in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.
- A, being on friendly terms with Z, goes into Z’s library in Z’s absence, and takes away a book without Z’s express consent. Here, if A was under the impression that he had Z’s implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

Essential Ingredients of Dishonest Misappropriation of Property

- Property must be of another.
 - The essence of offence under this section is that some **property** belonging to another which comes into the **possession** of the accused innocently, is **misappropriated or converted** by the accused to his **own**.
 - The term **misappropriation** implies **misappropriation of property** in the **possession** of someone else.
 - No **criminal misappropriation** can take place if that **property** is in **nobody's possession**.
- Finding of the property.

- The law relating to finding **property** by a stranger and his liability is well indicated in the illustrations to this Section. For example, if someone finds the goods on the roadside belonging to someone else, he retains the goods to himself and uses them even after knowing the actual owner of the property. He commits the offence defined under this Section.
- Converts to own use.
 - The words '**convert to own use**' means using the **property** of another as if it is **one's own property**. There must be actual conversion of the thing **misappropriated** to the accused's **own use**.
- Servant or Clerk Taking his master's property.
 - It is clear that a servant cannot be convicted of theft for taking goods which belonged to the master except when the goods were in the **possession** of the servant **unlawfully** through him.
 - For instance, where a clerk is sent out to collect money due on a bill, or a servant to buy and bring home goods, if the money or goods are misappropriated, he will be charged under **Section 403** or under **Section 408 (Criminal Breach of Trust by clerk or servant)**.
- Dishonest intention.
 - For an offence of **criminal misappropriation**, it is not necessary that the **property** should be taken with **dishonest intention**, the **possession** of the property may come innocently and then by subsequent change of **intention, or knowledge** of some new facts with which the party was not previously acquainted, the retaining of that property becomes wrongful or fraudulent.

Aggravated Form of Criminal Misappropriation

- **Section 404** deals with **dishonest misappropriation of property** of a **dead person**. It is considered an **aggravated form** of the offence, that is why it provides for enhanced sentences.

Dishonest Misappropriation of Property Possessed by Deceased Person at the time of his Death

- **Section 404 [S. 313 BNS]** of the Code states that whoever **dishonestly misappropriates** or **converts** to his own use **property**, knowing that such property was in

the **possession** of a **deceased person** at the time of that person's decease, and has not since been in the **possession** of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which **may extend to three years**, and shall also be **liable to fine**, and if the offender at the time of such person's decease was employed by him as a **clerk or servant**, the **imprisonment may extend to seven years**.

Ingredients of Section 404

- The **property** must be **movable** in nature or must be a **movable property**;
- Such property must be in the **possession** of the **deceased person** at the time of the death of such person;
- The **offender converted** it or **misappropriated** it for his **own use**;
- The accused must have **dishonest intentions** while committing such a crime.

Case Law

- **U.Dhar v. State of Jharkhand (2003):**
 - The **Supreme Court** held that the word 'dishonestly' and 'misappropriate' are necessary ingredients of an offence under **Section 403**. Any dispute being about recovery of money is purely of civil nature. Hence, a **criminal complaint** regarding such a matter is not maintainable.
- **State of Madhya Pradesh v. Pramod Mategaonkar (1964):**
 - **Madhya Pradesh HC** held that **misappropriation of property** can be deemed as **temporary or permanent**, and no endorsement or approval is necessary to establish this offence.
- **Ramaswamy Nadar v. State of Madras (1957):**
 - **The Supreme Court** interpreted the phrase "**converts to his own use**" as mentioned in **Section 403** of the **IPC 1860**. The court held that it implies the accused has utilized the property in a manner that goes against the rights of the **actual owner** of the **property**.

CRIMINAL BREACH OF TRUST

Section 405 [S. 314 BNS] of IPC, 1860, deals with the penalty clause of criminal breach of trust, which is defined in Section 405 of the Indian Penal Code, 1860. So, by its own heading in Section 405, it is clear that when any “person” places their trust in “someone” for transferring possession of some property to “someone,” that “someone” then breaches the trust of the “person” by retaining the property comes under the ambit of Section 406 of IPC.

Definition of Section 406 of IPC

Section 406 of the IPC describes the punishment for criminal breach of trust. “Whoever commits a criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Ingredients of Section 406 of IPC

1. An entrustment of the property against which the charges are levied is required. The property here covers both moveable and immovable property.
2. The individual must have dishonestly misused the property in violation of the duties committed to that person.
3. Section 405 of the IPC’s elements must be violated.

What is a Criminal breach of trust under Section 406 of IPC?

In layman’s terms, a criminal breach of trust happens when the accused commits an offence in the property’s best interest by creating or converting another person’s property for his own use. The transferor and transferee of the property establish a connection in which the transferor retains legal ownership. Still, the transferee has custody or control of it for the transferor’s or another person’s benefit.

Punishment under Section 406 of IPC

The term of punishment for committing a criminal breach of trust is specified in Section 406 of IPC. Depending on the circumstances, the offender is sentenced to three years in jail, a fine, or both.

Criminal breach of trust is a non-bailable and cognizable offence that may only be tried by a Magistrate of the First Class. Furthermore, with the court’s consent, the property owner in respect of which the breach of trust has occurred may compound the offence.

Entrustment of Property under Section 406 of IPC

Generally, it refers to transferring property ownership to another person. In general, such a property transfer does not imply the loss of ownership or other property rights. Furthermore, “entrusting” property necessitates the establishment of some fiduciary relationship. Put another way, the individual receiving the property must be legally in a position of trust.

A married lady is the most common example. It is not a strict rule that the woman’s ownership of stridhan automatically transfers to her husband once she enters her in-laws’ home. It should be noted that the husband and his parents are obligated to surrender the woman’s property at her request as the trustees of such property.

Section 406 of IPC and Stridhan

According to Hindu law, a wife is entitled to possess, use, and dispose of her stridhan at her discretion. It is essential that she be given what was rightly hers on demand or otherwise in the event that the wife chooses to leave the marital home. If the husband or any of his family members misappropriate something or refuse to give it back to the wife for whatever reason, it is considered a criminal breach of trust and can be punished under Section 406 of IPC.

What kind of proofs are admissible under Section 406 of IPC

1. The beneficial ownership of the property in relation to which the alleged offence was committed must be shown, and it must be shown that the accused held the property on behalf of the other party.
2. The transferee has custody of the item; the transferor is still the rightful owner.
3. Unless there are circumstances surrounding it from which one might infer that it was an entrustment and not just a payment, any financial transfer made by one person to another does not constitute an entrustment.
4. In cases where the married woman’s complaint contained clear, detailed, and unambiguous charges of entrustment and theft of stridhan property, all of the events set out therein constitute an offence under Section 406 of IPC.
5. There must be an intention to commit a criminal breach, and this intent must be established in order to seek punishment under Section 406 of IPC.

Regarding Section 406 IPC, it should be noted that the Section 405 IPC ingredients must be proven in order to establish the conduct of the offence under Section 406 of IPC. Therefore, the prosecution

must show that the accused was granted trust, that he had authority or control over the objects, and that he then misappropriated them.

Cases relating to Section 406 of IPC

1. The Supreme Court ruled in the case of *State of Gujarat vs. Jaswantlal Nathalal (AIR 1968 SC 700)* that the term “entrustment” implies that the person who transfers any property or transfers it on their behalf remains the property’s owner under Section 406 of IPC.
2. In *Mohammed Sulaiman vs. Mohammed Ayub*, the court claimed that “According to Section 405 IPC, property must be used or disposed of in violation of any express or implicit legal contract if something is done to it that would suggest misappropriation, conversion, or misuse to establish an offence under Section 406 of IPC. The terms of this section will not apply to a simple civil dispute”.
3. The Supreme Court ruled in *Rashmi Kumar vs. Mahesh Kumar Bhada* that a husband or specified family member who dishonestly misappropriates or steals a wife’s stridhan property for his benefit or who authorizes another person to do so constitutes a criminal breach of trust.
4. In the *State of Uttar Pradesh vs. Babu Ram*, the accused, a sub-inspector, investigated a theft case in a hamlet. The Supreme Court ruled that the cash notes were supplied to the sub-inspector for a specific reason and that the victim trusted the accused to return the money once he was happy with it. If the accused had removed the money notes, it would constitute a criminal breach of trust, and Section 406 of IPC would be applied.

RECEIVING OF STOLEN PROPERTY

Stolen property is defined in Section 410. The offences relating to stolen property is dealt with in Section 411 to 414 of IPC.

Section 410 [S. 315 BNS]: Stolen property

‘Property, the possession whereof has been transferred by theft or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as ‘stolen property’ whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.’

Ingredients:

1. Stolen property.

2. Whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India.
3. When stolen property ceases to be “stolen property”.
4. If such property subsequently comes into the possession of a person legally entitled to the possession thereof.
5. Stolen property coming into possession of owner before its receipt by person accused of receiving it.

Stolen property:

A stolen property is one on which the possession of the property is transferred by –

- (a) Theft, or
- (b) Extortion, or
- (c) Robbery, or
- (d) Where the property has been misappropriated criminally, or
- (e) The property in respect of which the breach of trust is committed.

The property received must be a stolen one, by any one of the above mentioned methods. The property into or for which the stolen property is converted or exchanged is not a stolen property.

In *Manmohan Roy (1875)*, it was held that the money obtained upon a money order which is a forged one, is not a stolen property.

But in *Cowell vs. Green*, it was held that the motion obtained by killing sheep which was stolen alive, was held that it was a stolen property.

When stolen property ceases to be a stolen property:

The property which treated to be the stolen property will not longer a stolen property when the legally entitled person of that property, gets back possession of that property.

When, the owner of the property gets the possession of the stolen property, before it is received by some other person, it ceases to be a stolen property, and if the other person, having known of the fact that the property was stolen receives that property, he cannot be held for receiving stolen property. Because, before, he received that, it ceased to be a stolen property.

For example, if 'A' steals the watch of 'B' and 'B' immediately after somehow gets the watch from the thief and then 'B' gives it, 'A' to sell that watch. Here, 'A' cannot be held to receive the stolen property.

Another example, 'A' dishonestly, misappropriates the money of 'B' who is his manager.

Afterwards, 'B' comes to know about this fact and gets the money so misappropriated.

When 'B' gets back money, the money ceased to be a stolen money. 'B' then, pays out of that money to 'A' as his salary. Here, 'A' cannot be held to receive the stolen property, even though he knew that it was a stolen one.

Section 411: Dishonestly receiving stolen property

Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

This section deals with the persons who receive the stolen property. It does not deal with the principal offenders. This is meant to prevent those persons who trade in the stolen article. Because, the objective of this section is that the receivers are actually, encouraging the commission of the crime, and sometimes, the detection of the stolen property becomes very difficult due to this intermediary act.

This section constitutes the substantial offence. This section does not the same as that of the abettor or conspirator. This section does not depend upon the conviction of the principal offender. And in fact, this section provides for more stringent punishment than the principal offences.

Ingredients:

1. Dishonestly receiving or retaining stolen property.
2. Knowledge or reason to believe at the time of receipt or retention that the property received or retained was a stolen property.

1. Dishonestly receiving or dishonestly retaining the stolen property

When a person receives or retains a stolen property dishonestly, it constitutes the actus. At the time of receiving or retaining the property, the person should do so dishonestly receiving and retaining or different. Deceiving means taking a thing from another. Retain means keeping a thing with oneself. So, when a person while taking delivery of a stolen property, intends to cause wrongful gain to himself and wrongful loss to the owner, he is said to receive the stolen property dishonestly.

Similarly, when a person retains or keeps a stolen property with himself, with the intention to cause wrongful gain to himself and wrongful loss to the owner, is said to retain the stolen property dishonestly. Suppose, when the person not being owner gets the possession of the stolen property, without knowing it to be the stolen property but afterwards, comes to know about this fact and even after, keeps that stolen property with himself, then he is said to retain the stolen property dishonestly. receiving and retaining are to be thus, qualified by the word “dishonestly”. If anyone is present, then such act attracts the invoking of this section. This is the actus reus.

2. Knowledge or reason to believe the same to be stolen property

This part deals with the guilty mind or mens rea coupled with ‘dishonestly’. So, when the person receives or retains the stolen property, he must have the knowledge that the property which he is receiving or retaining is a stolen property. So, when he receives or retains, at that very moment he should know about it.

Or, when he receives or retains the property, the person, receiving or retaining must have reason to believe that it is stolen property. This is to be tested objectively.

The knowledge or reason to believe falls just before the receipt or retention.

Some more points:

To constitute an offence under Section 411, all the ingredients must be satisfied. For example, suppose, while receiving or retaining the property, the person may receive or retain dishonestly, but may not have the knowledge or reason to believe that it is a stolen property in this case, Section 411 is not attracted.

And, suppose, a person receives or retains the stolen property, knowing or having reason to believe that it is a stolen property may not receive or retain it dishonestly. for example, the police officer receiving a stolen property believing or knowing to be a stolen property, from the thief, or the owner receiving the property.

The example for retention may be when a person steals the watch a person, and the owner after coming to know about him, tells him to keep himself it, by paying him (owner) the worth of that watch. Here, the thief when he pays the money and retains them, he does not keep it dishonestly. Because, now he is the owner of the watch and there is no question as to causing wrongful gain to himself or wrongful loss to the owner before.

