

THE INDIAN PENAL CODE

CHAPTER I INTRODUCTION

The [Indian Penal Code](#) was drafted by the First Indian Law Commission presided over by Lord Thomas Babington Macaulay. The draft underwent further revision at the hands of well-known jurists, like Sir Barnes Peacock, and was completed in 1850. The [Indian Penal Code](#) was passed by the then Legislature on 6 October 1860 and was enacted as Act No. XLV of 1860.

Preamble.

**WHEREAS it is expedient to provide a general
[Penal Code](#) for India; It is enacted as follows:—**

COMMENT.—The [Indian Penal Code, 1860 \(IPC, 1860\)](#) exhaustively codifies the law relating to offences with which it deals and the rules of the common law cannot be resorted to for inventing exemptions which are not expressly enacted.^{1.} It is not necessary and indeed not permissible to construe the [IPC, 1860](#) at the present day in accordance with the notions of criminal jurisdiction prevailing at the time when the Code was enacted. The notions relating to this matter have very considerably changed between then and now during nearly a century that has elapsed. It is legitimate to construe the Code with reference to the modern needs, wherever this is permissible, unless there is anything in the Code or in any particular section to indicate the contrary.^{2.}

[s 1] Title and extent of operation of the Code.

This Act shall be called the [Indian Penal Code](#), and shall ^{3.}[extend to the whole of India ^{4.}[except the State of Jammu and Kashmir].]

COMMENT—

Before 1860, the English criminal law, as modified by several Acts,^{5.} was administered in the Presidency towns of Bombay, Calcutta and Madras. But in the mofussil, the Courts were principally guided by the Mohammedan criminal law, the glaring defects of which were partly removed by Regulations of the local Governments. In 1827, the judicial system of Bombay was thoroughly revised and from that time the law which the criminal Courts administered was set forth in a Regulation^{6.} defining offences and specifying punishments. But in the Bengal and Madras Presidencies the Mohammedan criminal law was in force till the [Indian Penal Code](#) came into operation.

[s 1.1] Trial of offences under [IPC, 1860](#).—

All offences under [IPC, 1860](#) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the [Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#).^{7.}

[s 1.2] Overlapping Offences.—

Where there is some overlapping between offences contained in [IPC, 1860](#) and other enactments, the Supreme Court has held that it would not mean that the offender could not be tried under [IPC, 1860](#). The Court concerned can pronounce on such issues on the basis of evidence produced before it. There may be some overlapping of facts in the cases under [section 420 IPC, 1860](#) and [section 138 of the Negotiable Instruments Act, 1881](#) but ingredients of offences are entirely different. Thus, the subsequent case is not barred.⁸ A "terrorist act" and an act of "waging war against the Government of India" may have some overlapping features, but a terrorist act may not always be an act of waging war against the Government of India, and *vice versa*. The provisions of Chapter IV of the [Unlawful Activities \(Prevention\) Act, 1967](#) and those of Chapter VI of the [IPC, 1860](#) including section 121, basically cover different areas.⁹ The mere fact that the offence in question was covered by the [Customs Act, 1962](#) did not mean that it could not be tried under [IPC, 1860](#) if it also falls under it.¹⁰

1. *MC Verghese v Ponnai*, [AIR 1970 SC 1876 \[LNIND 1968 SC 339\]](#) : (1969) 1 SCC 37 [[LNIND 1968 SC 339](#)] : 1970 Cr LJ 1651 .
2. *Mobarik Ali v State of Bombay*, [AIR 1957 SC 857 \[LNIND 1957 SC 81\]](#) : 1957 Cr LJ 1346 (SC).
3. The original words have successively been amended by Act 12 of 1891, section 2 and Sch I, the A.O. 1937, the A.O. 1948 and the A.O. 1950 to read as above.
4. Subs. by Act 3 of 1951, section 3 and Sch, for "except Part B States" (w.e.f. 1-4-1951).
5. 9 Geo. IV, section 74; Acts VII and XIX of 1837; Act XXXI of 1838; Acts XXII and XXXI of 1839; Acts VII and X of 1844; Act XVI of 1852. See Pramod Kumar, *Perspectives of the New Bill on Indian Penal Code and Reflections on the Joint Select Committee Report—Some Comments*, (1980) 22 JILI 307.
6. XIV of 1827.
7. [Section 4\(1\) Code of Criminal Procedure, 1973](#). Also see commentary under [section 3 of IPC](#) *infra*.
8. *Sangeetaben Mahendrabhai Patel v State of Gujarat*, [AIR 2012 SC 2844 \[LNIND 2012 SC 1473\]](#) : (2012) 7 SCC 621 [[LNIND 2012 SC 1473](#)] .
9. *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra*, (2012) 9 SCC 1 [[LNIND 2012 SC 1215](#)] : [AIR 2012 \(SCW\) 4942](#) : [AIR 2012 SC 3565 \[LNIND 2012 SC 1215\]](#) : 2012 Cr LJ 4770 : JT 2012 (8) SC 4 [[LNIND 2012 SC 1215](#)] : 2012 (7) Scale 553 [[relied on State \(NCT of Delhi\) v Navjot Sandhu @ Afsan Guru, AIR 2005 SC 3820 \[LNIND 2005 SC 580\]](#) : (2005) 11 SCC 600 [[LNIND 2005 SC 580](#)] : (2005) 2 SCC (Cr) 1715]
10. *Natarajan v State*, (2008) 8 SCC 413 [[LNIND 2008 SC 1093](#)] : (2008) 3 SCC (Cr) 507.

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[s 2] Punishment of offences committed within India.

Every person ¹ shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within ¹¹.¹²[India] ¹².^{*}]. ²**

COMMENT—

This section deals with the intraterritorial operation of the Code. It makes the Code universal in its application to every person in any part of India for every act or omission contrary to the provisions of the Code.

[Section 2](#) read with [section 4](#) of the [IPC, 1860](#) makes the provisions of the Code applicable to the offences committed "in any place without and beyond" the territory of India; (1) by a citizen of India or (2) on any ship or aircraft registered in India, irrespective of its location, by any person not necessarily a citizen. Such a declaration was made as long back as in 1898. By an amendment in 2009 to the said section, the Code is extended to any person in any place "without and beyond the territory of India", committing an offence targeting a computer resource located in India.¹³

1. 'Every person'.—Every person is made liable to punishment, without distinction of nation, rank, caste or creed, provided the offence with which he is charged has been committed in some part of India. A foreigner who enters the Indian territories and thus, accepts the protection of Indian laws virtually gives an assurance of his fidelity and obedience to them and submits himself to their operation. It is no defence on behalf of a foreigner that he did not know he was doing wrong, the act not being an offence in his own country. A foreigner who commits an offence within India is guilty and can be

punished as such without any limitation as to his corporal presence in India at the time.¹⁴ Indian Courts have jurisdiction against foreigners residing in foreign countries but their acts connected with transaction or part of transaction arising in India.¹⁵

[s 2.1] Corporate Criminal Liability

A company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the fact that the corporation cannot commit a crime, the generally accepted modern rule is that a corporation may be subject to indictment and other criminal process although the [criminal act](#) may be committed through its agent. The majority in the [Constitution](#) bench held that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment is mandatory imprisonment and fine.¹⁶ When imprisonment and fine is prescribed as punishment the Court can impose the punishment of fine which could be enforced against the company.¹⁷

In *CBI v Blue Sky Tie-up Pvt Ltd*,¹⁸ the question again came up for consideration before the Supreme Court and it was held that since the majority of the [Constitution](#) Bench ruled in *Standard Chartered Bank v Directorate of Enforcement* [*supra*] that the company can be prosecuted even in a case where the Court can impose substantive sentence as also fine, and in such case only fine can be imposed on the corporate body, the contrary view taken by the learned single Judge cannot be approved.

[s 2.2] Vicarious Liability.—

[Indian Penal Code](#), save and except some matters does not contemplate any vicarious liability on the part of a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices.¹⁹ Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.²⁰ The provisions of the [Essential Commodities Act, 1955](#), [Negotiable Instruments Act, 1881](#), [Employees' Provident Fund \(Miscellaneous Provision\) Act, 1952](#), etc., have created such vicarious liability. It is interesting to note that section 14A of the 1952 Act specifically creates an offence of criminal breach of trust in respect of the amount deducted from the employees by the company. In terms of the explanations appended to [section 405 of the IPC, 1860](#) a legal fiction has been created to the effect that the employer shall be deemed to have committed an offence of criminal breach of trust. Whereas a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling under [section 406 of the IPC, 1860](#) vicarious liability has been held to be not extendable to the Directors or officers of the company.²¹

There is no exception in favour of anyone in the [Penal Code](#), but the following persons are exempted from the jurisdiction of criminal Courts of every country:—

(a) Foreign Sovereigns.—The real principle on which the exemption, of every sovereign from the jurisdiction of every Court, has been deduced is that the exercise of such jurisdiction would be incompatible with his regal dignity—that is to say, with his absolute independence of every superior authority.²²

(b) Diplomats.—United Nations Privileges and Immunities Act, 1947, and the [Diplomatic Relations \(Vienna Convention\) Act, 1972](#), gave certain diplomats, missions and their member's diplomatic immunity even from criminal jurisdiction. The [Diplomatic Relations \(Vienna Convention\) Act](#) had been enacted to give effect to the Vienna Convention on Diplomatic Relations, 1961. The effect of section 2 of the Act is to give the force of law in India to certain provisions set out in the Schedule to the Act.