In Begarayi Krishna Saraher, where a child committed theft and was discharged under Section 83, the accused received the stolen property from the child. Here, it was held that the discharge of the child is no bar for convicting the accused for dishonestly receiving the stolen property having known of this fact.

In Parr, the person, directed his servant to receive the stolen goods into his premises.

The servant in the absence of the principal, received the goods inside, having known that they were stolen. Here, both the servants and the principal were indicted jointly for committing offence under section 411.

Section 412: Dishonestly receiving property stolen in the commission of dacoity:

Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe, to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to gang of dacoity, property which he knows or has stolen to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fixed.

This section applies to the persons other than the persons involved in dacoity.

Ingredients:

1. (a) Dishonestly receives or retains any stolen property.
(b) The possession of that property must be coupled with the knowledge or reason to believe that, it has been transferred by the commission of dacoity.
2. (a) Dishonestly receives property from a person.
(b) Had knowledge or reason to believe that such person belongs or to have belonged to a gang of dacoity.
(c) With knowledge or reason to believe that the property is a stolen.

This section provides for a more serious offence than Section 411. Before convicting a person, for receiving or retaining stolen property, it should be shown that the person should have possession at the material time or there should be a control of the place by the person, where, the property is said to be deposited or should have some knowledge of the deposition.

In Anirudha Agasthi, where the stolen articles were kept in a suitcase and recovered from a house occupied by the accused and other members of the family. It was held that, the accused cannot have exclusive or conscious possession of the accused.

The possession must be exclusive. If the possession and control is with another, then one cannot be said to have possession even though he is aware of the deposit of stolen property.

In Man Singh (1993), where a person is not guilty under Section 394, for committing a dacoity but where the looted property is found in his possession and he has knowledge that it is looted property, it was held he can be held under this section.

In Narendra Kumar (1956), where the accused is convicted under Section 395 for committing a dacoity, and it is in the course of that dacoity that the property which is found in his possession came to him, it was held he cannot be held under Section 412.

THE OFFENCE OF CHEATING

- **Cheating** is considered as a **criminal offence** under the Indian Penal Code, 1860 (IPC). It is done in order **to gain profit** or an advantage from **another person** by **using some deceitful means**.
- **Section 415** states that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property, to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "**cheat**".

Illustrations

- A, by **falsely pretending** to be in the **Civil Service**, **intentionally deceives Z**, and thus **dishonestly induces Z** to let him have on credit goods for which he does not mean to pay. A has committed the offence of **cheating** under **Indian Penal Code, 1860 (IPC)**.
- A, by putting a **counterfeit mark** on an article, **intentionally deceives Z** into a belief that this article was made by a certain celebrated manufacturer, and thus **dishonestly induces Z** to buy and pay for the article. A has committed the offence of **cheating** under **Indian Penal Code, 1860 (IPC)**.

Essentials of Cheating

- **Section 415[S. 316 BNS]** has **two alternate parts**, in the very **first part** the person must '**dishonestly**' or '**fraudulently**' induce the complainant to deliver any property while in the **second part**, the person should **intentionally induce** the complainant (**the person so deceived**) **to do or omit to do a thing**.
- The main essential of **Section 415** which have to be proved to obtain conviction for cheating are as follows:
- **For the First Part**
 - The **accused deceived** some person.
 - By **deception**, he **induced** that person.
 - The above inducement was **fraudulent** and **dishonest**.

- The person so induced **delivered some property** to or **consented to the retention of some property by any person**.
- **For the Second Part**
 - The **accused deceived** some person.
 - Such **inducement** was **intentional**.
 - The person so induced **did or omitted** to do something.
 - Such an **act or omission caused** or was likely to cause **damage or harm** to the person induced in **body, mind, reputation or property**.

Deception

- A person **deceives** another when he causes one to believe **what is false or misleading as a matter of fact or leads to error**. **Deception** is a necessary ingredient for the offences of cheating under both parts of the section.
- To constitute the offence of cheating '**deception**' must precede and thereby induce the other person to either;
 - ***Deliver or retain property***.
 - ***To commit the act or omission***.
- Whenever a person **fraudulently** represents as an existing fact that which is not an existing fact, he commits an offence of **cheating**. What actually constitutes deception is a matter of evidence in each case depending upon the **facts and circumstances**.
 - Where there is no evidence of deception then the offence of cheating should not be established.

Willful Representation and Cheating

- Where there is **willful misrepresentation with intent to defraud**, it will amount to **cheating**. However, it is important to see that when the misrepresentation was made it was **false to the knowledge of the accused**.

Dishonest Intention

- To hold a person guilty of cheating, it is necessary to show that he had **fraudulent or dishonest intentions at the time of making the promise**.

Inducement

- The **person cheated** must have been **intentionally induced to do an act** which he would have done due to the **deception** caused to him. **Section 415** clearly shows that **mere deceit** is not **sufficient** to prove the offence.
- Likewise, committing something fraudulently or dishonestly is also not sufficient. The **effect** of the **fraudulent or dishonest act** must be such that it **induces the person deceived to deliver property or do something (in the form of an act or omission)**.

Cheating by Personation

Section 416 [S. 317 BNS] of the code states that, a person is said to "cheat by personation" if he cheats by **pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.**

Illustrations

- 'A' **cheats by pretending** to be a certain rich banker of the same name. 'A' cheats by personation.
- 'A' **cheats by pretending to be B**, a person who is deceased. 'A' cheats by personation.

Punishment for Cheating

- **Section 417** states that whoever cheats shall be **punished with imprisonment of either description** for a term which may **extend to one year, or with fine, or with both.**

Cheating in Fiduciary Relationship

- Section 418 states that Cheating with the knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.
- It prescribes the **punishment for cheating by a person standing in a fiduciary capacity to the person who cheated.**
- Such a relationship exists between a **banker and a customer, the principal and an agent, guardian and the ward, director of a company and a shareholder, a solicitor and a client, etc.**

Punishment for Cheating by Personation

Section 419 of the code states that whoever **cheats by personation** shall be punished with imprisonment of either description for a term which may **extend to three years, or with fine, or with both.**

Cheating and Dishonestly Inducing Delivery of Property

Section 420 deals with **certain aggravated forms or specified classes of cheating**. It deals with cases of cheating, whereby, the deceived person is dishonestly induced;

- **To deliver any property** to any person.
- **To make, alter or destroy;**
 - **The whole or any part of a valuable security.**
 - Anything which is **signed or sealed**, and which is capable of **being converted into a valuable security**.

It is required to prove that the **complainant has parted** with the **property due to dishonest inducement of the accused**. The property so delivered must have some money value to the person cheated.

The **maximum punishment** which can be awarded under **this section** is **imprisonment for a term of 7 years and a fine**.

Case Laws

- **Shri Bhagwan Samardha Sreepadha Vallabha Venkata Vishwanandha Maharaj v. State of Andhra Pradesh (1999):**
 - The Supreme Court held that the **representation made by the accused** in an appeal that he had **divine healing powers through his touches**, thereby making the complainant believe that he could cure his little girl of her congenital dumbness through his divine powers was **fraudulent and amounted to inducement**.
 - Thus, believing the promises, the **complainant was induced to believe in the divine powers and shell out money to the so-called Godman**.
- **Abhayananda Mishra v. State of Bihar, (1961):**
 - The Supreme Court held that a **passport is a document** by which its very nature and purpose is a political document for the benefit of its holder.

- It recognizes him as a citizen of the country granting it and in the nature of request to order another country to allow his free passage there.
 - There can therefore be no doubt that a passport is a document of **importance for travel abroad and is of considerable value to its holder**, thus looking to the importance and characteristics of a passport it can be said that it is a property within the meaning of **sections 415 and 420 of IPC**.
- **Baboo Khan v. State of Uttar Pradesh (1961):**
 - The Allahabad HC held that the **accused**, who **pretended to be a certain well-known eye specialist and encouraged the claimant to agree to him to carry out a procedure** on the eye of his 12-year-old son, was found **guilty under section 416 of Indian Penal Code, IPC**.

FRAUDULENT DEEDS AND DISPOSITIONS

OF PROPERTY

(SECTIONS 421 TO 424)

Section 421[S. 318 BNS]:Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors

“Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

Under this section, the act of removal, concealment, or delivery of any property or causing a transfer or transferring a property, to any person and without consideration is the actus i.e. the result of human conduct. The dishonest intention or fraudulent intention to transfer or remove etc. with the intention to prevent or knowledge that he is likely by such

transfer, etc. the lawful distribution of property among the creditors of him or the creditors of any other person is the mens i.e. the mental element. So, when both the actus and mens are present in the act of a person, that act is prohibited by law.

The object of this offence is to regulate the acts of a fraudulent or dishonest debtor, by causing wrongful loss to the creditors.

Ingredients:

1. Dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers or causes to be transferred to any person (any property).
2. Without any adequate consideration.
3. Any property.
4. Intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person.

1. Dishonestly or fraudulently removes, conceals or delivers to any person or transfers or causes to be transferred to any person (any property)

‘Dishonestly’ is defined in section 24 of IPC, as “Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing ‘dishonestly’.”

‘Fraudulently’ is defined in section 25 of IPC as “A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.”

- ‘Removes’ means taking out away from a place.
- ‘Concealing’ means hiding something.
- ‘Delivery’ means handing over of a thing to a person.
- ‘Transfer’ means changing or moving a thing from one place to another place.

So, when any person takes out a thing (property) away from a place, or hides that property or hands over to another or moves away or causes a move of that property from one place to another, with the intention to cause wrongful loss to one person and wrongful gain to another or to himself or with the intention to defraud that other person, is said to done the act constituting an ingredient of the offence of section 421.

For example, if X with an intention to cause wrongful loss to Y or so defraud him

nominally hands over the possession of his land to Z without any reason or so as to take it back afterwards, he is said to fulfil this ingredient.

2. Without adequate consideration

For a contract to valid the consideration should be valid and adequate. But, when the consideration is not adequate the court then examines the actual reason for non-adequate consideration. So, when the property is transferred or delivered, without adequate consideration, the court imputes dishonest or fraudulent intention on the accused.

3. Any property

Property may be movable or immovable.

4. Intending thereby to prevent, or knowing it to be likely that he thereby prevent, the distribution of that property according to law among his creditors, or the creditors of any other person.

This is a part of the mens rea to be fulfilled before invoking section 421.

For this section contemplates that, when the person removes, delivers, transfers or causes to transfer etc. of the property, with dishonest intention or fraudulent intention, and without adequate consideration for transfer, such removal etc. must be done with the intention to prevent the lawful distribution of that property among his creditors or any other person's creditor.

For example, X is indebted to Y for a sum of Rs. 2 lakhs. X fails to repay the amount and Y files a suit in the civil court for recovery of the debt. X fails to pay the decretal amount. Y files for execution and the court possess an order for attachment of the property of X so as to distribute the proceeds to Y. In the mean time, X knowing this transfers his 'house' to A, for a meagre amount telling him, that afterwards he will again claim it back. This transfer, he did with the intention to prevent the court from attaching it and thereby preventing the payment to his creditor Y. He commits the offence under section 421.

Suppose, in the same example, instead of X, if his servant P does the same work, then he is also liable under section 421.

So, both the dishonest intention at the time of transfer etc. of the property and the simultaneous intention to prevent the distribution of property transferred to the creditors lawfully, must co-exist.

Section 422[S. 319 BNS]: Dishonestly or fraudulently preventing debt being available for creditors

“Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person; shall be punished with, imprisonment of either description for a term which may extend to two years, or with fine or with both.”

This section just like section 422, is intended to prevent the defrauding creditors by masking property. The offence consists in the dishonest or fraudulent evasion of one's own liability.

Ingredients:

1. The debt or demand was due to the accused, or some other person.

2. The accused prevented such debt or demand from being made legally available for his debts, or for the debt of another person.
3. He did it dishonestly or fraudulently.

Cases:

1. Nobin Chundre Muddauk (1874) – In this case A entered into an agreement with B not to compromise a case with C. Because, A had assigned the benefit of the suit to B as a security for the due payment of an instalment of money and A ignoring the agreement, compromises with C. It was held A is not liable, because, the compromise was not done with dishonest or fraudulent intention with C.

2. Hara Kumary Chowdhaurani (1900) – In this case, the accused's estate was under mortgage and in the management of certain persons under certain conditions as to payment of money realized by them. In execution of a decree obtained by the managers in a suit brought by them in the name of the accused; a certain under tenure was sold for Rs. 3000. The judgment - debtor arranged with the accused that on payment of Rs. 1000 the sale should be set aside and he accordingly paid that sum into court, and an application was made by the accused to draw out the money upon which no order was made. They were convicted. It was held that the application to obtain the money paid into court might have been a breach of their contract with the mortgages, but such conduct would not be regarded as dishonest or fraudulent so as to render accused liable to punishment.

Section 423[S. 320 BNS]: Dishonest or fraudulent execution of deed of transfer containing false statement of consideration

“Whoever dishonestly or fraudulently signs, executes, or becomes a party to any deed or instrument which purports to transfer or subject to any change any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or change or relating to the person or persons for whose use or benefit it is really

intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.”

MISCHIEF

What is Mischief?