A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction except in the case of:

- (i) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (ii) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (iii) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.²³ A diplomatic agent is not obliged to give evidence as a witness.²⁴ Privileges and immunities are conferred on United Nations and its Representatives as well as on other international organisations and their representatives by the United Nations (Privileges and Immunities) Act, 1947.²⁵

(c) Alien enemies.—In respect of acts of war alien enemies cannot be tried by criminal Courts. If an alien enemy commits a crime unconnected with war, e.g., theft, he would be triable by ordinary criminal Courts.

(d) Foreign army.—When armies of one State are by consent on the soil of a foreign State they are exempted from the jurisdiction of the State on whose soil they are.

(e) Warships.—Men-of-war of a State in foreign waters are exempt from the jurisdiction of the State within whose territorial jurisdiction they are. The domestic Courts, in accordance with principles of international law, will accord to the ship and its crew and its contents certain immunities. The immunities can, in any case, be waived by the nation to which the public ship belongs.²⁶

(f) President and Governors.—Under [Article 361](#) of the Indian [Constitution](#), the President and Governors are exempt from the jurisdiction of Courts.

2. 'Within India'.—If the offence is committed outside India it is not punishable under the [Penal Code](#), unless it has been made so by means of special provisions such as sections 3, 4, 108A, etc., of the Code. Under [section 179 of the Cr PC, 1973](#) even the place(s) wherein the consequence (of the [criminal act](#)) "ensues" would be relevant to determine the Court of competent jurisdiction. Therefore, even the Courts within whose local jurisdiction, the repercussion/effect of the [criminal act](#) occurs, would have jurisdiction in the matter. When the consequence of an act committed by a foreigner outside India if ensued in India, he can be tried in India.²⁷ Normally crime carries the person. The commission of a crime gives the Court of the place where it is committed jurisdiction over the person of the offender.²⁸

[s 2.3] Territorial jurisdiction.—

The territory of India is defined under [Article 1 of the Constitution of India](#). [Article 1 of the Constitution of India](#) deals only with the geographical territory while [Article 297](#) deals with 'maritime territory'.

[Article 297\(3\)](#) authorises the Parliament to specify from time to time the limits of various maritime zones such as, territorial waters, continental shelf, etc. Clauses (1) and (2) of the said Article make a declaration that all lands, minerals and other things of value and all other resources shall vest in the Union of India.²⁹ [Section 18 of the IPC, 1860](#) defines India as the territory of India excluding the state of Jammu and Kashmir. These territorial limits would include the territorial waters of India.³⁰ Under the [General Clauses Act, 1897](#), India is defined to mean all territories for the time being comprised in the territory of India as defined in the [Constitution of India](#). Under the provisions of [Article 297 of the Constitution of India](#), all lands, minerals and other things of value underlying the ocean within the territorial waters or the continental shelf or the exclusive economic zone of India vest in the Union. The [Constitution of India](#) does not itself define the terms territorial waters, continental shelf, and exclusive economic zone. Clause (3) of [Article 297](#) states that their limits shall be such as may be specified by Parliament. In 1976, Parliament implemented the amendments to the [Constitution of India](#) by passing the Maritime Zones Act, 1976.³¹ Insofar the Republic of India is concerned, the limit of the territorial waters was initially understood to be three nautical miles. It had been extended subsequently; up to six nautical miles by a Presidential proclamation dated 22 March 1952 and to 12 nautical miles by another proclamation dated 30 September 1967. By The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 80 of 1976, it was statutorily fixed at 12 nautical miles. Section 3 of the Act stipulates that the sovereignty of India extends to the territorial waters, the limit of which is 12 nautical miles. Section 5 of the Territorial Waters Act, 1976 defines the contiguous zone of India as an area beyond and adjacent to territorial waters to a distance of 24 nautical miles from the nearest point of the baseline. Section 7 of the Act defines the Exclusive economic zone of India as an area beyond and adjacent to territorial waters up to a limit of 200 nautical miles.³²

[s 2.4] Jurisdiction beyond Territorial Waters

In the case of *British India Steam Navigation Co Ltd v Shanmughavilas Cashew Industries*,³³ the Supreme Court examined the effective operation of the statutes of a country in relation to foreigners and foreign ships.

In general, a statute extends territorially, unless the contrary is stated, throughout the country and will extend to the territorial waters, and such places as intention to that effect is shown. A statute extends to all persons within the country if that intention is shown. The Indian Parliament, therefore, has no authority to legislate for foreign vessels or foreigners in them on the high seas. Thus a foreign ship on the high seas, or her foreign owners or their agents in a foreign country, are not deprived of rights by our statutory enactment expressed in general terms unless it provides that a foreign ship entering an Indian port or territorial waters and thus coming within the territorial jurisdiction is to be covered. Without anything more Indian statutes are ineffective against foreign property and foreigners outside the jurisdiction.

It is this principle which is reflected in [section 2\(2\) of the Merchant Shipping Act, 1958](#).³⁴

Earlier in *Aban Loyd Chiles Offshore Ltd v UOI*,³⁵ it was held that India has been given only certain limited sovereign rights and such limited sovereign rights conferred on India in respect of continental shelf and exclusive economic zone cannot be equated to extending the sovereignty of India over the continental shelf and exclusive economic zone as in the case of territorial waters.

1. *MC Verghese v Ponnai*, AIR 1970 SC 1876 [LNIND 1968 SC 339] : (1969) 1 SCC 37 [LNIND 1968 SC 339] : 1970 Cr LJ 1651 .
2. *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 (SC).
11. The original words "the said territories" have successively been amended by the A.O. 1937, the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 3-4-1951), to read as above.
12. The words and figures "on or after the said first day of May, 1861" rep. by Act 12 of 1891, section 2 and Sch I.
13. *Republic of Italy through Ambassador v UOI*, (2013) 4 SCC 721 : 2013 (1) Scale 462 [LNINDORD 2013 SC 9114] .
14. *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 (SC). See also *State of Maharashtra v Mayer Hans George*, 1965 (1) SCR 123 [LNIND 1964 SC 415] : AIR 1965 SC 722 [LNIND 1964 SC 208] : 1965 (1) Cr LJ 641 .
15. *Lee Kun Hee v State of UP*, (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNINDORD 2012 SC 443] : 2012 Cr LJ 1551 .
16. *Standard Chartered Bank v Directorate of Enforcement*, (2005) 4 SCC 530 [LNIND 2005 SC 476] : AIR 2005 SC 2622 [LNIND 2005 SC 476] : 2005 SCC (Cr) 961; *Asstt Commr v Velliappa Textiles Ltd*, 2003 (11) SCC 405 [LNIND 2003 SC 794] : 2004 SCC (Cr) 1214 **Overruled**.
17. *Standard Chartered Bank v Directorate of Enforcement*, AIR 2006 SC 1301 [LNIND 2006 SC 145] : (2006) 4 SCC 278 [LNIND 2006 SC 145] : (2006) 2 SCC (Cr) 221. See also *CBI v Blue Sky Tie-up Pvt Ltd*, (2011) 6 Scale 436 : AIR 2012 (SCW) 1098 : 2012 Cr LJ 1216 . Also see *Aneeta Hada v Godfather Travels & Tours*, (2012) 5 SCC 66 : 2012 Cr LJ 2525 : AIR 2012 SC 2795 [LNIND 2012 SC 260] .
18. *CBI v Blue Sky Tie-up Pvt Ltd*, (2011) 6 Scale 436 : AIR 2012 (SCW) 1098 : 2012 Cr LJ 1216 . Also see *Aneeta Hada v Godfather Travels & Tours*, (2012) 5 SCC 66 : 2012 Cr LJ 2525 : AIR 2012 SC 2795 [LNIND 2012 SC 260] in which it is held that directors cannot be prosecuted without the Company being arraigned as an accused—138 NI Act.
19. *Keki Hormusji Gharda v Mehervan Rustom Irani*, (2009) 6 SCC 475 [LNIND 2009 SC 1276] : 2009 Cr LJ 3733 : AIR 2009 SC 2594 [LNIND 2009 SC 1276] .
20. *Maksud Saiyed v State of Gujarat*, (2008) 5 SCC 668 [LNIND 2007 SC 1090] : JT 2007 (11) SC 276 [LNIND 2007 SC 1090] : (2008) 2 SCC (Cr) 692.
21. *SK Alagh v State of UP*, AIR 2008 SC 1731 [LNIND 2008 SC 368] : (2008) 5 SCC 662 [LNIND 2008 SC 368] : 2008 Cr LJ 2256 : (2008) 2 SCC (Cr) 686.
22. *Per Brett, LJ in The Parlement Belge*, (1880) 5 PD 197 , 207.
23. Article 31 (1) of Diplomatic Relations (Vienna Convention) Act, 1972.
24. Article 31 (1) of Diplomatic Relations (Vienna Convention) Act, 1972.
25. United Nations (Privileges and Immunities) Act, Act No. XLV of 1947.
26. *Chung Chi Cheung*, (1939) AC 160 .
27. *Lee Kun Hee v State of UP*, (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNINDORD 2012 SC 443] : 2012 Cr LJ 1551 ; *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 (SC) : 1958 SCR 328 [LNIND 1957 SC 81] .

28. *Kubic Dariusz v UOI*, AIR 1990 SC 605 [LNIND 1990 SC 25] : (1990) 1 SCC 568 [LNIND 1990 SC 25] : 1990 Cr LJ 796 .
29. *Republic of Italy through Ambassador v UOI*, (2013) 4 SCC 721 : 2013 (1) Scale 462 [LNINDORD 2013 SC 9114] .
30. *BK Wadeyar v Daulatram Rameshwarlal*, AIR 1961 SC 311 [LNIND 1960 SC 493] : 1961 (1) SCR 924 [LNIND 1960 SC 493] .
31. *Aban Loyd Chiles Offshore Ltd v UOI*, JT 2008 (5) SC 256 [LNIND 2008 SC 897] : 2008 (6) Scale 128 [LNIND 2008 SC 897] : (2008) 11 SCC 439 [LNIND 2008 SC 897] .
32. *UOI Republic of Italy through Ambassador v UOI*, (2013) 4 SCC 721 : 2013 (1) Scale 462 [LNINDORD 2013 SC 9114] .
33. *British India Steam Navigation Co Ltd v Shanmughavilas Cashew Industries*, 1990 (3) SCC 481 [LNIND 1990 SC 150] : JT 1990 (1) SC 528 [LNIND 1990 SC 150] : 1990 (1) SCR 884 .
34. *World Tanker Carrier Corp v SNP Shipping Services Pvt Ltd*, AIR 1998 SC 2330 [LNIND 1998 SC 461] : 1998 (5) SCC 310 [LNIND 1998 SC 461] .
35. *Aban Loyd Chiles Offshore Ltd v UOI*, (2008) 11 SCC 439 [LNIND 2008 SC 897] : JT 2008 (5) SC 256 [LNIND 2008 SC 897] : 2008 (6) Scale 128 [LNIND 2008 SC 897] .

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[s 3] Punishment of offences committed beyond, but which by law may be tried within India.

Any person liable, by any ^{36.}[Indian law], to be tried for an offence committed beyond ^{37.}[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 ^{38.}[India].

COMMENT—

This section and section 4 relate to the extraterritorial operation of the Code. The words of this section postulate the existence of a law that an act constituting an offence in India shall also be an offence when committed outside India. Thus, taking part in a marriage which is prohibited by the [Child Marriage Restraint Act, 1929](#) by a citizen of India beyond India is not an offence which can be punished in India.^{39.} This section only applies to the case of a person who at the time of committing the offence charged was amenable to an Indian Court.^{40.} Thus, an Indian citizen who committed an offence outside India which was not an offence according to the laws of that country would still be liable to be tried in India if it was an offence under the Indian law.^{41.} An Indian citizen was murdered by another Indian citizen in a foreign country and the police refused to register an FIR on the ground that the offence was committed outside India. The Court held that the refusal was illegal and directed the police to register the crime and proceed with investigation in accordance with the law. The Court observed that [section 3 of the IPC, 1860](#) helps the authorities in India to proceed by treating the offence as one committed within India. No doubt it is by a fiction that such an assumption is made. But such an assumption was necessary for practical purposes.^{42.}

In a series of cases⁴³, it was also held that an offence committed outside India by a citizen of India can be investigated by the local police even without prior sanction of the Central Government. Where both husband and wife are Indians residing at USA, a complaint against the husband alleging cruelty is maintainable.⁴⁴

The operation of the section is restricted to the cases specified in the [Extradition Act, 1962](#) and the [Cr PC, 1973, sections 188 and 189](#).

1. *MC Verghese v Ponnann*, [AIR 1970 SC 1876 \[LNIND 1968 SC 339\]](#) : (1969) 1 SCC 37 [LNIND 1968 SC 339] : [1970 Cr LJ 1651](#) .

2. *Mobarik Ali v State of Bombay*, [AIR 1957 SC 857 \[LNIND 1957 SC 81\]](#) : [1957 Cr LJ 1346](#) (SC).

36. Subs. by the A.O. 1937 for "law passed by the Governor General of India in Council".

37. The original words "the limits of the said territories" have successively been amended by the A.O. 1937, the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 3 April 1951), to read as above.

38. The original words "the said territories" have successively been amended by the A.O. 1937, the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch, (w.e.f. 3-4-1951) to read as above.

39. *Sheikh Haidar v Syed Issa*, (1939) Ngp 241.

40. *Pirtai*, (1873) 10 BHC (Cr C) 356.

41. *Pheroze v State of Maharashtra*, [1964 \(2\) Cr LJ 533](#) (Bom).

42. *Remia v Sub-Inspector of Police, Tanur*, [1993 Cr LJ 1098](#) (Ker). The court referred to *State of WB v Jugal Kishore*, [AIR 1969 SC 1171 \[LNIND 1969 SC 8\]](#) : [1969 Cr LJ 1559](#) .

43. *Souda Beevi v Sub Inspector of Police*, [2012 Cr LJ 58](#) (NOC) : [2011 \(4\) Ker LT 52](#) ; *Muhammad Rafi v State of Kerala*, [2010 Cr LJ 592](#) : [2009 \(1\) Ker LT 943](#) ; *Vijaya Saradhi Vajja v Devi Sriroopa Madapati*, [2007 Cr LJ 636](#) (AP); *Samarudeen v Asst. Director of Enforcement*, [\(1999 \(2\) Ker LT 794 \[FB\]\)](#); *S Clara v State of TN*, [2008 Cr LJ 2477](#) (Mad).

44. *Harihar Narasimha Iyer v State of TN*, [2013 Cr LJ 378](#) ; *Rajesh Gupta v State of AP*, [2011 Cr LJ 3506](#) : [2011 \(3\) Crimes 236](#) .

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45. [s 4] Extension of Code to extraterritorial offences.

The provisions of this Code apply also to any offence committed by—

^{46.}[(1) any citizen of India in any place without and beyond India;

(2) any person on any ship or aircraft registered in India wherever it may be;]

^{47.}[(3) any person in any place without and beyond India committing offence targeting a computer resource located in India.]

^{48.}[*Explanation.*—In this section—

(a) the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code;

(b) the expression "computer resource" shall have the meaning assigned to it in clause (k) of sub-section (1) of [section 2 of the Information Technology Act, 2000](#) (21 of 2000).]

^{49.}[ILLUSTRATION]

^{50.}[***] A, ^{51.}[who is a ^{52.}[citizen of India]], commits a murder in Uganda. He can be tried and convicted of murder in any place in ^{53.}[India] in which he may be found.

^{54.}[***]

COMMENT—

This section shows the extent to which the Code applies to offences committed outside India. The Code applies to any offence committed by—

- (1) any citizen of India in any place, wherever he may be;
- (2) any person on any ship or aircraft registered in India wherever it may be; and
- (3) any person, whether or not a citizen of India, who commits any offence, from anywhere in the world, targeting a computer resource located in India.

Hence, except for the case of an offence committed against a computer resource located in India, to extend the scope of operation of [IPC, 1860](#) against persons, either the offender must be a citizen of India or he must have committed the offence on any ship or aircraft registered in India.

[s 4.1] Crimes committed outside India.—

Where an offence is committed beyond the limits of India but the offender is found within its limits, then

- (I) he may be given up for trial in the country where the offence was committed (extradition) or
- (II) he may be tried in India (extraterritorial jurisdiction).

Where an offence was committed by an Indian citizen outside India, it was held that the offence was punishable under the [IPC, 1860](#). An investigation of such an offence would not require sanction of the Central Government under the proviso to [section 188, Cr PC, 1973](#). But an enquiry as contemplated by [section 202, Cr PC, 1973](#) could only be with the sanction of the Central Government.⁵⁵

(I) Extradition.—Extradition is the surrender by one State to another of a person desired to be dealt with for crimes of which he has been accused or convicted and which are justiciable in the Courts of the other State. Surrender of a person within the State to another State—whether a citizen or an alien—is a political act done in pursuance of a treaty or an arrangement *ad hoc*.⁵⁶ Though extradition is granted in implementation of the international commitment of the State, the procedure to be followed by the Courts in deciding, whether extradition should be granted and on what terms, is determined by the municipal law of the land. Extradition is founded on the broad principle that it is in the interest of civilised communities that criminals should not go unpunished and on that account, it is recognised as a part of the comity of nations that one State should ordinarily afford to another State assistance towards bringing offenders to justice.⁵⁷ The procedure for securing the extradition from India is laid down in the [Extradition Act, 1962](#).