The concept of mischief is defined in Section 425[S. 322 BNS] of the Indian Penal Code (IPC), and the corresponding punishment is outlined in Section 426 of the IPC. Additionally, Sections 427 to 440 of the IPC specify the punishment for aggravated forms of mischief, considering the nature and value of the property damage.

According to Section 425 of the IPC (Indian Penal Code) enacted in 1860, mischief is committed when an individual intentionally causes destruction or damage to any property, thereby reducing its value and usefulness, resulting in unnecessary loss or damage to the public or any person. This applies to situations where the person performing the act is aware that it is likely to cause harm to the property.

In simpler terms, mischief in IPC can be defined as the intentional act or the act performed with the knowledge that it will prevent another person from enjoying the benefits of their property. This act can be directed against either the public or a specific individual.

Illustrations

- For a simple understanding, some examples of mischief under IPC that can be seen are:
- ‘A’ destroys a car jointly owned by ‘A’ and ‘B’, intending wrongful loss to ‘B’
- ‘A’, a student takes a copy of the question paper before the exam to diminish its utility.
- ‘A’ damages important documents belonging to ‘B’, intending wrongful loss to ‘B’.
- ‘A’ causes cattle to enter the property of ‘B’ to cause damage to his crops.
- ‘A’ deliberately throws a ball at the neighbour’s window.

The objective of Law of Mischief under IPC

The Law of Mischief under the IPC is designed to offer safeguards against destroying property that leads to wrongful loss or damage to the public or an individual. It serves as an extension of the legal principle *sic utere tuo ut alienum non-laedas*, which translates to “use your property in such a way as not to injure the property of others or your neighbours.”

Illustrations

- “A” intentionally sets X’s home on fire, causing him wrongful loss or injury.

- “A” a doctor deliberately prescribed the wrong medicine to “B’s” cattle with an intent to cause wrongful loss or injury.
- “C” diverts the flow of the canal in such a way as to prevent “B” from irrigating his field, causing him loss by damage to crops.
- “B” tears off some important business-related documents of A to cause him financial loss.
- “A” deliberately burns off the standing crop that was jointly cultivated by “A” and “B”.
- “B” intentionally damages a “signboard “installed by order of the municipality, causing wrongful losses & injury.

Punishment for Mischief in IPC

The punishment for mischief is outlined in Section 426 [S. BNS] of the Indian Penal Code. According to this section, anyone found guilty of committing mischief can be sentenced to imprisonment for up to three months, or they may be fined, or both imprisonment and fine may be imposed as a collective punishment.

Scope of Mischief under IPC

Section 425[S. 322 BNS] of the IPC encompasses acts that damage or destroy property, leading to wrongful loss or damage. It has a broad scope and applies to both public and private damages.

However, it is important to note that this section does not apply in cases where there is no element of intention. Furthermore, the accused person doesn't need a valid motive or benefit from the act of mischief under IPC.

There are additional considerations to be taken into account. For instance, whether this section applies in cases where the accused person damages their property or if it covers situations where property damage is a consequence of an illegal act or failure to make a payment.

Essential Ingredients of Mischief in IPC

The elements essential for an act to be considered mischief in IPC are:

Intention or Knowledge to Cause Wrongful Loss or Damage (mens rea)

The accused must have the intention or knowledge that their actions will result in damage to property or wrongful loss to an individual. The intent to cause damage or wrongful loss is sufficient for an act to be considered mischief in IPC. The act does not necessarily have to be directed at the property owner.

For example, in a communal disturbance where individuals intend to destroy property without concern for ownership, falls within the criteria of mischief under IPC.

In the case of **Krishna Gopal Singh And Ors. vs the State Of U.P.**, it was established that the offence of mischief is not committed if the accused did not act to cause wrongful loss or damage to a person or the public. Acts performed under duress or without the free consent of the accused do not fall under the scope of mischief in IPC.

Wrongful Loss or Damage

The essential element of committing mischief under IPC is that the act should result in destruction, damage, or wrongful loss to the public or an individual. This constitutes the *actus reus* of the offence. The accused's intention may be to cause wrongful loss or damage to a person, such as tearing important documents related to property or finances.

Causing Destruction of Any Property or Any Change in It

Mischief can also be committed by causing the destruction or alteration of any property. It is crucial that the damage or change is a direct result of the alleged act. For example, modifying the content of a speech or intentionally destroying someone's belongings would fall under the category of mischief in IPC.

Destroys or Diminishes Value or Utility, etc.

Furthermore, mischief can be constituted by diminishing the value or utility of something. This could involve actions such as leaking an exam paper or deliberately misplacing important files and folders when they are needed. The object's utility is determined from the owner's perspective, not the accused.

In the case of **Indian Oil Corporation v. NEPC India Ltd. and Ors**, the defendant removed an aircraft's engines, thereby diminishing its utility and rendering it useless. The court held that the damage caused fulfilled all the elements of mischief, thus establishing the mischief offence in IPC.

Aggravated Forms of Mischief under IPC

Different forms and criteria of mischief under the IPC are as follows:

Mischief causing loss or damage to property

Section 427 of the IPC states that if someone commits mischief and causes loss or damage to fifty rupees or more, they can be imprisoned for up to two years, with a fine, or both.

Mischief by killing or maiming animals

Sections 428 to 434 of the IPC deal with mischief committed by killing, poisoning, maiming, or rendering useless any animal or animal valued at ten rupees or more. The intention behind these sections is to prevent animal cruelty, and the punishment for such acts can be imprisonment for up to two years, a fine, or both.

It is important to note that the term “animal” in this context refers to any living creature other than a human being. The term “maiming” refers to causing permanent injury that affects using a limb or other body parts.

Mischief by killing or maiming cattle

Section 429[S. 323 BNS] of the IPC specifically deals with killing or maiming cattle, which refers to animals used for commercial purposes. This section focuses on analyzing the intent and motive behind the crime. It is assumed that the accused intended to maim or kill the cattle with the motive of causing wrongful loss to the owner. The punishment for such offences can be imprisonment for up to five years, a fine, or both.

Mischief by Injuring Works of Irrigation

Section 430[S. 323 BNS] of the IPC addresses the punishment for causing damage to irrigation works, rendering them useless, or wrongfully diverting them to cause mischief. The objective of this section is to prevent any disruption in the supply of water used for commercial purposes, such as agriculture, manufacturing, or essential needs like drinking and storage. The punishment for such offences can be imprisonment for up to five years, a fine, or both.

Mischief by Injuring Public Road, Bridge, River, or Channel

Section 431[S.323 BNS] of the IPC pertains to the commission of mischief by causing damage to any public road, bridge, navigable river, or channel. The act renders them impassable or less safe for traveling or conveying property. The assumption in this section is that the accused intends to cause wrongful loss to the public by destroying or diminishing the value of the property. The punishment under Section 431 can be imprisonment for up to five years, a fine, or both.

Mischief by Obstructing Public Drainage attended with damage

IPC Section 432[S. 323 BNS] deals with individuals who perform acts that result in or are likely to cause inundation or obstruction to any public drainage, causing injury or damage. This section addresses the concept of causing destruction of property and affecting the public at large for mischief in IPC. The punishment for such offences can be imprisonment for up to five years, a fine, or both.

Mischief by Destroying a Lighthouse or Seemark

Section 432[S. 323 BNS] of the IPC addresses the offence of committing mischief by destroying or disturbing a lighthouse, light used as a seemark, sea-mark, buoy, or any other object placed as a guide for navigators. This section considers the intention to misguide navigators as part of the mischief, whether by destroying or moving the sea-mark in a way that renders it useless or diminishes its usefulness. The punishment for such offences can be imprisonment for up to seven years, a fine, or both. The increased punishment reflects the potential for significant commercial or personal losses caused by this mischief under IPC.

Mischief by Destroying a Landmark fixed by public authority

Section 434 of the IPC deals with the offence of committing mischief by destroying or moving any landmark fixed by the authority of a public servant or by any act that renders such landmark less useful. The punishment for this offence can be imprisonment for up to one year, a fine, or both. The landmark that is destroyed or diminished should be significant and have been fixed by the authority of a public servant.

Mischief based on the method adopted to cause damage

Offences of Arson: Sections 435 to 438 of the IPC cover aggravated forms of mischief based on the method adopted to cause damage. These sections are collectively called “offences of arson,” which involve the intentional and malicious burning or charring of property.

If the damage caused by fire or explosive substances amounts to one hundred rupees or more, the punishment can be imprisonment for up to seven years and a fine. For agricultural produce, the damage caused must amount to ten rupees or more to be punishable under these sections.

CRIMINAL TRESPASS

Black's Law Dictionary defines trespassing as an unlawful act committed against the person or property of another especially, wrongful entry on another's real property. **Section 441 [S. BNS] contained in Chapter XVII of the Indian Penal Code, 1860 (IPC)** deals with criminal trespass.

Section 441 of IPC (S.327 BNS)

- This Section deals with the offence of **criminal trespass**.
- It states that 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 having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit **criminal trespass**.
- The object of making criminal trespass as an offence is to ensure that people can **enjoy their private property** without any kind of interruption from outsiders.
- The use of **criminal force is not an essential element** under this Section.
- **Illustration:**
 - X unlawfully and without Y's permission enters Y's house to steal his grandfather's antique watch, X would be liable for theft as well as criminal trespass.

Essential Elements of Criminal Trespass

- Entering or remaining **unlawfully** on real property owned by another.
- If entry is lawful, **continuing unlawfully** on such property.
- Such entry or **unlawful remaining** must be done with intent.
- Commit an **offence**.
- **Intimidate** the owner of the property.

Aggravated Forms of Criminal Trespass

- House Trespass:
 - As per **Section 442 (S.328 BNS) of IPC**, whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or

any building used as a place for worship, or as a place for the custody of property, is said to commit **house-trespass**.

- Lurking house-trespass:
 - As per **Section 443 of IPC**, whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit **lurking house-trespass**.
- Lurking house-trespass by night:
 - As per **Section 444 of IPC**, whoever commits lurking house-trespass after sunset and before sunrise, is said to commit lurking house-trespass by night.
- House-breaking:
 - House-breaking denotes a forcible intrusion into someone's home, it is another aggravating kind of house trespass. Housebreaking can happen in six different ways, according to **Section 445[S.328 BNS] of the IPC**:
 - Through a passage made by the intruder himself.
 - Through any passage not used by anyone else.
 - Through any passage opened for the purpose of committing housebreaking but not intended to be open.
 - By opening any lock.
 - By using criminal force at either the entrance or the exit.
 - By entering or leaving any passage fastened together.
- House-breaking by night:
 - As per **Section 446 of IPC**, whoever commits house-breaking after sunset and before sunrise, is said to commit house-breaking by night.

Punishment for Criminal Trespass

- **Section 447 of IPC** deals with the punishment for criminal trespass.

- It states that whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may **extend to three months, or with fine** which may extend to five hundred rupees, or with both

Case Laws

1. Satrughana Nag v. State of Odisha

The respondent's home was broken into by the appellant, in this case, late at night, but when her brothers heard sounds coming from the room, they arrived and saved her. The complaint alleged a violation of Section 457, and the judge at the district court took cognizance of the matter.

The court determined that this was a case of house trespass, which is illegal and punishable by section 448[S. BNS] of the IPC.

2. Biswajit Paul v. State of Assam

A gang of persons arrived to evict the petitioner from his property, equipped with spades, sticks, and other tools.

According to the court, it must be shown that an unauthorised entry was made into a piece of property that belonged to someone else and that this unlawful entry was undertaken with the intent to commit a crime or to intimidate, harass, or irritate the owner of the property, in order to establish a trespass. However, there was no evidence of ownership, and a meeting arranged to ascertain ownership was unsuccessful.

Hence, the appeal was denied since there is insufficient evidence that the aforementioned trespassing factors have been established.

OFFENCE RELATING TO MARRIAGE

Chapter XX of I.P.C. includes Section 493 to 498, which provides punishment for offences relating to marriage.

These offences may be grouped into four categories: -

- (i) Unlawful or deceitful marriage (Sections 493, 496);
 - (ii) Bigamy (Sections 494, 495);
 - (iii) Adultery (Sections 497, 498);
 - (iv) Enticing or taking away or detaining with criminal intent a married woman (Section 498)
- Chapter XX – A, inserted in the code vide criminal law (Second Amendment Act, 1983) provides punishment in case of cruelty by husband or relatives of husband to newly married bride in Section 498 – A, I.P.C.

This chapter penalizes conjugal infidelity and other offences connected therewith in a manner materially different from the English Law.

It punishes four principal offences relating to marriage, these being: -

(1) cohabitation obtained by fraudulently inducing a belief in the woman that she is the accused's wife (Section 493), allied to which is the mock marriage punishable under Section 496.

The offence of Bigamy is provided against in Sections 494 and 495, but these provisions had to be made necessarily elastic so as to provide for the diverse customs of the various races inhabiting the nation.

The third offence of Adultery is a departure from the English Law under which adultery is not a crime, but merely a misconduct against which the aggrieved party has no redress against the adulterer or adulteress except in damages awarded in a suit for divorce or a judicial separation.

The offence of seduction of a married woman is one closely related to offence of adultery. The first offence punishable under Section 493 was constituted an offence in spite of the trend of the English

cases, which held such connection not to amount to rape. But this view has since been overruled by the Criminal Law (Amendment) Act, 1885, which now expressly declares such act to amount to rape.