(II) Extraterritorial jurisdiction.—Indian Courts are empowered to try offences committed out of India on (A) land, (B) high seas or (C) aircraft.

(A) Land.—By virtue of [sections 3 and 4](#) of the [Penal Code](#), and [section 188 of the Cr PC, 1973](#) local Courts can take cognizance of offences committed beyond the territories of India. Where the Court is dealing with an act committed outside India by a citizen of India which would be an offence punishable under the [Penal Code](#) if it had been committed in India, section 4 constitutes the act an offence and it can be dealt with under [section 188 of the Cr PC, 1973](#).⁵⁸ If, however, at the time of commission of

the offence the accused person is not a citizen of India, the provisions of [section 4 of the Penal Code](#) and [section 188 of the Cr PC, 1973](#) have no application.⁵⁹

[Section 188 of the Cr PC, 1973](#), provides that when an offence is committed outside India—

- (a) by a citizen of India, whether on high seas or elsewhere; or
- (b) by any person not being such citizen on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found.

The word 'found' in [section 188, Cr PC, 1973](#) means not where a person is discovered but where he is actually present.⁶⁰ A man brought to a place against his will can be said to be found there.⁶¹ When a man is in the country and is charged before a Magistrate with an offence under the [Penal Code](#), it will not avail him to say that he was brought there illegally from a foreign country. The Bombay High Court has laid down this principle, following English precedents, in *Savarkar's case*.⁶² The accused Savarkar had escaped at Marseilles from the custody of police officers charged with the duty of bringing him from London to Bombay, but was re-arrested there and brought to Bombay and committed for trial by the Special Magistrate at Nasik. The High Court held that the trial and committal were valid.⁶³ The provisions of the [IPC, 1860](#) have been extended to offences committed by any citizen of India in any place within and beyond India by virtue of section 4 thereof. Accordingly, offences committed in Botswana by an Indian citizen would also be amenable to the provisions of the [IPC, 1860](#) subject to the limitation imposed under the proviso to [section 188 Cr PC, 1973](#).⁶⁴ Section 4 gives extraterritorial jurisdiction but as the Explanation says the acts committed must amount to an offence under the [Penal Code](#).⁶⁵

[s 4.2] Acts done within Indian as well as foreign territory.—

A person who is a citizen of India is liable to be tried by the Courts of this country for acts done by him, partly within and partly without the Indian territories, provided the acts amount together to an offence under the Code.⁶⁶

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

Admiralty jurisdiction extends over—

- (1) Offences committed on Indian ships on the high seas.
- (2) Offences committed on foreign ships in Indian territorial waters.
- (3) Piracy.

Power to enforce claims against foreign ships is an essential attribute of admiralty jurisdiction and it is assumed over such ships while they are within the jurisdiction of the High Court by arresting and detaining them. Admiralty jurisdiction of the High Courts in India has been historically traced to the Charters of 1774 and 1728, as subsequently expanded and clarified by the Letters Patent of 1823, 1862 and 1865 read with the Admiralty Court Act, 1861, the Colonial Courts of Admiralty Act, 1890, and the Colonial Court of Admiralty (India) Act, 1891 and preserved by section 106 of the Government of India Act, 1915, section 223 of the Government of India Act, 1935 and

[Article 225 of the Constitution of India](#). The pre-[Constitution](#) enactments have continued to remain in force in India as existing laws.^{67.}

The High Court as a Court of Admiralty is treated as a separate entity exercising a distinct and specific or prescribed or limited jurisdiction. This reasoning is based on the assumption that the continuance in force of the Colonial Courts of Admiralty Act, 1890 as an existing law carves out a distinct jurisdiction of the High Court limited in ambit and efficacy to what has been granted by the Admiralty Court Act 1861, and that jurisdiction has remained stultified ever since. This restrictive construction is not warranted by the provisions of the [Constitution](#). Accordingly, a foreign ship falls within the jurisdiction of the High Court where the vessel happens to be at the relevant time, i.e., at the time when the jurisdiction of the High Court is invoked, or, where the cause of action wholly or in part arises. The [Merchant Shipping Act](#) empowers the concerned High Court to arrest a ship in respect of a substantive right. This jurisdiction can be assumed by the concerned High Court, whether or not the defendant resides or carries on business, or the cause of action arose wholly or in part, within the local limits of its jurisdiction. Once a foreign ship is arrested within the local limits of the jurisdiction of the High Court, and the owner of the ship has entered appearance and furnished security to the satisfaction of the High Court for the release of the ship, the proceedings continue as a personal action. The conclusion is that all the High Courts in India have inherent admiralty jurisdiction and can invoke the same for the enforcement of a maritime claim.^{68.}

Even while exercising extraordinary powers available under the [Constitution](#) the jurisdiction of the High Court is primarily circumscribed by its territorial limits, viz., the jurisdiction has to be in context of the territorial jurisdiction available to the High Court. If the overall scheme of [IPC, 1860](#) (section 4), [Cr PC, 1973](#) (section 188), The [Merchant Shipping Act, 1958](#) (section 437) and the Territorial Waters Act, 1976 (section 13) are taken into consideration read with sections 2(2) and 3(15) of the [Merchant Shipping Act](#), it is apparent that for a Court, including High Court, to be vested with jurisdiction, an offender or offending vessel have to be found within local territorial limits of such Court.^{69.}

[s 4.3] Piracy

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).^{70.}

The Convention on the Law of Sea known as United National Convention on the Law of Sea, 1982 (UNCLOS) sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities. UNCLOS, 1982 is a

comprehensive code on the international law of sea. It codifies and consolidates the traditional law within a single, unificatory legal framework. It has changed the legal concept of continental shelf and also introduced a new maritime zone known as exclusive economic zone. Exclusive economic zone is a new concept having several new features.⁷¹ The UNCLOS signed by India in 1982 and ratified on 29 June 1995, encapsulates the law of the sea and is supplemented by several subsequent resolutions adopted by the Security Council of the United Nations.

Before UNCLOS came into existence, the law relating to the seas which was in operation in India, was the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, which spelt out the jurisdiction of the Central Government over the Territorial Waters, the Contiguous Zones and the Exclusive Economic Zone. The provisions of the UNCLOS are in harmony with and not in conflict with the provisions of the Maritime Zones Act, 1976, in this regard. [Article 33](#) of the Convention recognises and describes the Contiguous Zone of a nation to extend to 24 nautical miles from the baseline from which the breadth of the territorial sea is measured. Similarly, [Articles 56](#) and [57](#) describe the rights, jurisdiction and duties of the coastal State in the Exclusive Economic Zone and the breadth thereof extending to 20 nautical miles from the baseline from which the breadth of the territorial sea is measured. This provision is also in consonance with the provisions of the 1976 Act. The area of difference between the provisions of the Maritime Zones Act, 1976, and the Convention occurs in [Article 97](#) of the Convention which relates to the penal jurisdiction in matters of collision or any other incident of navigation.⁷²

[s 4.4] Jurisdiction of Indian High Courts.—

In view of the declaration of law made by the Supreme Court in *M V Elisabeth v Harwan Investment and Trading*,⁷³ the High Courts in India have inherent admiralty jurisdiction.

The offences which come within the admiralty jurisdiction are now defined by the [Merchant Shipping Act, 1958](#).

(C) Aircraft.—The provisions of the Code are made applicable to any offence committed by any person on any aircraft registered in India, wherever it may be.

[s 4.5] Liability of foreigners in India for offences committed outside its limits.