The offence of Bigamy punishable under Section 494 and 495 materially differs from the corresponding rule of English Law, under which monogamy being the universal practice, the rule is simpler. But under these sections the criminality of the second or subsequent marriage depends upon the practice of the caste or race to which the accused belongs. If polygamy or polyandry was sanctioned by usage, one could not be convicted for doing an act in conformity with custom, nor could the law enforce monogamy upon the people with the same assurance as the abolition of suttee, since the one is by no means as serious as others.

UNLAWFUL OR DECEITFUL MARRIAGE

Section involved: - 493 & 496

Section 493 [S. 80 BNS]: - “Cohabitation caused by a man deceitfully inducing a belief of lawful marriage” – Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ingredients: - The offence requires two essentials: -

1. Deceit causing a false belief in the existence of a lawful marriage.
2. Cohabitation or sexual intercourse with the person causing such belief.

CASES AND JUDGEMENTS

1. *Raghunath Pandey v. State, AIR 1957, Orissa 198*: - The essence of the offence under Section 493 consists in the practice of deception by a man on a woman in consequence of which she is led to believe that she is lawfully married to him even though, in fact, it is not so. To prove deception it must be conclusively established that the petitioner either dishonestly or fraudulently concealed certain facts, or made a false statement knowing it to be false.

2. *State of Gujarat V. Hiralal Metha, 1974, GUJ*

3. *Kompella A. N. Subramanyam v. J. Ramalakshmi* (1974) Andhra: W. B 278: -“It is essential that the deceit and fraudulent intention contemplated should be found to have existed at the time the ceremony of marriage was gone through.”

4. *Amruta Gadaria v. Trilochan Pradhan* 1993 (Criminal)

Analysis of the offence:

1. Principle: - The commission of the offence here described is only possible when the woman is at least 16 years of age. If she is below that age, her consent is immaterial and cohabitation with her is rape. If she is above that age, the accused may induce her to believe him as her lawful married husband.

2. Essence of the offence: - The essence of the offence under this Section consists in the practice of deception by a man on a woman, in consequence of which she is led to believe that she is lawfully married to him, even though, in fact, they are not lawfully married. To prove deception, it must be proved that petitioner either dishonestly or fraudulently concealed certain facts, or made a false statement knowing it to be false.

In *K. A. N. Subramanyam v. J. Rajnalakshmi* (1971) The Court held: The offence under Section 493, I.P.C. consists in giving a false assurance of the marriage to a woman and thereby procuring sexual intercourse with her. It is essential that the deceit and fraudulent intention contemplated should be proved to have existed at the time the ceremony of marriage was gone through.

The Section only punishes an act where such deception is practised before a woman consents to have sexual intercourse with a man. If therefore a man marries a woman in the bonafide belief that the marriage is effective, and afterwards discovers some flaw rendering it inoperative after which he continues to cohabit with her, he could not be said to have had sexual intercourse after causing belief in her marriage by deceit.

Section 496[S. 82 BNS]: - “Marriage Ceremony fraudulently gone through without lawful marriage” –

Whoever dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

This Section punishes the offence of contracting a mode-marriage, with object of achieving a dishonest or fraudulent purpose.

The essence of the offence is deception, whether of the other party to the marriage or a third person, and the marriage ceremony should be fraudulently gone through and that there should be no lawful

marriage. The parties to the marriage, or at least one of the parties to the marriage must have knowledge that there is no marriage.

Case: - Sheikh Alimuddin, 10, C. W. N.

DIFFERENCE BETWEEN SECTION 496 AND 493

1. This Section is applicable both on men and women, unlike section 493 which applies only for man.
2. The offence under section 496 is complete without cohabitation or the holding of a sexual intercourse on faith of the marriage, whereas it is the sine qua non of the offence, punishable under section 493.

OFFENCES RELATED TO BIGAMY

SECTION INVOLVED: 494 & 495

Section 494[S.81 BNS]: “Marrying again during lifetime of husband or wife” – Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exceptions: This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contacts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real State of facts so far as the same are within his or her knowledge.

Section 495: “Same offence with concealment of former marriage from person with whom subsequent marriage is contracted” – Whoever commits the offence defined in the last preceding Section having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Comment: Section 494 punishes the offence known to the English Law as Bigamy.

Scope: Section 494 does not apply to Mohammedan males, who are allowed to marry more than one wife, but it applies to Mohammedan females, and to Hindus, Christians, and Parsis of entire sex.

Ingredients: Section 494 requires: -

1. Existence of the First Wife or husband when the second marriage is celebrated.
2. The second marriage being void by reason of the subsistence of the first according to the law applicable to the person violating the provision of the law.

Cases and Judgements:

1. ***Bhauraao Shankar Lokhande v. State of Maharashtra*** AIR 1965 CD 1564 – “To constitute an offence of bigamy the marriage must have been celebrated with proper ceremonies and in due form. Merely going through certain ceremonies with the purpose that the parties be taken to be married will not effect a marriage between them. Where the ceremonies performed are not prescribed by law or approved by custom, the marriage is not a valid marriage and so it is no marriage in the eyes of law to hold a person liable under Section 494”.

ANALYSIS OF BARE ACT

1. “Whoever Marries”

The expression “whoever marries” must mean “whoever marries validly” or “whoever marries and whose marriage is a valid one”. If the marriage is not a valid one, according to the law applicable to the parties, no question of its being void by reason of its taking place during the life of the husband or wife of the person marrying arises. If the marriage is not a valid marriage, it is no marriage in the eye of law.

In order to constitute a valid marriage certain ceremonies have to be necessarily gone through. What ceremonies are necessary depends upon the customs of the community to which the parties belong.

In a case under section 494, I.P.C. both the alleged marriage of a person have to be proved as a fact.

If the person is deserted from spouse for two years, or there is a judicial separation, it cannot be said that the marriage has dissolved. In this case, the marriage is still subsisting and if there is a divorce, then the marriage has dissolved and is no marriage in the eye of law.

It has been held in the case of ***Usman v. Budlm*** AIR 1942, Sind 92 and ***Bumodin***

Howaldar v. Emperor AIR, 1921 Cal 480, that in order than an offence of bigamy can be committed, there must a previous valid subsisting marriage.

In ***Santosh Kumari v. Surjit Singh***, AIR 1990 H.P. TT, the Court held, Divorce dissolves a valid marriage, and the parties obtaining such dissolution can re-marry.

In *Abdul Ghani v. Azizul Haq* (1911) 39 Cal., the Court held that, a Mohammedan woman marrying within the period of her iddat (The period of four months which divorced wife was to observe after divorce before re-marrying) is not guilty of Bigamy.

In *Anwar Ahmad v. State of U.P.*, 1991 Cr. LJ: SI. Jafri. J, observed:

“Notwithstanding the fact that the personal law permits a Muslim male to contract four marriage if a second marriage is contracted under the special marriage Act, 1954. vis-avis the fact that he has a legally wedded wife who has been married to him under the Mohammedan Law, Section 494 has to claw at the erring male.”

2. “Second marriage with void”

In *Sita Ram v. Jagannath*, 1961, Raj, the Court held that where marriage is an ingredient of an offence, marriage must be strictly proved.

In *Malan v. State of Bom.* AIR 1960 Bombay, the Court observed: In order that an offence under section 494 may be committed, it is necessary, at least, that all the ceremonies which are necessary to be performed in order that a valid marriage may take place, ought to be performed and ordinarily, all these ceremonies would amount to valid marriage but for the fact that the marriage becomes void on account of the existence of a previous wife.

The second marriage of a person can be void only when the first marriage was valid. And, the second marriage must also be valid.

In *Gopal Lal v. State of Rajasthan* 1979 Cr. L. J. (S. C): The Court held that “merely because the second marriage even if performed by performing all the essential ceremonies turns out to be void by virtue of section 17 of the Hindu Marriage Act, 1955, it cannot be said that section 494, I.P.C. will not be attracted.

In *Narantakath v. Parakkal*, (1922) Mad, it has been held, that good faith and mistake of Law are no defence to a charge of Bigamy.

Living – The question arises whether the healthy living or a vegetative living. It is to be noted that even a vegetative living, comes under the bond of marriage. Because, under the law, the marriage is still in existence unless it is ended by death or by a decree of divorce.

One more question arises as to the knowledge that the spouse is living or the knowledge that one has already married. The first case is governed by the proviso to this section. In the second case, he/she

is not considered to be married, because, for a valid marriage, consent should be there, and that consent involves the element of knowledge.

EFFECT OF CONVERSION OF RELIGION ON BIGAMY

In **Sarla Mudgal v. U.O.I**, AIR 1995 SC 1531, the Court held that the second marriage of a Hindu husband after his conversion to Islam is a void marriage in terms of section 494 I.P.C. and is also in violation of the principles of Natural Justice.

The four petitions under Article 32 of the Constitution has been disposed of together since they related to legality of contracting a second marriage by a Hindu husband after embracing Islam. The common questions for consideration before the apex Court were: -

1. Whether a Hindu husband, married under Hindu Law, by embracing Islam, can solemnize second marriage?
2. Whether such a marriage, without having the first marriage dissolved under law would be a valid marriage qua the first wife who constitutes to be a Hindu?
3. Whether the apostate (convert) husband would be guilty of the offence under section 494 of I.P.C?

After examining a number of cases in which one of the partners, either husband or wife after renouncing their original religion embraced another faith and contracted a second marriage. The Court said:

“A marriage celebrated under a particular personal law cannot be dissolved by the application of another personal law to which one of the spouses converts and the other refuses to do so. Where a marriage takes place under Hindu law, the parties acquire a status and certain rights by the marriage itself under the law governing the Hindu marriage and if one of the parties is allowed to dissolve the marriage by adopting and enforcing the new personal law, it would then amount to destroying the existing rights of the other spouse who continues to be Hindu. We therefore, hold that under Hindu personal law as it existed prior to its codification in 1955, a Hindu marriage continued to subsist even after one of the spouses converted to Islam. There was no automatic dissolution of the marriage.

As regards the plea advanced by the accused that having embraced Islam, one can have four wives irrespective of the fact that his first wife continues to be Hindu, their Lordships held that such an argument is untenable. The Court said:

The Modern Hindu Law strictly enforces monogamy. A marriage performed under the Hindu Marriage Act 1955, cannot be dissolved except on the grounds available under section 13 of the Hindu Marriage Act, 1955. In that situation, parties who have solemnized the marriage under the act remain married even when the husband embraces Islam in favour of another wife. A Second marriage by an apostate (convert) under the shelter of conversion to Islam would nevertheless be a marriage in violation of the provisions of the act by which he would be continuing to be governed so far as his first marriage under the act is concerned despite his conversion to Islam. The second marriage of an apostate would therefore, be illegal marriage qua his wife who married him under the act and continues to be a Hindu. Between the apostate and his Hindu wife, the second marriage is in violation of the provisions of the act and as such would be non-est (non in existence).

The Court further said: Conversion to Islam and marrying again would not, by itself, dissolve the Hindu marriage under the act. The second marriage by a convert would therefore be in violation of the act and as such void in terms of section 494 I.P.C.

Any act which is in violation of the mandatory provisions of law is per se void. The real reason for the voidness of the second is the subsisting of the first marriage, which is not dissolved even by the conversion of the husband. It would be given a go-by to the substance of the matter and acting against the spirit of the statute if the second marriage of the convert is legal.

As regards the contention that a convert to Islam is governed by Muslim personal law and not by Hindu personal law the Court said: A matrimonial dispute between a convert to Islam and his or her non – Muslim spouse it obviously is not a dispute where the parties are Muslims and therefore; the rule of decisions in such a case was or is not required to be the Muslim Personal Law. In such cases the Court shall act and the judge should decide according to justice, equity and good conscience. The second marriage of a Hindu husband after embracing Islam being violative of justice, equity and good conscience would be void and attract the provisions of Section 494 I. P.C.

With regard to applicability of section 494 I.P.C., the Court said that since all the ingredients of the Section are satisfied in case of a Hindu husband, who marries for the second time after conversion to Islam, the said marriage is void by reason of its taking place during the life-time of the first wife, and so the accused is liable for bigamy under Section 494. I.P.C.

CONVERSION FROM MOHAMMEDANISM

In the case of an apostate from Mohammedanism, the marriage tie is dissolved and the wife will not be guilty of bigamy if she marries again.

COURT PERMISSION FOR SECOND MARRIAGE

No Court is authorised to permit a second marriage, even if be at the application of the first wife. Such permission is illegal.

Case: Santosh Kumari v. Surjit Singh 1990 Cr. L. J

Exception: Exception to section 494 lays down three conditions: -

1. Continual absence of one of the parties for the space of 7 years;
2. The absent spouse not have been heard of by the other party as being alive within that time; and
3. The party marrying must inform the person with whom he or she marries of the above fact.

1. “Continual absence of such person for the space of 7 years”

The absence must be continuous, and there should not be any break in between. But in Tolson (1889) QBD, the Court held that if the second marriage takes place within 7 years under a bonafide belief based on reasonable grounds that the former consort is dead, no offence is committed. Because, the object is to promote the marriage in such cases.

2. “Shall not have been heard of by such person as being alive within that time”

In Enai Beebee (1865) 4 WR (Cr) the Court held that in case a woman who having the means of acquiring knowledge of the fact of the death of her first husband, does not choose to make use of them, is guilty of bigamy. Because, the person must take reasonable steps to find out his/her whereabouts.

3. “Inform the person with whom such marriage is contracted”

In Umi, (1882) 6 Bom, the Court held that if the second marriage is contracted within seven years, it is incumbent on the person contracting to inform the other party about the first marriage.

4. Abetment of bigamy

Where the person abets the second marriage is liable for punishment. The priests, the parents who participate in the second marriage, knowingly, are to be held for abetment of bigamy.

Case – ***Gajja Nand, 1921***, Lahore High Court – In this case, the mother of the girl, was willing to get her married with one person, but the father was unwilling. Accordingly, the mother got her daughter married with that person. The married couple started living together and in the mean time, the father took his daughter from her matrimonial home, and he got his daughter married again to some other person.

So, it was held that the father was liable for abetment of bigamy.

Some other aspect – The law as to bigamy needs an amendment. Because, it requires that the second marriage should be proved. There may arise a case, where the person knowing that he is already married, may not fulfil the full requirements of the second marriage, so as to deprive the provisions of law. So, to avoid such situations the law needs to be changed.

KIDNAPPING, ABDUCTING OR INDUCING

WOMAN TO COMPEL HER TO

MARRIAGE ETC.

Section 366[S. 85 BNS]:

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine; and Whoever, by means of criminal intimidation as defined in this code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

Ingredients, I part:

1. There should be kidnapping or abduction of a woman.
2. Such kidnapping or abduction must be –
 - (a) With the intention that, she may be compelled or knowledge that it is likely that she will be compelled to marry any person against her will or
 - (b) In order that she may be forced or seduced to illicit intercourse.

II part:

1. By means of criminal intimidation or by means of abuse of authority or by any other method inducing any woman to go from any place.

2. Such going must be with an intention that she may be or with knowledge that, it is likely that she will be, forced or seduced to illicit intercourse, with some person.

1. Kidnapping or abduction of a woman

So, in order to commit this offence, primarily there should be a kidnapping or abduction of a woman, woman also includes a minor child.

2. With intention or knowledge that she may be compelled or will be compelled to marry against her will

The kidnapping or abduction must be committed with the intention that she may be forced to accept for marriage or with the knowledge that she will be compelled to marry.

This should be against her will. That is she should not be willing to marry. In this case, it is just sufficient, if he intends or knows that she may be or will be compelled. Whether he has really compelled her or not is not required.

3. In order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse \

Here also, the kidnapping or abduction must be for the purpose of illicit intercourse. Here, knowledge is required. Force is not physical force. Even the circumstances may also constitute force. Seduce means “enticing or tempting”. Illicit intercourse means intercourse between man and woman who are not husband and wife.

III part:

1. Inducing a woman, by criminal intimidation or by means of abuse of authority or compulsion to go from any place Here, it does not expressly say kidnapping and abduction, but, impliedly it involves kidnapping or abduction. There should be criminal intimidation or abuse of authority or compulsion.
2. For illicit intercourse with some person The going of the woman by inducement and such inducement is with the intention or knowledge that she will be forced or seduced for illicit intercourse with another person.

ENTICING OR TAKING AWAY OR

DETAINING WITH CRIMINAL INTENT A

MARRIED WOMAN

Section 498[S. 83 BNS]:

Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

This is an offence against the matrimonial relationship. It protects the right of the husband of that wife. Under this section, the husband only can complain about the offence.

The consent of that wife is immaterial.

Ingredients:

1. Taking or enticing away a married woman.
2. The accused had the knowledge or had reason to believe that she is married.
3. Intention was to make her have illicit intercourse with some other person.
4. Conceals or detains with that intent.

1. Takes or entices a woman

Taking is not forceful taking, if the accused assists the woman to come out of her husband or from the case of the person, then it is called taking. This means some influence, whether physical or moral. Under this section, if the person takes away or entices away, with the intention to have illicit intercourse, the offence is completed there and then, whether there was actual illicit intercourse or not. The enticement or taking must be from the husband or from the person taking care of her on behalf of the husband, and not enticing or taking away from any other person that attracts the infliction of this section.

2. Intention to illicit intercourse

There should be intention that she may have illicit intercourse with any person when, she was enticed or taken away, if such intention is present that case will come under this section.

3. Conceals or detains with such intention

In *Sundara Dass Tevan*, it was held that the words “conceals or detains” are intended to be applied to the enticing or inducing a wife to withhold or conceal herself from her husband, and assisting her to do so, as well as to physical restraint or prevention of her will or action. Depriving the husband of his proper control over his wife, for the purpose of illicit intercourse, is the gist of the offence, and a detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishments.

Detention does not mean that it is against the consent of the woman.

CHAPTER XI: OFFENCE OF RAPE

Rape

Sections Involved: Section 375, 376, 376 A to 376 D of I.P.C.

Section 375 defines rape and Section 376 prescribes punishment and 376 A to 376 D defines custodial rape and prescribes punishment for the same.

Definition of Rape:

Section 375 of I.P.C. defines rape: [S. 63 BNS]

Section 375: Rape: A man is said to commit “rape”, who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: -

Firstly – Against her will

Secondly – Without her consent

Thirdly – With her consent, when her consent had been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly – With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawful 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 unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly – With or without her consent, when she is under sixteen years of age.

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception: Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Ingredients: The following are the essential ingredients of the offence of rape

1. There must be sexual intercourse with a woman by a man.

2. Such a sexual intercourse should be under any of the following circumstances:

- (a) Against her will;
- (b) Without her consent;
- (c) With consent, obtained under fear of death or hurt;
- (d) With consent given under misconception of fact, that the man is her husband;
- (e) Consent given by reason of unsoundness of mind, intoxication, or under influence of any stupefying or unwholesome substance;
- (f) With a woman under 16 yrs of age with or without consent

Case and judgments:

1. ***Tukaram V. State of Maharashtra***, AIR 1979 SC (Mathura Case): The Bombay High Court observed that there was a difference between “consent” and “passive submission”, and held that mere passive or helpless surrender of the body and its resignation to equalled with the desire or will.

To nullify the effect of the SC judgement in this case, extensive amendments were introduced to the I.P.C. and to the Indian Evidence Act. Section 376 A to 376 D were incorporated into the I.P.C.

2. ***Ghanshyam Misra V. State***, AIR 1957, Orissa: “Penetration is sufficient to constitute sexual intercourse, necessary for the offence of rape. The depth of penetration is immaterial as far as the offence under Section 376 is concerned”.

3. ***Phani Bhushan Behera V. State of Orissa***, 1995 Cr L. J.: “The Orissa High Court has held: -

“The rupture of hymen is by no means necessary to constitute the offence of rape. Even a slight penetration in the vulva is sufficient to constitute the offence of rape. Vulva penetration with or without violence is as much rape as vaginal penetration. The statute merely requires evidence of penetration, and this may occur with the hymen remaining intact.

4. ***Madan Gopal Kakkad V. Nabal Dubey***, 1992 (s) Section 204, “The question as to whether an act amount to rape or not, is not a matter of medical opinion, but a question of law.”

5. ***Jagdish Pd. Sharma V. State***, 1995 Cr. LJ 2501 (Del): “The depth of penetration is immaterial as far as the offence under Section 376 is concerned.”
6. ***State of Maharashtra V. Madhukar Narayan Mardikar***; AIR 1991 SC 207: “Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes”
7. ***State of Maharashtra V. Prakash***, 1992 SC 1275: “Consent obtained under fear of death or of hurt or threat is no consent”.
8. ***Addepalli Setti Babu V. State of A. P.*** 1994 Cr. LJ 1420 (A.P.): Consent obtained by fraud is no consent”.
9. ***Harpal Singh V. State of H.P.***, AIR 1981 SC 361: “Sexual intercourse with a woman under 16 years of age will amount to rape, whether it is done with her consent, because the consent of a minor is no consent.”
10. ***State of Punjab V. Gurmit Singh***, 1996, SD 1393: “The Court must ensure that crossexamination is not made a means of harassment for causing humiliation to the victim of crime.”

The SC also observed that testimony of victim in cases of sexual offence is vital and unless there are compelling reasons, which necessitate looking for corroboration for her statement, the Court should find no difficulty to act on the testimony of a victim of sexual assault alone”.

11. ***Bodhisaltwa Gautam V. Miss Subhra Chakraborty*** AIR 1996 SC 922: “SC laid down broad parameters in assistance of the rape victims”.

Issues:

1. What is the extent of penetration required to prove the offence of rape?
2. Difference between “against the will” as per Cl (1) and with her consent” as per secondly of section 375.
3. Changing trends of exception to section 375 i.e. cases related to “Rape by husband”.
4. Differentiate between consent and submission.

Analysis of section 375 and issues:

The word “rape” is derived from the Latin term “vapiro”, which means “Forcible seizure”. It signifies “the ravishment of a woman without her consent, by force, fear or fraud” or “the knowledge of a woman by force against her will.”

1. ***“Against Her Will”***: The first clause of section 375 stipulates that a man commits the offence of rape, if, he has sexual intercourse with a woman ‘against her will’.

When something is done “against the will” the element of active opposition is absent

For Example : - If Sexual intercourse is done with a woman who is asleep, then it would amount to being against her will. (Mayers, 12 Cox C. C. 311)

The term “against her will” is not similar to “without her consent” as in clause (2) of section 375. Though every Act done ‘against the will’ of a person will also mean that it is done “without the consent” of the person, an act done “without the consent” of a person does not necessarily mean “against the will”. “Without consent” denotes an act being done inspite of opposition of the person.

“Will” is the faculty or power of the mind by which we determine either to do or not to do something. It implies consciousness, cognition and mental determination.

2. ***Without consent***: The second clause of section 375 stipulates that if a man has sexual intercourse with a woman without her consent, then it amounts to rape.

The Court held, *in Rao Hamain Singh v. State AIR*, 1958, Punjab, that consent as a defence to an allegation of rape requires voluntary participation, not only after the exercise of intelligence based on the knowledge of the Act, but after having freely exercised the choice between resistance and assent.

So a helpless resignation in the face of inevitable compulsion or passive giving in is not a consent in law.

“Consent” here means free consent, which must be an Act of reason, accompanied with deliberation, after the mind has weighed as in a balance, the goods and evil on each side, with the existing capacity and power to withdraw the accent according to one’s will or pleasure.

Consent implies the exercise of a free and untrammelled right to forbid or without what is being consented to, it always is a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former.

In a case of Rape: It is no defence that the woman consented after the Act.

Section 114 – A of Evidence Act, provides a presumption as to absence of consent in certain prosecution for rape. According to this section, where sexual intercourse by the accused is proved, and the question is whether it was without the consent of the woman to have been raped and she

states in her evidence before the Court, that she had not given consent, the Court shall presume that consent was not given by her.

(Related to consent)

Cases:

- (i) ***State of H.P. V. Dharma Dass***, 1922 Cr L.J. – Free consent established, the accused was acquitted.
- (ii) ***Biram Soren V. State of W.B.***, 1992 Cr LJ (Cal.) (Prosecutrix being a consenting party and she being not a mirror, it was not a case of rape).
- (iii) ***Bharat V. State of M.P.***, 1992 Cr LJ (M.P.) (Consent, hence no rape).
- (iv) ***State of Orissa V. Gangadhar Behuria***, 1992 Cr LJ (Ori) (No consent, Rape established).
- (v) ***Mukhera Belakota Reddi V. State of A.P.***, 1952 Cr LL (AP): (Absence of injuries on the body of the victim, does not lead to inference of consent).
- (vi) ***Dmagistrate Das V. State***, 1992 Cr .LJ (Orissa)
- (vii) ***Addepalli Settibatu V. State of A. P.*** 1994, Cr LJ (A.P.): (Consent by fraud is no consent).

Submission without resistance is not necessarily amount to consent. The person assaulted may be too young to appreciate the nature of the act done or to do more than submit without actually consenting.

In R. V. Day, it was held that submission by a child in the hands of an older and stronger person, and possible under the influence of fear of or a sense of constraining authority, has been held not to be equivalent to consent.

DIFFERENCE BETWEEN SUBMISSION AND CONSENT

There is a difference between submission and consent. Every consent involves a submission but the converse dose not follow and a mere Act of submission does not involve consent.

Consent implies the exercise of a free and untrammelled right to forbid or withhold what is being consented to; it always is a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former.

The consent, to be operative, must be a free consent. If it is induced by fear, it is not consent at all but a mere submission.

3. **Consent by “Fear of death or of hurt”:** Clause (3) of 375 stipulates that consent obtained under fear by putting the woman or any person in whom she is interested, in fear of death or hurt is not consent and hence, the act would amount to rape

Cases:

(i) *State of Maharashtra V. Prakash*, AIR, 1992 SC

(ii) *Jones*, (1864) L. R. 2 C. C. 10

This clause has been amended by the Criminal Law (Amendment) Act, 1983 (No. 43 of 1983) and now consent obtained by putting a person in whom the victim woman is interested in fear of death or of hurt will be of no help to the accused. It is now not necessary that the offence of rape is completed only when the victim woman must be put in fear of death or hurt but an offence or rape would be complete even when the accused puts a person in whom the victim woman is interested in fear of death or hurt and her consent is obtained thereby.