The acts of a foreigner committed by him in territory beyond the limits of India do not constitute an offence against the [Penal Code](#), and, consequently, a foreigner cannot be held criminally responsible under that Code by the tribunals of India for acts committed by him beyond its territorial limits. Thus, when it is sought to punish a person, who is not an Indian subject, as an offender in respect of a certain act, the question is not 'where was the act committed,' but 'was that person at the time, when the act was done, within the territory of India'. For, if he was not, the act is not an offence, the doer of it is not liable to be punished as an offender, and he is, therefore, not subject to the jurisdiction of criminal Courts.⁷⁴ But if a foreigner in a foreign territory initiates an offence which is completed within Indian territory, he is, if found within Indian territory, liable to be tried by the Indian Court within whose jurisdiction the offence was completed.⁷⁵

[s 4.6] Section 4 IPC and section 188 of Cr PC.—

Section 188 Cr PC, 1973 and section 4 of the IPC, 1860 spell out that if the person committing the offence at that point of time is a citizen of India, then, even if the offence is committed beyond the contours of India, he will be subject to the jurisdiction of the Courts in India. The rule enunciated under the two sections rests on the principle that qua citizens the jurisdiction of Courts is not lost by reason of the venue of the offence. However, section 188 of the Code places an interdiction in the enquiry or trial over offences committed outside India by a citizen of India insisting for sanction from the Central Government to do so.⁷⁶

1. *MC Verghese v Ponnai*, AIR 1970 SC 1876 [LNIND 1968 SC 339] : (1969) 1 SCC 37 [LNIND 1968 SC 339] : 1970 Cr LJ 1651 .
2. *Mobarik Ali v State of Bombay*, AIR 1957 SC 857 [LNIND 1957 SC 81] : 1957 Cr LJ 1346 (SC).
45. Subs. by Act 4 of 1898, section 2, for section 4.
46. Subs. by the A.O. 1950, for clauses (1) to (4).
47. Ins. by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51(a)(i) (w.e.f. 27-10-2009).
48. Subs. by the Information Technology (Amendment) Act, 2008 (10 of 2009), section 51(a)(ii), for Explanation (w.e.f. 27-10-2009). Explanation, before substitution, stood as under: "Explanation.—In this section the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code."
49. Subs. by Act 36 of 1957, section 3 and Sch II, for "Illustrations" (w.e.f. 17-9-1957).
50. The brackets and letter "(a)" omitted by Act 36 of 1957, section 3 and Sch II (w.e.f. 17-9-1957).
51. Subs. by the A.O. 1948, for "a coolie, who is a Native Indian subject".
52. Subs. by the A.O. 1950, for "a British subject of Indian domicile".
53. The words "British India" have been successively amended by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951), to read as above.
54. Illustrations (b), (c) and (d) omitted by the A.O. 1950.
55. *Muhammad Rafi v State of Kerala*, 2010 Cr LJ 592 Ker DB.
56. *State of WB v Jugal Kishore More*, (1969) 3 SCR 320 [LNIND 1969 SC 8] : 1969 Cr LJ 1559 : AIR 1969 SC 1171 [LNIND 1969 SC 8] .
57. *Abu Salem Abdul Qayoom Ansari v State of Maharashtra*, JT 2010 (10) SC 202 [LNIND 2010 SC 858] : 2010 (9) Scale 460 : (2011) 3 SCC (Cr) 125 : (2011) 11 SCC 214 [LNIND 2010 SC 858] .
58. *Ajay Aggarwal v UOI*, 1993 (3) SCC 609 [LNIND 1993 SC 431] : AIR 1993 SC 1637 [LNIND 1993 SC 431] : 1993 Cr LJ 2516 .
59. *Central Bank of India Ltd v Ram Narain*, (1955) 1 SCR 697 [LNIND 1954 SC 126] : 1955 Cr LJ 152 : AIR 1955 SC 36 [LNIND 1954 SC 126] .
60. *Maganlal v State*, (1882) 6 Bom 622.
61. *Lopez and Sattler*, (1858) 27 LJ (MC) 48.
62. *Vinayak D Savarkar*, (1910) 13 Bom LR 296 , 35 Bom 225.

63. *Supra*. Also see *Om Hemrajani v State of UP*, (2005) 1 SCC 617 [LNIND 2004 SC 1181] : AIR 2005 SC 392 [LNIND 2004 SC 1181] .
64. *Thota Venkateswarlu v State of AP*, AIR 2011 SC 2900 [LNIND 2011 SC 850] : (2011) 9 SCC 527 [LNIND 2011 SC 850] : 2011 Cr LJ 4925 : (2011) 3 SCC (Cr) 772.
65. *Rambharthi*, (1923) 25 Bom LR 772 [LNIND 1923 BOM 115] : 47 Bom 907; *Sheikh Haidar v Syed Issa*, (1939) Nag 241.
66. *Moulvie Ahmudoollah*, (1865) 2 WR (Cr) 60.
67. See *Kamalakar Mahadev Bhagat v Scindia Steam Navigation Co Ltd*, AIR 1961 Bom 186 [LNIND 1960 BOM 71] : (1960) 62 Bom LR 995 ; *Sahida Ismail v Petko R Salvejkov*, AIR 1973 Bom 18 [LNIND 1971 BOM 74] : (1972) 74 Bom LR 514 ; *Jayaswal Shipping Co v SS Leelavati*, AIR 1954 Cal 415 [LNIND 1953 CAL 202] ; *Reena Padhi v 'Jagdhir'*, AIR 1982 Ori 57 [LNIND 1981 ORI 93] .
68. *M V Elisabeth v Harwan Investment and Trading*, 1993 Supp (2) SCC 433 : AIR 1993 SC 1014 [LNIND 1992 SC 194] ; *MV Al Quamar v Tsavliris Salvage (International) Ltd*, AIR 2000 SC 2826 [LNIND 2000 SC 1119] : (2000) 8 SCC 278 [LNIND 2000 SC 1119] : 2000 (5) Scale 618 [LNIND 2000 SC 1119] ; *MV Free Neptune v DLF Southern Towns Private*, 2011 (1) Ker LT 904 : 2011 (1) KHC 628 .
69. *MG Forests Pte Ltd v "MV Project Workshop"*, Gujarat High Court Judgement dated 24 February 2004.
70. **Article 100**. United Nations Convention on the Law of the Sea (UNCLOS), 1982.
71. *Aban Loyd Chiles Offshore Ltd v UOI*, JT 2008 (5) SC 256 [LNIND 2008 SC 897] : 2008 (6) Scale 128 [LNIND 2008 SC 897] : (2008) 11 SCC 439 [LNIND 2008 SC 897] .
72. *Republic of Italy through Ambassador v UOI*, (2013) 4 SCC 721 : 2013 (1) Scale 462 [LNINDORD 2013 SC 9114] .
73. *M V Elisabeth v Harwan Investment and Trading*, 1993 Supp (2) SCC 433 : AIR 1993 SC 1014 [LNIND 1992 SC 194] .
74. *Musst. Kishen Kour*, (1878) PR No. 20 of 1878; *Jameson*, (1896) 2 QB 425 .
75. *Chhotalal*, (1912) 14 Bom LR 147 [LNIND 1912 BOM 26] .
76. *P T Abdul Rahiman v State of Kerala*, 2013 Cr LJ 893 (Ker).

THE INDIAN PENAL CODE

CHAPTER I INTRODUCTION

The [Indian Penal Code](#) was drafted by the First Indian Law Commission presided over by Lord Thomas Babington Macaulay. The draft underwent further revision at the hands of well-known jurists, like Sir Barnes Peacock, and was completed in 1850. The [Indian Penal Code](#) was passed by the then Legislature on 6 October 1860 and was enacted as Act No. XLV of 1860.

Preamble.

**WHEREAS it is expedient to provide a general
[Penal Code](#) for India; It is enacted as follows:—**

COMMENT.—The [Indian Penal Code, 1860 \(IPC, 1860\)](#) exhaustively codifies the law relating to offences with which it deals and the rules of the common law cannot be resorted to for inventing exemptions which are not expressly enacted.^{1.} It is not necessary and indeed not permissible to construe the [IPC, 1860](#) at the present day in accordance with the notions of criminal jurisdiction prevailing at the time when the Code was enacted. The notions relating to this matter have very considerably changed between then and now during nearly a century that has elapsed. It is legitimate to construe the Code with reference to the modern needs, wherever this is permissible, unless there is anything in the Code or in any particular section to indicate the contrary.^{2.}

77. [[s 5] Certain laws not to be affected by this Act.

Nothing in this Act shall affect the provisions 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 law¹ .]

COMMENT—

This section is a saving clause to section 2. Though the Code was intended to be a general one, it was not thought desirable to make it exhaustive, and hence, offences defined by local and special laws were left out of the Code, and merely declared to be punishable as theretofore.^{78.} Thus, the personnel of the Army, Navy and Airforce are governed by the provisions of the [Army Act, 1950](#), The [Navy Act, 1957](#), and The [Indian Air Force Act, 1950](#) in regard to offences of mutiny and desertion committed by them.^{79.}

1. 'Special or local law'.—A special law is a law relating to a particular subject;^{80.} whereas a local law is a law which applies only to a particular part of the country.^{81.} The distinction between a statute creating a new offence with a particular penalty and a statute enlarging the ambit of an existing offence by including new acts within it with a particular penalty is well settled. In the former case the new offence is punishable by the new penalty only; in the latter it is punishable also by all such penalties as were applicable before the Act to the offence in which it is included. The Principle is that where a new offence is created and the particular manner in which proceedings should be taken is laid down, then proceedings cannot be taken in any other way.^{82.} However, a person cannot be punished under both the [Penal Code](#) and a special law for the same

offence,⁸³ and ordinarily the sentence should be under the special Act.⁸⁴ This is, however, confined to cases where the offences are coincident or practically so.⁸⁵

The Supreme Court issued specific guidelines regarding the interpretation of general law and special law. See the Box below for these Guidelines.