4. “Consent obtained by fraud or under misconception of fact or due to unsoundness of mind”:

Clause (4) and (5) of section 375 deal with these aspects. Consent obtained by fraud is no consent, For instance: If a woman gives consent on the basis of a false promise of marriage by the man, then her consent is no consent under law.

Example: If a woman consents under the belief that he is her lawfully married husband, then such consent is not a valid consent under law.

Case:

Salesh Khatoon V. State of Bihar, 1989 Cr LJ (Pat)

“Consent obtained by deceitful means is no consent and comes within the ambit of ingredients of the definition of rape”.

5. Consent of a woman under 16 years of age: Clause (6) provides that sexual intercourse with a woman under 16 years of age will amount to rape, whether it is done with or without her consent.

Case:

Harpal Singh V. State of H.P. AIR, 1981 SC 361: “The SC held that once it was proved that the girl was below 16 years of age, the question of consent became wholly irrelevant.

Other issues related to offence of rape:

1. Necessity of penetration:

In interpreting the explanation to Section 375 I.P.C. whether complete penetration is necessary to constitute an offence of rape, various High Court have taken a consistent view that even the slightest penetration is sufficient to make out an offence of rape and the depth of penetration is immaterial. Penetration is not only sufficient but also necessary to constitute the sexual intercourse required of this offence.

Even "vulva penetration" only is sufficient to constitute rape.

In *State of M.P. V. Bhanwarla*, 1985 Cr LJ M.P.: - The Court held that in order to constitute an offence of rape, under Section 376, I.P.C., a complete penetration is not necessary.

Rape and homicide:

A person causing the death of the woman by rape can be convicted of homicide, depending upon his intention and knowledge whether his act was the proximate cause of death and whether the offender could have known it to be likely.

The fact that the offender was husband does not confer him greater immunity.

Cases:

- (i) Hurec Mohan Mythee V. Emperor, Cal 49
- (ii) Shahu V. Emperor; S. L. R. 76
- (iii) Shambhu Katri V. Emperor, I.P.C., Patna

Punishment for rape:

Section Involved: Section 376, 376-A to 376-D

Section 376 [S. 64 BNS]: Punishment for rape – (1) Whoever, except in the cases provided for by sub Section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever, –

(a) being a police officer commits rape –

- (i) within the limits of the Police Station to which he is appointed; or
 - (ii) in the premises of any station house whether or not situated in the Police Station to which he is appointed; or
 - (iii) on a woman in his custody or in the custody of a Police Officer subordinate to him; or
- (b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or
- (c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or
- (d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or
- (e) commits rape on a woman knowing her to be pregnant; or
- (f) commits rape on a woman when she is under twelve years of age; or
- (g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, imprisonment of either description for a ten or less than ten years.

Explanation to Section 376:

Explanation 1: Where a woman is raped by one or more of a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within meaning of this sub-section.

Explanation 2: "Women's or children's institution" means an institution, whether called an orphanage or a home for neglected woman or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3: “Hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

Analysis of Section 376, and 376-A to 376-D:

Section 376 provides for the punishment for the offence of rape.

In view of growingly increasing incidence of this offence stringent punishment has been provided. It is to be a sentence between 7 yrs and life imprisonment or for 10 yrs and additional imposition of fine.

If sentence of imprisonment to be awarded is to be less than 7 years it will be only for adequate and special reasons and these will have to be recorded in the judgement.

However, if the woman raped is wife of the accused, and is not under 12 year of age, the imprisonment may be for a term extending to 2 years or he may be punished with fine or both.

Offence under Section 376 (2) Graver: However if this offence has been committed by persons responsible for the protection of the people by taking advantage of their official position, the punishment is very stringent. The offender shall be punished for a term which shall not be less than 10 years, but which may be for life and shall also be liable to fine.

Section 376 – A: Intercourse by a man with his wife during separation: - Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Comments:

Section 376 – A makes punishable the sexual intercourse by a person with his separated wife without her consent. The separation may be under a decree of separation or may be under any custom or usage. Though after separation, the woman remains the wife of the person with whom she is married, but she is under no conjugal liability. Therefore sexual intercourse without her consent is an offence under this section. If it is with consent, then no offence is constituted.

Section 376 B [S. 67 BNS] – Intercourse by Public servant with woman in his custody: -

Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of

rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Comments:

Where a public servant by taking advantage of his official position induces or seduces a woman who is in his custody or in the custody of his subordinate to have sexual intercourse with him it is punishable under this section. The act should not amount to the offence of rape. If it amounts to rape then it is punishable under section 376.

In such a case, there is no use of force and the woman is in fact induced or seduced i.e., there is element of allurement. In such cases, consent is deemed to be given but due to the power of official position, it is only taken to be submission and not active or free consent.

Hence such an offence is punishable, even though not amounting to rape.

Section 376 C [S.68 BNS]: Intercourse by superintendent of jail, remand home, etc: - Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation 1: "Superintendent" in relation to jail, remand home or other place of custody or a 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 he can exercise any authority or control over its inmate

Explanation 2: The expression "women's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376.

Comment:

Sexual intercourse by a superintendent or manager of a jail, remand home, or other place of custody established by, or under any law or of a women's or children's institution with a female inmate by inducing or seducing her by taking advantage of his official position has been made punishable under this section.

The Act should not amount to the offence of rape. If it amounts to rape, it will be punishable under section 376.

Section 376 D[S. 70 BNS]: Intercourse by any member of the management or staff of a hospital with any woman in that hospital: - Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation: The expression “hospital” shall have the same meaning as in Explanation 3 to sub-section (2) of section 376

Comments:

This section makes punishable, the sexual intercourse by a member of the hospital staff with any woman by taking advantage of his position. The Act punishable under this Section should not amount to the offence of rape. In that case it will be punishable under Section 376.

OTHER ISSUES AND RELATED CASES:

1. Rape victims entitled to compensation:

- (a) Bodhisaltra Gautam V. Subhv Chakraborty AIR (1996) SC 922
- (b) Uttarakhand Sangharsh Samiti, Mussoorie V. State of U.P., (1996) SC, All.

2. Enhanced sentences in rape cases:

- (a) State of A.P.V. Bodem Sudea Rao, AIR, (1996), SC

3. Delay in lodging complaint does not raise inference that complaint was false:

- (a) Karnel Singh V. State of M.P., AIR (1995) SC
- (b) State of Punjab V. Gurmit Singh, AIR, 1996 SC

Cases and judgement:

1. ***Sidheshwar Ganguly V. State of W. Bengal***, AIR 1958, SC: “Determination of age of girl – Birth certificate is conclusive proof.
2. ***Pramod Mahto V. State of Bihar (1989)***, SC: “plea that case was foisted on accused due to communal feelings.

Held: Even if communal feeling had run high, it is inconceivable that an unmarried girl and two married women would go to the extent of staking their reputation and future in order to falsely set up a case of rape on them for stake of communal interest.

3. ***Bharasds Bhoginbhai Hirijibai V. State of Gujarat***, 1983, SC: “Corroboration is not the sine quo non (necessary requirement). For a conviction in a rape case.

4. ***State of Punjab V. Gurmit Singh***, AIR, 1996 SC:

- (a) Delay in lodging FIR is not material when properly explained.
- (b) Testimony of prosecutrix (victim) in cases of sexual assault is vital and unless there are compelling reason which necessitate looking for corroboration of her statement, the court should find no difficulty in convicting the accused on prosecutrix testimony alone.
- (c) Trial of sexual offences should be in camera and invariably by lady judges wherever available.
- (d) Court must restrain making observations that probably the prosecutrix is a girl of loose moral character.
- (e) Court is under an obligation to see that prosecutrix is not unnecessarily harassed and humiliated in cross – examination in case of rape trial.

5. ***Bodhisattwa Gautam V. Subhra Chakraborty***, AIR, 1996, SC compensation to victims of rape during pendency of trial: - Court has jurisdiction to award interim compensation pending prosecution. “It is a crime against basic human right and violates right to life (Article 21).

6. ***Delhi domestic working women's forum V. U. O. I.***(1995) SC:

The Court indicated the broad parameters in assisting the victims of rape and observed that.

- (a) The complainants of sexual assault cases should be provided with legal representation.
- (b) Legal assistance will have to be provided at the Police Station since, the victim of social assault might very well be in distressed state upon arrival at the Police Station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.
- (c) The police should be under a duty to inform the victim of her right to representation before any question were asked to her and that the police report should state that the victim was so informed.

- (d) The police should be under a duty to inform the victim of her right to representation before any question were asked of her and that the police report should state that the victim was so informed.
- (e) A list of advocates willing to act in these cases should be kept at the Police Station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.
- (f) The advocate shall be appointed by the Court, upon application by the police at the earliest convenient moment, but in order to ensure that victim were questioned without under delay, the advocate would be authorised to act at the Police Station, before leave of the Court was sought or obtained.
- (g) In all rape trials, anonymity of the victims must be maintained, as far as necessary.
- (h) It is necessary having regard to the DPSP contained under Article 36(1) of the constitution of India, to set up the criminal injuries compensation board. Rape victim frequently insure substantial financial loss. Some for example, are too traumatized to continue in employment.
- (i) Compensation for victims shall be awarded by the Court on conviction of the offender and by the criminal injuries compensation board, whether or not a conviction has taken place. The board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of rape.

LAW COMMISSION OF INDIA

ONE HUNDRED AND SEVENTY SECOND REPORT

ON

REVIEW OF RAPE LAWS MARCH, 2000

[The 15th Law Commission of India, headed by Shri Justice B. P. Jeevan Reddy, a former judge of the Supreme Court of India, in its 172nd Report on Review of Rape Laws has recommended stringent provisions in the Indian Penal Code (IPC). Code of Criminal Procedure, 1973 and Evidence Act, 1872, suggesting changes for widening the scope of the offence in section 375 of IPC to make it gender neutral. The Commission has recommended various other changes in section 376, 376A, 376D of IPC. It has also suggested insertion of a new section 376E dealing with unlawful sexual contact, deletion of section 377 of the IPC and enhancement of punishment in Section 509 of the IPC. It has also recommended various changes in the Code of Criminal Procedure and in the Evidence Act in order to plug the loopholes in procedural provisions.

The Law Commission Report focuses on the need to review the Rape Laws in the light of increased incidents of custodial rape and crime of sexual abuse against youngsters, the objective being prevention of child prostitution. The crime of sexual assault on a child causes lasting psychic damage to the child and as such, it is essential to prevent sexual abuse of children through stringent provisions. The United Nations Convention and various constitutional provisions also underlined the need for protecting the child from all forms of sexual exploitation and sexual abuse.

The report follows the directions of the Supreme Court seeking Law Commission's well considered views following criminal Writ Petition No. 33 of 1997 by Sakshi, an organisation interested in the issues concerning women, before the Supreme Court of India for directions concerning the definition of the expression "sexual intercourse" as contained in Section 375 of the IPC. The Supreme Court referred the matter to the Law Commission and the 15th Law Commission submitted its final report to the Supreme Court on March 14, 2000.

In the well-considered views of the Commission, all cases of sexual assault must be tried by Special Courts with court personnel including judges, prosecutors, counselors, specially trained and Sensitised to issues of sexual assault.

The present report includes the observations of the Commission in response to the Supreme Court direction. Later on, three other organisations namely Interventions for Support, Healing and Awareness – IFSHA, All India Democratic Women's Association – AIDWA and the National Commission for Women – NCW also presented their views on the proposed suggestions.]

The petitioner 'Sakshi', an organisation interested in the issues concerning women, had approached the Supreme Court of India with the aforesaid Writ Petition praying for

- (a) issuance of a writ in the nature of a declaration or any other appropriate writ or direction declaring inter alia that 'sexual intercourse' as contained in Section 375 of the Indian Penal Code shall include all forms of penetration such as penile/vaginal penetration, penile/oral penetration, penile/anal penetration, finger/vaginal and finger/anal penetration and object/vaginal penetration and
- (b) to issue a consequential writ, order or direction to the respondents in the Writ Petition and to their servants and agents to register all such cases found to be true on investigation.

Changes recommended in the Indian Penal Code, 1860

Substitution of definition of 'rape' by definition of 'sexual assault':

Not only women but young boys, are being increasingly subjected to forced sexual assaults. Forced sexual assault causes no less trauma and psychological damage to a boy than to a girl subjected to such offence. Boys and girls both are being subjected to oral sexual intercourse too. According to some social activists like Ms. Sheela Barse, both young girls and boys are being regularly used for all kinds of sexual acts and sexual perversions in certain tourist centres like Goa – mainly for edification of the foreign tourists. Sakshi have also recommended for widening the scope of the offence in section 375 and to make it gender neutral. Some of the Western countries have already done this. It is also necessary to include under this new definition (sexual assault) not only penile penetration but also penetration by any other part of the body (like finger or toe) or by any other object.

Explanation to section 375 has also been substituted by us to say that penetration to any extent whatsoever shall be deemed to be penetration for the purpose of this section. This is so provided for the reason that in the case of children, penetration is rarely complete – for physical reasons. So far as the Exception is concerned, we have retained the existing

Exception the only change made being in the matter of age; we have raised the age of the ‘wife’ from fifteen to sixteen. The age of the person assaulted sexually referred to in the clause “sixthly” has also been raised to sixteen from fifteen.

Substitution of existing section 375 of the IPC recommended:

We accordingly recommend that the existing section 375 be substituted by the following:

“Section 375 – Sexual Assault: Sexual assault means –

- (a) Penetrating the vagina (which term shall include the labia majora), the anus or urethra of any person with –
 - a. any part of the body of another person or
 - b. An object manipulated by another person except where such penetration is carried out for proper hygienic or medical purpose;
- (b) Manipulating any part of the body of another person so as to cause penetration of the vagina (which term shall include the labia majora), the anus or the urethra of the offender by any part of the other person’s body;
- (c) Introducing any part of the penis of a person into the mouth of another person;
- (d) Engaging in cunnilingus or fellatio; or

(e) Continuing sexual assault as defined in clauses (a) to (d) above

in circumstances falling under any of the six following descriptions:

First – Against the other person's will.

Secondly – Without the other person's consent.

Thirdly – With the other person's consent when such consent has been obtained by putting such other person or any person in whom such other person is interested, in fear of death or hurt.

Fourthly – Where the other person is a female, with her consent, when the man knows that he is not the husband of such other person and that her consent is given because she believes that the offender is another man to whom she is or believes herself to be lawfully married.

Fifthly – With the consent of the other person, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by the offender personally or through another of any stupefying or unwholesome substance, the other person is unable to understand the nature and consequences of that to which such other person gives consent.

Sixthly – With or without the other person's consent, when such other person is under sixteen years of age.

Explanation: Penetration to any extent is penetration for the purposes of this section.

Exception: Sexual intercourse by a man with his own wife, the wife not being under sixteen years of age, is not sexual assault."

Representatives of Sakshi wanted us (the Law Commission) to recommend the deletion of the exception, with which we are unable to agree. Their reasoning runs thus: where a husband causes some physical injury to his wife, he is punishable under the appropriate offence and the fact that he is the husband of the victim is not an extenuating circumstance recognised by law; if so, there is no reason why concession should be made in the matter of offence of rape/sexual assault where the wife happens to be above 15/16 years.

We are not satisfied that this Exception should be recommended to be deleted since that may amount to excessive interference with the marital relationship.

Modification of Section 376:

So far as the proposed section 376 is concerned, we are not suggesting any substantial changes except two and adapting the language of the section to accord with the change in section 375. In the light of instances coming before the courts and the instances mentioned in the Note prepared by Sakshi, we have proposed addition of a proviso to sub-section (1) (while treating the existing proviso as the second proviso) providing that where the sexual assault is committed by the father, grandfather or brother, the punishment should be severe.

On the basis of suggestions made by Sakshi, we have also added the words “or any other person being in a position of trust or authority towards the other person” after the words “father, grandfather or brother”. The second change suggested by us is in the matter of the age of wife referred to in proposed sub-section (1) as also of the person assaulted in clause (f) of sub-section (2). The age “fifteen” is raised to “sixteen”.

The reasons for these changes are:

1. to visit with a severe penalty the near relations and persons in position of trust and authority who more often than not commit the offence of sexual assault on the members of the family or on unsuspecting and trusting young persons. We have in this connection taken note of the extremely odious and debased conduct of the father of the minor girl in the facts highlighted in Sudesh Jakhoo vs. K. C. J. and other [1996 (3) AD Delhi 653 = (1996) 62 DLT 563) and
2. to maintain uniformity in the matter of age of wife or any other young person who needs special protection – as sixteen.

Section 376 shall be re-cast as follows:

“Section 376 – Punishment for sexual assault:

(1) Whoever, except in the cases provided for by sub-section (2), commits sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the person subjected to sexual assault is his own wife and is not under sixteen years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

If the sexual assault is committed by a person in a position of trust or authority towards the person assaulted or by a near relative of the person assaulted, he/she shall be punished with rigorous

imprisonment for a term which shall not be less than ten years but which may extend to life imprisonment and shall also be liable to fine.

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than minimum punishment prescribed in this sub-section.

(2) Whoever –

(a) being a police officer commits sexual assault –

- a. within the limits of the police station to which he is appointed; or
- b. in the premises of any station house whether or not situated in the police station to which he is appointed; or
- c. on a person in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits sexual assault on a person in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and commits sexual assault on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits sexual assault on a person in that hospital; or

(e) commits sexual assault on a woman knowing her to be pregnant; or

(f) commits sexual assault on a person when such person is under sixteen years of age; or

(g) commits gang sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine.

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1 – Where a person is subjected to sexual assault by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang sexual assault within the meaning of this sub-section.

Explanation 2 – “Women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected women or children or a widows’ home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3 – “Hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.”

Amendment of Section 376A:

Representatives of Sakshi wanted us to recommend the deletion of section 376A (as well as Exception to section 375). Their logic was this: when a man who causes hurt or any other physical injury to his own wife is liable to be punished for such offence like any other person causing such hurt or physical injury, why should a husband who sexually assaults his wife, who is living separately under a decree of separation or under any custom or usage, be not punished like any other person. Section 376A, which provides a lesser punishment to a husband who sexually assaults his own wife living separately in the aforesaid circumstances, they argued, is arbitrary and discriminatory. They say that once section 376A is deleted, the husband in such a case would be punished under section 376

(1) which carries higher punishment than section 376A. While we appreciate the force of said argument in the context of the wife who is living separately under a decree of separation or under any custom or usage, we can not at the same time ignore the fact that even in such a case the bond of marriage remains unsevered. In the circumstances, while recommending that this section should be retained on the statute book, we recommend enhancement of punishment under the section.

Accordingly, section 376A [S. 66 BNS] shall be read as follows:-

“376A. Sexual assault by the husband upon his wife during separation – Whoever commits sexual assault upon his wife, who is living separately from him under a decree of separation or under any custom or usage, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years and which may extend to seven years and shall also be liable to fine.”

Amendment of Section 376B, 376C and 376D:

Having regard to the gravity of these offences, we recommend enhancement of punishment – with a minimum punishment of not less than five years. We have also added an Explanation which will govern all these three sections. The Explanation defines “sexual intercourse” to mean any of the acts mentioned in clauses (a) to (e) of section 375.

Explanation to section 375 will however apply even in the case of sexual intercourse as defined by the Explanation to this section.

Modifications in sections 376B, 376C and 376D of the IPC recommended:

Accordingly, section 376B with necessary adaptations and changes, shall read as follows:

“376B[S.67 BNS]. Sexual intercourse by public servant with person in his custody – Whoever, being a public servant, takes advantage of his/her official position and induces or seduces any person, who is in his/her custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him/her, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than five years and which may extend to ten years and shall also be liable to fine.

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than five years.

Explanation: “Sexual intercourse” in this section and sections 376C and 376D shall mean any of the acts mentioned in clauses (a) to (e) of section 375. Explanation to section 375 shall also be applicable.”

“376C/S.68 BNS]. Sexual intercourse by superintendent of jail, remand home, etc. – Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women’s or children’s institution takes advantage of his/her official position and induces or seduces any inmate of such jail, remand home, place or institution to have sexual intercourse with him/her, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than five years and which may extend to ten years and shall also be liable to fine.

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than five years.

Explanation 1 – “Superintendent” in relation to a jail, remand home or other place of custody or a 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 he/she can exercise any authority or control over its inmates.

Explanation 2 – The expression “women’s or children’s institution” shall have the same meaning as in Explanation 2 to sub-section (2) of section 376.”

“376D[S. BNS]. *Sexual intercourse by any member of the management or staff of a hospital* with any woman in that hospital. Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his/her position and has sexual intercourse with any person in that hospital, such sexual intercourse not amounting to the offence or sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than five years and which may extend to ten years and shall also be liable to fine.

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than five years.

Explanation – The expression ”hospital” shall have the same meaning as in Explanation 3 to sub-section (2) of section 376.”

Insertion of section 376E[S.71 BNS]:

This is a wholly new section recommended by us. We have called it the offence of ‘unlawful sexual contact’. This section is intended to cover a wide variety of offences including sexual harassment at work place and sexual perversions of the kind mentioned in the note submitted by Sakshi. Sub-section (1) of this new section covers touching, directly or indirectly, with a part of the body or with an object, any part of the body of another person (not being the spouse of such person), with sexual intent and without the consent of such other person. In case the other person is below sixteen years of age, we have recommended higher punishment. Sub-section (2) is an extension or elaboration of the offence mentioned in sub-section (1), while sub-section (3) deals with a case where such offence is committed on a young person – young person being defined by the Explanation to mean a person below the age of sixteen years. If the offence of unlawful sexual contact is committed on a young person by a person with whom such young person is in a relationship of dependency, the punishment is rigorous imprisonment which may extend to seven years or with fine or with both and in case the offender happens to be the father, grandfather or brother, a still higher punishment is provided for. In the case of a ‘young person’, consent is treated as irrelevant. (Sections 151, 152 and 153 of the Canadian Criminal Code also contain similar provisions).

Insertion of new section 376E recommended:

We therefore recommend that a new section, namely, section 376E be inserted in the IPC in the following terms:

“376E[S.71 BNS]. Unlawful sexual contact –

- (1) Whoever, with sexual intent, touches, directly or indirectly, with a part of the body or with an object, any part of the body of another person, not being the spouse of such person, without the consent of such other person, shall be punished with simple imprisonment for a term which may extend to two years or with fine or with both.
- (2) Whoever, with sexual intent, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites, or touches, with sexual intent, directly or indirectly, with a part of the body or with an object any part of the body of a young person, shall be punished with imprisonment of either description which may extend to three years and shall also be liable to fine.
- (3) Whoever, being in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency, touches, directly or indirectly, with sexual intent, with a part of the body or with an object, any part of the body of such young person, shall be punished with imprisonment of either description which may extend to seven years and shall also be liable to fine.

Explanation: “Young person” in this sub-section and sub-section (2) means a person below the age of sixteen years.”

Deletion of section 377:

In the light of the change effected by us in section 375, we are of the opinion that section 377 deserves to be deleted. After the changes effected by us in the preceding provisions (sections 375 to 376E), the only content left in section 377 is having voluntary carnal intercourse with any animal. We may leave such persons to their just deserts.

Amendment of section 509:

So far as this section is concerned, the only change we are suggesting is enhancement of punishment. We recommend that the existing section 509 be amended as follows:

“509. Word, gesture or act intended to insult the modesty of a woman:

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years and shall also be liable to fine."

New Section 166A, [S.197 BNS] IPC:

The 84th Report of the Law Commission had recommended that a new section, namely, section 166A, be inserted in the Indian Penal Code. The object behind this new section was to punish a public servant who knowingly disobeys any direction of law prohibiting him from requiring the attendance at any place of any person for the purpose of investigation into an offence or other matter or knowingly disobeys any other direction of law regulating the manner in which he shall conduct such investigation and which act of his causes prejudice to any person.

The representatives of Sakshi with whom we had a discussion, requested that a new section as recommended by 84th Report of the Law Commission be recommended to be inserted in the IPC. These provisions must be understood in the light of the fact that in the next chapter, we are recommending several measures with respect to the manner in which the statement of women and children (below 16 years) should be recorded, the place where it should be recorded and so on.

New section 166A of the IPC recommended. Accordingly, we recommend that a new section be introduced in the IPC in the following terms:

“166A. Whoever, being a public servant –

- a) knowingly disobeys any direction of the law prohibiting him from requiring the attendance at any place of any person for the purpose of investigation into an offence or other matter, or
- b) knowingly disobeys any other direction of the law regulating the manner in which he shall conduct such investigation, to the prejudice of any person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.”

Views of “Sakshi” for defining ‘consent’ considered:

Lastly, we may refer to a request of Sakshi to insert the definition of “consent” for the purpose of the aforesaid section. We are however of the opinion that no such definition is called for at this stage, for the reason that the said expression has already been interpreted and pronounced upon by the courts in India in a good number of cases.

Reference in this behalf may be made to page 700 of the Commentary on IPC by Justice Jaspal Singh (First Edition 1998) where it is stated, on the basis of the decisions of the Madras, Punjab and Nagpur High Courts, that “consent implies the exercise of a free and untrammelled right to forbid or withhold what is being consented to; it always is a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former.”

CRIMINAL INTIMIDATION

What is Criminal Intimidation?

The literal definition of intimidation, as per the Oxford Dictionary, is to coerce someone into acting as desired by the intimidator.

As Section 503 [S. 349 BNS] IPC, criminal intimidation is an act committed by an individual who threatens another person with harm to their person, reputation, or property, with the intention of compelling them to perform an act that they are not legally obligated to do. The person who poses the threat is referred to as the intimidator.

In such cases, the accused may use words or gestures to intimidate and cause harm to the victim's body, property, reputation, or even to other family members.

For example, consider the following illustration: A threatens to burn down B's house to dissuade him from filing a civil suit. In this scenario, A has committed the offence of criminal intimidation. A has used a threat to cause damage to B's property and subsequently compelled him to refrain from performing a legally required act (filing the civil suit), thereby making A guilty of the offence of criminal intimidation.

ESSENTIALS OF CRIMINAL INTIMIDATION UNDER SEC 503 IPC

The landmark case of **Narender Kumar & Ors v. State (2012)** established the essential elements required to constitute the offence of criminal intimidation under Section 503 IPC:

Threat of injury to the victim

According to Section 44 of the IPC, injury refers to any unlawful damage caused to an individual, whether it pertains to their body, mind, reputation, or property.