Supreme Court Guidelines on Interpretation of General law and Special law

- (i) When a provision of law regulates a particular subject and a subsequent law contains a provision regulating the same subject, there is no presumption that the later law repeals the earlier law. The rule-making authority while making the later rule is deemed to know the existing law on the subject. If the subsequent law does not repeal the earlier rule, there can be no presumption of an intention to repeal the earlier rule;
- (ii) When two provisions of law – one being a general law and the other being special law govern a matter, the court should endeavour to apply a harmonious construction to the said provisions. But where the intention of the rule-making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect.
- (iii) If the repugnancy or inconsistency subsists in spite of an effort to read them harmoniously, the prior special law is not presumed to be repealed by the later general law. The prior special law will continue to apply and prevail in spite of the subsequent general law. But where a clear intention to make a rule of universal application by superseding the earlier special law is evident from the later general law, then the later general law, will prevail over the prior special law.
- (iv) Where a later special law is repugnant to or inconsistent with an earlier general law, the later special law will prevail over the earlier general law.

[*Maya Mathew v State of Kerala*⁸⁶. and *P Raghava Kurup v V Ananthakumari*⁸⁷.]

[s 5.1] Contempt of Court

Contempt of Courts Act, 1971 (Act 70 of 1971) makes it clear that, Contempt of Court means 'Civil contempt' or 'Criminal contempt'.⁸⁸ 'Civil contempt' means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an Undertaking given to a Court.⁸⁹ "Criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which – (i) scandalises or tends to scandalise or lowers or tends to lower the authority of any Court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.⁹⁰ The provisions of this Act shall be in addition to and not in derogation of, the provisions of any other law relating to contempt of Courts.⁹¹ Contempt proceeding is *sui generis* (of its own kind or class or unique). It has peculiar features which are not found in criminal proceedings. The respondent does not stand in the position of a person accused of an offence. Initiation of contempt proceedings against the respondent who is already accused in a criminal proceedings, does not amount to double jeopardy.⁹² *Mens rea* is not necessary for committing contempt of Court. The main ingredient of the offence of contempt of Court is the result of one's contumacious act of offending the prestige and dignity of the judiciary so as to lower it in the estimation of the general public. Whether the contemnor intended it or not is of no consequence.⁹³

[s 5.2] Contempt of Supreme Court and High Courts

Articles 129 and 215 preserve all the powers of the Supreme Court and the High Court, respectively, as a Court of Record which includes the power to punish the contempt of itself. There are no curbs on the power of the High Court to punish for contempt of itself except those contained in the [Contempt of Courts Act, 1971](#).⁹⁴ For the judiciary to carry out its obligations effectively and true to the spirit with which it is sacredly entrusted the task, constitutional Courts have been given the power to punish for contempt, but greater the power; higher the responsibility.⁹⁵

[s 5.3] Contempt of Subordinate Courts

Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of Courts subordinate to it as it has and exercises in respect of contempt of itself provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the [IPC, 1860](#) [[section 10 Contempt of Courts Act, 1971](#)]. The procedure prescribed either under the [Cr PC, 1973](#) or under the [Indian Evidence Act, 1872](#) is not attracted to the proceedings initiated under [section 15 of the Contempt of Courts Act](#). The High Court can deal with such matters summarily and adopt its own procedure. The only caution that has to be observed by the Court in exercising this inherent power of summary procedure is that the procedure followed must be fair and the contemnors are made aware of the charges levelled against them and given a fair and reasonable opportunity.⁹⁶

[s 5.4] [Section 228 IPC vis-a-vis Contempt of Courts Act](#)

What is made punishable under [section 228 IPC, 1860](#)⁹⁷ is the offence of intentional insult to a Judge or interruption of Court proceedings but not as a contempt of Court. The definition of criminal contempt is wide enough to include any act by a person which would either scandalise the Court or tend to interfere with the administration of justice. It would also include any act which lowers the authority of the Court or prejudices or interferes with the due course of any judicial proceedings. It is not limited to the offering of intentional insult to the Judge or interruption of the judicial proceedings.⁹⁸

1. *MC Verghese v Ponnai*, [AIR 1970 SC 1876](#) [[LNIND 1968 SC 339](#)] : (1969) 1 SCC 37 [[LNIND 1968 SC 339](#)] : [1970 Cr LJ 1651](#) .

2. *Mobarik Ali v State of Bombay*, [AIR 1957 SC 857](#) [[LNIND 1957 SC 81](#)] : [1957 Cr LJ 1346](#) (SC).

77. Subs. by the A.O. 1950, for section 5.

78. *Ramachandrappa*, (1883) 6 Mad 249; *Motilal Shah*, (1930) 32 Bom LR 1502 : 55 Bom 89.

79. *UOI v Anand Singh Bisht*, AIR 1997 SC 361 [LNIND 1996 SC 1341] : (1996) 10 SCC 153 [LNIND 1996 SC 1341] : 1996 Cr LJ 4435 : (1996) 1 SCC (Cr) 1198.
80. Section 41 IPC, 1860.
81. Section 42 IPC, 1860.
82. *Bhalchandra Ranadive*, (1929) 31 Bom LR 1151 , 1178 : 54 Bom 35.
83. *Hussun Ali*, (1873) 5 NWP 49.
84. *Kuloda Prosad Majumdar*, (1906) 11 Cal WN 100; *Bhogilal*, (1931) 33 Bom LR 648 .
85. *Joti Prasad Gupta*, (1931) 53 All 642 , 649; *Suchit Raut v State*, (1929) 9 Pat 126.
86. *Maya Mathew v State of Kerala*, (2010) 4 SCC 498 [LNIND 2010 SC 190] : (2010) 3 SCR 16 [LNIND 2010 SC 190] : AIR 2010 SC 1932 [LNIND 2010 SC 190] : 2010 (2) Scale 833 [LNIND 2010 SC 190] .
87. *P Raghava Kurup v V Ananthakumari*, (2007) 9 SCC 179 [LNIND 2007 SC 215] : 2007 (2) SCR 1058 [LNIND 2007 SC 215] : (2007) 3 Scale 431 [LNIND 2007 SC 215] .
88. Section 2(a).
89. Section 2(b).
90. Section 2(c).
91. Section 22.
92. *Delhi Judicial Service, Association, Tis Hazari Court v State of Gujarat*, AIR 1991 SC 2176 [LNIND 1991 SC 446] : 1991 (4) SCC 406 [LNIND 1991 SC 446] .
93. *VG Ramachandran, Contempt of Court*, 6th Edn, p 319 quoted in *Re MV Jayarajan*, 2012 (1) Ker LT SN 23 : 2011 (4) KHC 585 .
94. *V G Peterson v O V Forbes*, AIR 1963 SC 692 [LNIND 1962 SC 298] : 1963 Supp (1) SCR 40 : 1963 (1) Cr LJ 633 .
95. *HG Rangangoud v State Trading Corp of India*, AIR 2012 SC 490 : 2012 (1) SCC 297 .
96. *Daroga Singh v BK Pandey*, AIR 2004 SC 2579 [LNIND 2004 SC 485] : (2004) 5 SCC 26 [LNIND 2004 SC 485] : 2004 Cr LJ 2084 .
97. [s 228] - **Intentional insult or interruption to public servant sitting in judicial proceeding.**—
Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
98. *Daroga Singh v BK Pandey*, AIR 2004 SC 2579 [LNIND 2004 SC 485] : (2004) 5 SCC 26 [LNIND 2004 SC 485] : 2004 Cr LJ 2084 .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

[s 6] Definitions in the Code to be understood subject to exceptions.

Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions", though those exceptions are not repeated in such definition, penal provision, or illustration.

ILLUSTRATION

- (a) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences, but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.
- (b) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it".

COMMENT—

The "general exceptions" enacted by [Indian Penal Code, 1860 \(IPC, 1860\)](#) are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the legislature by [section 6 IPC, 1860](#) enacted that all the definitions must be regarded as subject to the general exceptions. Therefore, general exceptions are part of the definition of every offence contained in [IPC, 1860](#), but the burden to prove their existence lies on the accused.^{1.}

Section 6 is a convenient formula to avoid reproduction of lengthy exceptions in the description of offences. In other words, all the offences must be read subject to Chapter IV relating to General Exceptions (sections. 76–106 [IPC, 1860](#)). So when an act falls within any one of these exceptions by virtue of section 6 of the Code, the accused has to be given benefit of the appropriate General Exception even though it is not specifically stated over again in the description of the offence committed.^{2.} [Section 6 of the Indian Penal Code](#) imposes an obligation on the court to consider the case of exceptions on its own so far as it relates to the burden of proving legal insanity under section 106 of the Act. If the case of the accused comes within the purview of [section 84 IPC, 1860](#), which is one of the provisions in Chapter IV of the General Exceptions of

the [Indian Penal Code](#), the court is to give due consideration and find out as to whether at the time of the occurrence the accused had any mental disability so as not to know what he was doing.^{3.}

The provisions of section 6 should be read as a proviso to [section 105 of the Evidence Act 1872](#).^{4.} When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the [Indian Penal Code \(XIV of 1860\)](#), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.^{5.}

1. *Shankar Narayan Bhadolkar v State of Maharashtra*, [AIR 2004 SC 1966](#) [[LNIND 2004 SC 1370](#)] : ([2005](#)) 9 SCC 71 [[LNIND 2004 SC 1370](#)] .

2. *Abdul Latif v State of Assam*, [1981 Cr LJ 1205](#) (Gau); see also *Patras Mardi v State*, [1982 Cr LJ NOC 7](#) (Gau).

3. *Khageswar Pujari v State of Orissa*, [1984 Cr LJ 1108](#) (Orissa), see also *Smt. Sandhya Rani Bardhan v State*, [1977 Cr LJ NOC 245](#) (Gau). *Subodh Tewari v State of Assam*, 988 Cr LJ 223 (Assam).

4. *Khurajam Somat Singh v State*, [1997 Cr LJ 1461](#) (Gau).

5. [Section 105 Evidence Act](#).

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[s 7] Sense of expression once explained.

Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.

COMMENT—

[Section 7 of IPC, 1860](#) provides that 'every expression' which is explained in any part of the Code, is used in every part of the Code in conformity with the explanation. Let it be noted that unlike the modern statute, section 7 does not provide 'unless the context otherwise indicate' a phrase that prefaces the dictionary clauses of a modern statute. Therefore, the expression 'Government' in section 21(12)(a) must mean either the Central Government or the Government of a State.^{6.}

^{6.} *RS Nayak v AR Antulay*, (1984) 2 SCC 183 [LNIND 1984 SC 43] : AIR 1984 SC 684 [LNIND 1984 SC 43] .

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[s 8] Gender.

The pronoun "he" and its derivatives are used of any person, whether male or female.

COMMENT—

[Section 8 of the Indian Penal Code](#) lays down that the pronoun 'he' and its derivatives are used for any person whether male or female. Thus, in view of [section 8, IPC, 1860](#) read with section 2(y), [Code of Criminal Procedure, 1973](#) ([Cr PC, 1973](#)) the pronoun 'his' in clause (d) of [section 125\(1\), Cr PC, 1973](#) also indicates a female.⁷

⁷. *Vijaya (Dr.) v Kashirao Rajaram Sawai*, [1987 Cr LJ 977](#) : [AIR 1987 SC 1100](#) [[LNIND 1987 SC 200](#)] ; *M Areefa Beevi v Dr. K M Sahib*, [1983 Cr LJ 412](#) (Ker) : See also *Girdhar Gopal v State*, [1953 Cr LJ 964](#) (MB) ([Section 354 IPC, 1860](#)).

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[s 9] Number.

Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

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[s 10] "Man" "Woman".

The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.

COMMENT—

A female child of seven and a half months was held to be a "woman" for the purpose of [section 354 IPC, 1860](#).^{8.}

^{8.} *State of Punjab v Major Singh*, [AIR 1967 SC 63](#) [[LNIND 1966 SC 130](#)] : [1967 Cr LJ 1](#) .

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[s 11] "Person".

The word "person" includes any Company or Association or body of persons, whether incorporated or not.

COMMENT—

The term 'person' has been defined in [section 11, IPC, 1860](#), and the same is *in pari materia* with [section 3\(42\) of the General Clauses Act 1897](#). Obviously, the definition is inclusive.⁹ A natural person, an incorporated person or even an unincorporated association or body of persons like a partnership can be a person under [section 11 of IPC, 1860](#).¹⁰ The Supreme Court has held in *Standard Chartered Bank v Directorate of Enforcement*,¹¹ that, as regards corporate criminal liability, there is no doubt that a corporation or company could be prosecuted for any offence punishable under law, whether it is coming under the strict liability or under absolute liability. A juristic person has been held to come within the meaning of the word "person" for the purposes of section 415 (cheating).¹²

The State and its instrumentalities are juristic persons,¹³ but by implication, the State stands excluded from the purview of the word 'person' for the purpose of limiting its right to avail the revisional power of the High Court under [section 397\(1\) of Cr PC, 1973](#) for the reason that the State, being the prosecutor of the offender, is enjoined to conduct prosecution on behalf of the society and to take such remedial steps as to deems proper.¹⁴ Chief Educational Officer is an artificial person/ juristic person falling under [section 11 of IPC, 1860](#).¹⁵

[s 11.1] Accused person.—

Though the word "person" is defined in the [Indian Penal Code section 11](#) and the [General Clauses Act section 3\(42\)](#) which are identical and are not exhaustive but an inclusive one. The words "accused" or "accused person" or "accused of an offence" are not defined either in the [Indian Penal Code](#) or in the [Indian Evidence Act](#) or in the [General Clauses Act 1897](#).¹⁶

[s 11.2] Complainant.—

A complaint can be filed in the name of a juristic person because it is also a person in the eye of law. It is clear that complainant must be a corporeal person who is capable of making a physical presence in the court. Its corollary is that even if the complaint is

made in the name of incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the court and it is that natural person who is looked upon, for all practical purposes, to be the complainant in the case. In other words, when the complainant is a body corporate it is the *de jure* complainant, and it must necessarily associate a human being as *de facto* complainant to represent the former in court proceedings.¹⁷ A company is a person in law and not in fact. A person in law is always required to be represented by a person in fact. A company can file a complaint for Defamation ([section 500 IPC, 1860](#)) through its authorised representative.¹⁸

9. *Chief Education Officer, Salem v K S Palanichamy*, [2012 Cr LJ 2543](#) (Mad).

10. *B Raman v M/S. Shasun Chemicals and Drugs Ltd*, [2006 Cr LJ 4552](#) (Mad); *Target Overseas Exports Pvt Ltd v A M Iqbal*, [2005 Cr LJ 1931](#) (Ker).

11. *Standard Chartered Bank v Directorate of Enforcement*, [AIR 2005 SC 2622](#) [[LNIND 2005 SC 476](#)] .

12. *Reji Michael v Vertex Securities Ltd*, [1999 Cr LJ 3787](#) (Ker).

13. *Common Cause, A Registered Society v UOI*, (1999) 6 SCC 667 [[LNIND 1999 SC 637](#)] : [AIR 1999 SC 2979](#) [[LNIND 1999 SC 637](#)] .

14. *Krishnan v Krishnaveni*, [AIR 1997 SC 987](#) [[LNIND 1997 SC 1883](#)] : 1997 Cr LJ 1519 : (1997) 4 SCC 241 [[LNIND 1997 SC 1883](#)] .

15. *Chief Education Officer, Salem v K S Palanichamy*, [2012 Cr LJ 2543](#) (Mad).

16. *Directorate of Enforcement v Deepak Mahajan*, [AIR 1994 SC 1775](#) [[LNIND 1993 SC 656](#)] : (1994) 3 SCC 440 : 1994 Cr LJ 2269 .

17. *Associated Cement Co Ltd v Keshvanand*, [AIR 1998 SC 596](#) [[LNIND 1997 SC 1634](#)] : (1998) 1 SCC 687 [[LNIND 1997 SC 1634](#)] : 1998 Cr LJ 856 .

18. *CM Ibrahim v Tata Sons Ltd*, [2009 Cr LJ 228](#) (Kar).

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[s 12] "Public."

The word "public" includes any class of the public, or any community.

COMMENT—

This definition is inclusive and does not define the word 'public'. It only says that any class of public or any community is included within the term 'public'. A body or class of persons living in a particular locality may come within the term 'public'.^{19.}

^{19.} *Harnandan Lal v Rampalak Mahto*, (1938) 18 Pat 76.

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[s 13] *[Repealed]*

[Definition of "Queen".] [Rep. by the A.O. 1950.]

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20. [[s 14] "Servant of Government".

The words "servant of Government" denote any officer or servant continued, appointed or employed in India by or under the authority of Government.]

20. Subs. by the A.O. 1950, for section 14.

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[s 15] *[Repealed]*

[Definition of "British India".] [Rep. by the A.O. 1937.]

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[s 16] *[Repealed]*

[Definition of "Government of India".] [Rep. by the A.O. 1937.]

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21. [s 17] "Government"

The word "Government" denotes the Central Government or the Government of a **22.** [***] State.]

COMMENT—

Legislature of a State cannot be comprehended in the expression 'State Government'. **23.**

21. Subs. by A.O. 1950, for section 17.

22. The word and letter "Part A" omitted by Act 3 of 1951, section 3 and Sch (w.e.f. 1-4-1951).

23. *RS Nayak v AR Antulay*, (1984) 2 SCC 183 [LNIND 1984 SC 43] : AIR 1984 SC 684 [LNIND 1984 SC 43] .