Ways in which threats can occur

Criminal intimidation can take place through various means, including:

- a. Threatening to cause injury to a person.
- b. Threatening to cause injury to the reputation of the victim.
- c. Threatening to cause injury to the property of the victim.
- d. Threatening to cause injury to another person or the reputation of someone the victim is interested in.

Intimidation to cause bodily harm

Criminal intimidation under Section 503 IPC encompasses threats of bodily harm to another individual. Considering only physical harm under this section is essential, while mental or emotional distress should be excluded. Additionally, the threat must be specific in nature and clearly communicated to the opposing party.

Intimidation to cause damage to reputation

The term “reputation” in this context refers to a person’s goodwill or standing in the eyes of the community. Therefore, any attempt or threat to harm an individual’s goodwill falls under the purview of criminal intimidation.

Threatening to cause harm to the victim’s property

Property, whether physical or intangible, is highly valuable and represents an individual’s hard work. Thus, any warning or danger that could significantly harm their property is considered an offence under Section 503 of the IPC. This provision also applies to jointly-held properties.

Threatening to harm another individual or their reputation, where the original person has a personal interest

This provision broadens the scope of criminal intimidation under Section 503 IPC. It includes threats or warnings intended to harm someone the intimidator has a personal interest in, such as their son, daughter, wife, or any other close family member. The explanation in Section 503 also covers threats to harm the reputation of a deceased person.

Intention at the time of the threat

The threat should be made with the intention of:

- a. Causing alarm to an individual.
- b. Compelling an individual to perform an act they are not legally required to do to prevent the implementation of the threat.

c. Forcing an individual to omit to perform an act they are legally obligated to do to prevent the implementation of the threat.

The Supreme Court of India, in the leading case of **Romesh Chandra Arora v. State (1960)**, further clarified that criminal intimidation under Section 503 IPC is not limited to the imposition of a threat but also includes situations where the threat serves as a mere warning to an individual.

Threatening to cause alarm to an individual

This provision requires that the threat be intended to cause alarm, fear, or distress to the person being threatened. The term “alarm” was clarified in the case of **Amulya Kumar Behera v. Nabaghana Behera Alias Nabina (1995)**, where the Orissa High Court equated it with words like ‘fear’ or ‘distress.’

Threatening someone to do something they are not legally obligated to do

If a person threatens another individual with force or harm to compel them to perform an act that they are not legally obliged to do, it constitutes criminal intimidation under Section 503 IPC.

For example, in the case of **Nand Kishore v. Emperor (1927)**, a butcher was threatened by certain people that trading beef would lead to imprisonment and social isolation, even though trading beef was legal at that time. The Allahabad High Court held that this threat amounted to criminal intimidation.

Threatening an individual to omit to perform any act they are lawfully required to do

If anyone knowingly and willingly threatens or attempts to threaten someone to refrain from performing any act that they are legally permitted to do, it will be considered criminal intimidation in IPC.

Punishment for Criminal Intimidation: Section 503 IPC [S.349 BNS] Punishment

The punishment for the offence of criminal intimidation or Section 503 IPC Punishment is as per Section 506 of the IPC which provides:

Simple criminal intimidation

If a person is found guilty of simple criminal intimidation under Section 503 IPC, the penalty is up to two years of imprisonment, a fine, or both. This offence is non-cognizable (police cannot arrest without a warrant), bailable (the accused can obtain bail), compoundable (can be settled with the consent of the victim), and triable by any magistrate.

Hurt, grievous hurt, or death of the person

Suppose the threat of the intimidator leads to causing hurt, grievous hurt or death to the person threatened or damaging any property by fire. In that case, the punishment is a maximum of seven years imprisonment, a fine, or both. This offence is non-compoundable (cannot be settled by mutual agreement) and can be tried by a first-class magistrate.

The threat is to impute chastity to women

If a person threatens a woman with imputing unchastity to her, the punishment is imprisonment of any kind for a term that can extend up to seven years, a fine, or both. This offence is non-compoundable and can be tried by a first-class magistrate.

Commission of Criminal Intimidation By An Anonymous Communication

Under Section 507 [S.349(4) BNS] of the IPC, there is a more serious and agitated form of criminal intimidation, which shares most of the elements with the standard criminal intimidation under Section 506. The distinguishing feature of this offence is that the intimidator commits the act anonymously without revealing their identity.

The punishment for this offence includes imprisonment for a term of up to two years, a fine, or both. It's important to note that this imprisonment is in addition to the usual punishment for criminal intimidation provided under Section 506 of the IPC.

The nature of this offence under Section 507 is bailable, non-cognizable (police cannot arrest without a warrant), and non-compoundable (cannot be settled by mutual agreement). A first-class magistrate can try it.

For instance, if someone abducts the daughter of a person named Ram and demands a ransom without revealing their identity while threatening to harm the daughter if the payment is not made, it would be an offence covered by Section 507.

Section 508 [S.352 BNS] of the IPC also deals with causing a person to believe that they will be rendered an object of divine displeasure. If an accused voluntarily induces or attempts to induce someone to do something they are not legally bound to do or omit to do something they are legally entitled to do, and convinces that person that they or someone they care about will face divine displeasure if they do not comply, then the accused is guilty.

The maximum punishment for this offence is one year of imprisonment, a fine, or both. This offence is non-cognizable, bailable, and compoundable by the individual against whom the offence was committed, and any magistrate can try it.

In summary, Sections 507 and 508 deal with specific forms of criminal intimidation that involve distinct elements and carry different punishments.

Doraswamy Ayyar v. King-Emperor (1924)

The Madras High Court established that for an act to be considered criminal intimidation under Section 503 of the IPC, the threat made must be realistic and capable of causing harm to the victim. The court ruled that threats of divine punishment alone would not be sufficient to qualify as criminal intimidation.

Rajinder Datt v. State of Haryana (1992)

In this case, it was determined that mere outbursts or statements made by the accused during an attack, indicating an intent to kill the victim, might not be enough to classify the act as criminal intimidation under Section 506 of the IPC. The court emphasized the need for evidence demonstrating a specific intent to cause death or grievous harm for the offence to fall under the ambit of criminal intimidation.

Shri Vasant Waman Pradhan v. Dattatraya Vithal Salvi (2004)

The Bombay High Court, in this case, emphasized the importance of mens rea (the guilty mind) in criminal intimidation cases under Section 503 IPC. It clarified that the core of criminal intimidation lies in the accused's malicious intentions or malafide motives. The court highlighted that determining the intention behind the act should consider the surrounding facts and circumstances associated with the incident.

Manik Taneja & Anr v. State of Karnataka (2015)

In the case of **Manik Taneja & Anr v. State of Karnataka (2015)**, the Supreme Court ruled that posting written statements on a social media platform, in this case, Facebook, about unfair treatment by the police did not constitute criminal intimidation under Section 506 of the IPC. The appellant had been involved in a car accident with an auto-rickshaw, and even after paying compensation for the passenger's treatment, the woman in the auto-rickshaw felt incensed and complained on the Bangalore traffic police's Facebook page. However, the court found no evidence of criminal intimidation in this situation.

Vikram Johar v. State of Uttar Pradesh (2019)

In the case of **Vikram Johar v. State of Uttar Pradesh (2019)**, the Supreme Court concluded that the mere act of abusing someone in filthy language does not meet the requirements for the offence of criminal intimidation under Section 503 of the IPC. In this case, the respondent and some others went to the plaintiff's residence, and one person in the group was carrying a pistol.

They verbally abused the plaintiff and attempted to attack him, but when neighbours arrived, they ran away. The court found that the accusation, if taken at face value, did not fulfil the elements of criminal intimidation under Sections 504 and 506 of the IPC, as the insult was not severe enough to cause a person to break public peace or commit another crime.

Limitation of the Provision of Criminal Intimidation

Chapter XXII of the IPC deals with the offence of criminal intimidation, but it appears to be inadequate to address the needs of the evolving society. With societal changes and technological advancements, the law must adapt accordingly.

The concept of criminal intimidation is quite extensive, but it lacks explicit provisions for situations where individuals are coerced into committing suicide due to threats or for cases involving intimidation through online platforms. Therefore, there is a pressing need to introduce more inclusive provisions and appropriate punishments that hold societal significance for instances of criminal intimidation under Section 503 IPC.

DEFAMATION UNDER IPC

What is Defamation?

Section 499[S. 354BNS] IPC categorizes defamation as a criminal offense. This occurs when an individual disseminates inaccurate statements, accusations, or false imputations about another person through various mediums, such as spoken words, written communication, visual signals, or other channels. The purpose of this section is to establish an equilibrium between protecting an individual's reputation and upholding the right to free speech, preventing the abuse of language.

What Constitutes Defamation Under IPC?

While understanding defamation as an offence is defined in the Indian legal context, it is essential to dive deep into the IPC, which dictates the law of the land. As per the provisions of the IPC, particularly sections 499 and 500 of IPC, defamation is primarily defined as any intentional harm caused to a person's reputation. This harm could be inflicted through spoken or written words, signs, or visible representations.

Section 499 of IPC stipulates that whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes 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 the cases from now on expected, to defame that person.

Section 500 of IPC then delineates the punishment for defamation, which can be simple imprisonment for a term extending to two years, or with a fine, or both.

Key Highlights

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Three Necessary Factors for Defamation to Occur Under IPC

For a case to qualify as defamation under the IPC, three key components must be present:

- The statement must be defamatory, meaning it lowers the moral or intellectual character of the person or lowers the person's character with reference to his caste or calling, or lowers the credit of that person or causes it to be believed that the body of such person is in a loathsome state, or in a state generally considered as disgraceful.

- The statement must refer to the person who claims that he has been defamed.
- The statement must be published, meaning that it must be communicated to someone other than the person who claims he has been defamed.

Punishment for Defamation Under IPC

As per the legal provisions laid out in Section 500 IPC, the penalty for defamation includes simple imprisonment that could extend to a maximum of two years, or a fine, or both. It's crucial to understand that this punitive provision isn't merely a legal reaction to the offence committed; it also serves as a potent deterrent, discouraging potential offenders from besmirching the reputation of others. The gravity of the punishment, thus, mirrors the seriousness with which the Indian legal system treats the offense of defamation.

Exceptions of Defamation

While IPC has stringent provisions for defamation, it also accommodates certain exceptions, which are encapsulated in explanations one to ten under Section 499.

- These exceptions are designed to maintain a harmonious balance between the fundamental right to freedom of speech and expression, and the right to a reputation.
- For instance, if the accused can demonstrate that the contentious statement was made in the public interest and is a veritable observation, they could potentially be exonerated from the charge of defamation. Additionally, other exceptions include truthful imputations made for the public good, comments made in good faith regarding the conduct of a public servant in discharging public functions, and more. Therefore, these exceptions act as a safety net, ensuring that the defamation laws do not infringe upon the legitimate exercise of one's right to express.

Two Types of Defamations Under IPC

Defamation, in its broad ambit, branches out into two categories:

1. **Slander:** This implies a defamatory statement that is expressed orally. The transitory nature of the spoken word often makes slander less harmful, but its impact can be deeply distressing and reputation-damaging, nonetheless.
2. **Libel:** This pertains to a defamatory statement that is written or published. Given its tangible and permanent form, libel can have far-reaching effects, particularly in today's age of widespread digital communication.

Both Types of Defamation Under IPC are regarded as offenses under the IPC, underscoring the importance the law places on safeguarding individuals' reputations.

Civil and Criminal Defamation

The defamation law in India demonstrates a fascinating intermingling of civil and criminal legislation's. Civil laws seek to award the aggrieved party with compensatory damages to redress the harm caused to their reputation. On the other hand, criminal laws seek to penalize the defamer.

In civil defamation, the aim is to rectify the harm caused to the plaintiff's reputation by awarding monetary damages. It operates under the maxim "volenti non fit injuria," which translates to "no injury is done to a person who consents." The plaintiff must prove that the defendant's actions resulted in actual damage to their reputation.

Criminal defamation, as outlined in sections 499 and 500 of the IPC, focuses on punitive measures against the defamer. It works on the principle of "Actus Reus," where the guilty action is enough for punishment, and the intention (Mens Rea) behind the act might not always be considered.

Landmark Judgements Related to Defamation in India

- In the legal case of Subramanian Swamy versus the Union of India, the Supreme Court emphasized the value of freedom of expression under the Constitution but noted its non-absoluteness.
- Applying the concept of reasonable restrictions, the court highlighted that freedom of speech, while expansive, is subject to limitations to prevent misuse.
- The court affirmed that an individual's reputation is an integral part of the right to life under Article 21, stating it cannot be sacrificed for another's right to free speech.
- The court distinguished between defamatory attacks and criticism, advocating tolerance for the latter but not the former.
- In the case of Shreya Singhal versus Union of India, the Supreme Court pushed back against state interference in freedom of speech.
- It declared Section 66A of the IT ACT-2000 unconstitutional, citing a violation of Article 19(1)(a) and a lack of protection under Article 19(2).
- Article 19(1)(a) grants the right to speech and expression, while 19(2) allows the state to impose reasonable restrictions.

- The court found Section 66A overly broad, posing a total chilling effect on free speech.
- Additionally, it read down Section 79, concerning intermediary liability, to address issues between governments and online platforms.