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24. **[s 18] "India."**

"India" means the territory of India excluding the State of Jammu and Kashmir.]

COMMENT—

This exclusion of the State of Jammu and Kashmir in this section is not violative of [Article 1](#) and the First Schedule of the [Constitution of India](#).²⁵ In fact, *Fazal Ali*, CJ, as he then was, held that exclusion of a territory postulates the existence of a territory itself; State of Jammu and Kashmir cannot be taken as a foreign territory.²⁶ Since the First Schedule to the [Constitution of India](#) specifically includes Jammu and Kashmir as a part of the territories of India, the exclusion of the State of Jammu and Kashmir from [section 18 of the Penal Code](#) only means that for the purposes of application of the provisions of the [Indian Penal Code](#), that State shall not be considered as a part of India. In fact, section 1 of the Code itself makes this position abundantly clear. The State of Jammu and Kashmir has a separate [Penal Code](#) of its own. It is known as the Ranbir [Penal Code](#), which is almost same as the [Indian Penal Code](#).

24. Subs. by Act 3 of 1951, section 3 and Sch, for section 18 (w.e.f. 1-4-1951). Earlier section 18 was repealed by the A.O. 1937 and was again inserted by the A.O. 1950.

25. *KRK Vara Prasad v UOI*, [AIR 1980 AP 243](#) [[LNIND 1980 AP 27](#)].

26. *Virender Singh v General Officer Commanding*, 1974 J & K LR 101 (FB).

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[[s 19] "Judge."

[s 19] The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person,—

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

ILLUSTRATIONS

- (a) A Collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.
- (b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.
- (c) A member of a panchayat which has power, under ²⁷.Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.
- (d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

COMMENT—

[Section 19 IPC, 1860](#) defines a 'Judge' as denoting not only every person who is officially designated as a Judge, but also every person who is empowered by law to give in any legal proceedings, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons empowered by law to give such a judgment. The Collector is neither a Judge as defined under section 19 nor does he act judicially, when discharging any of the functions under the [Land Acquisition Act](#).²⁸ Regional Provident Fund Commissioner while passing an order under section 7-A of Employees' Provident Funds and Miscellaneous Provisions Act 1952 was 'Judge' within definition under [section 19 of IPC, 1860](#).²⁹ The right to pronounce a definitive judgment is considered the *sine qua non* of a Court.³⁰

Illustration (d) is very important as it indicates that a Magistrate, who has power to try and determine cases, is a Court of Justice, but is not a Court of Justice when sitting in committal proceedings.

27. Rep. by the Madras Civil Courts Act, 1873 (3 of 1873).

28. *Surendra Kumar Bhatia v Kanhaiya Lal*, [AIR 2009 SC 1961](#) [[LNIND 2009 SC 209](#)] : (2009)12 SCC 184 [[LNIND 2009 SC 209](#)] .

29. *E S Sanjeeva Rao v CBI, Mumbai*, [2012 Cr LJ 4053](#) (Bom) : 2013 (1) RCR (Criminal) 284.

30. *Brajnandan Sinha v Jyoti Narain*, [AIR 1956 SC 66](#) [[LNIND 1955 SC 98](#)] : 1956 SCJ 155 .

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[s 20] "Court of Justice."

The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

ILLUSTRATION

A panchayat acting under ³¹ Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

COMMENT—

The word 'court' is a generic term and embraces a Judge but the *vice versa* is not true. Therefore, the words 'court' and 'Judge' are frequently used interchangeably because a Judge is an essential constituent of a court since there can be no dispensation of justice without a Judge. But that is not to say that when a Judge demits office the court ceases to exist *Supreme Court Legal Aid Committee v UOI*.³²

³¹. Rep. by the Madras Civil Courts Act, 1873 (3 of 1873).

³². *Supreme Court Legal Aid Committee v UOI*, (1994) 6 SCC 731 [LNIND 1994 SC 955] : JT 1994 (6) SC 544 [LNIND 1989 SC 165] .

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[s 21] "Public servant".

The words "public servant" denote a person falling under any of the descriptions hereinafter following; namely:—

33. [***]

34. Second.—Every Commissioned Officer in the Military, 35. [Naval or Air] Forces 36. [37. [***] of India];

38. [Third.—Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;]

Fourth.—Every officer of a Court of Justice 39. [(including a liquidator, receiver or commissioner)] whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth.—Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of 40. [the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of 41. [the Government], or to make any survey, assessment or contract on behalf of 42. [the Government], or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of 43. [the Government], or to make, authenticate or keep any document relating to the pecuniary interests of 44. [the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of 45. [the Government] 46. [***];

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any

secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

^{47.} [Eleventh.—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;]

^{48.} [Twelfth.—Every person—

- (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;
- (b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in [section 617 of the Companies Act, 1956](#) (Act 1 of 1956).]

ILLUSTRATION

A Municipal Commissioner is a public servant.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

^{49.} [Explanation 3.—The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.]

^{50.} [***]

STATE AMENDMENT

Rajasthan.—In section 21, after clause twelfth, add the following clause, namely:
— "Thirteenth.—Every person employed or engaged by any public body in the conduct and supervision of any examination recognised or approved under any law.

Explanation.—The The expression 'Public Body' includes—

- (a) a University, Board of Education or other body, either established by or under a Central or State Act or under the provisions of the [Constitution of India](#) or constituted by the Government; and
- (b) a local authority."

[Vide Rajasthan Act, 4 of 1993, sec. 2 (w.e.f. 11-2-1993)].

Public Servant.—A line is drawn between the great mass of the community and certain classes of persons in the service and pay of Government, or exercising various public functions, who are here included in the words "public servant." There are several offences which can only be committed by public servants and, on the other hand, public servants in the discharge of their duties have many privileges peculiar to themselves.^{51.}

The test to determine whether a person is a public servant is (1) whether he is in the service or pay of the Government and (2) whether he is entrusted with the performance of any public duty.^{52.} The definition is not exhaustive. A person may be a public servant in terms of another statute.^{53.}

Illustration.—The illustration at the end of the section relates to clause (10). The word "Commissioner" is used in the sense of a Municipal Councillor or member and not merely an officer designated as "Commissioner."^{54.}

The definition of the term "public servant" cannot be extended to the provisions of the [Representation of the People Act](#) where this Act makes reference to persons in the service of the Government.^{55.}

[s 21.1] Enlargement of concept under [Prevention of Corruption Act 1988](#).—

Section 2(i) of the [Prevention of Corruption Act 1988](#) has enlarged the concept of public servant wider than that contained in [section 21 IPC, 1860](#). A comparison of the definition of 'public servant' contained in [section 21 of IPC, 1860](#) and that contained in section 2(c) of the 1988 Act would show that [section 21 of IPC, 1860](#) did not include persons falling under sub-clause (ix), (x), (xi) and (xii) of section 2(c). Sub-clause (viii) of section 2(c) is also wider in amplitude than clause (12)(a) of [section 21 of IPC, 1860](#).^{56.} Definition of 'public servant' is of no relevance under the [PC Act 1988](#).^{57.}

[s 21.2] Definition not exhaustive.—

The definition under the section has been held to be not exhaustive. A person may be a public servant in terms of some other statute.^{58.}

[s 21.3] Judges [clause "Third"].—

Examining the scope of clause "third", the Supreme Court has laid down in *K Veeraswami v UOI*,^{59.} that this category of public servants would include judges of the High Courts and Supreme Court. The words "every judge", as used in the clause, the Court said, indicates "all judges and judges of all courts". "It is a general term... and should not be narrowly construed. It must receive comprehensive meaning. A judge of the superior court cannot ... be excluded from the definition of "public servant". It is not necessary that there should be master and servant relationship to constitute a person as a "public servant". The court noted that [section 21 IPC, 1860](#) does not define the expression "public servant" as a concept. It enumerates only the categories of public servants. Each category is different from the other and in some of the categories there is hardly any relationship of master and servant. In the view of the Andhra Pradesh High Court the Central Government is not a competent authority for sanctioning the prosecution of a High Court Judge.^{60.}

[s 21.4] Explanation 2.—

The person who in fact discharges the duties of the office which brings him under some one of the descriptions of public servant, is for all the purposes of the Code rightfully a public servant, whatever legal defect there may be in his right to hold the office.^{61.} But even if a person is in actual possession of the situation of a public servant, he is not a public servant unless he has a right to hold that situation, although in determining that right the legal defect, if any, has to be ignored.^{62.} A public servant under suspension does not cease to be a public servant within the meaning of this section.^{63.}

[s 21.5] CASES.—

^{64.}

The following persons are held to be Public Servants:

- (1) Member of Parliament (MP)^{65.}
- (2) Chief Minister and Ministers^{66.}
- (3) Judges of Superior Courts^{67.}
- (4) Speaker of Legislative Assembly^{68.}
- (5) Employee of a Nationalised Bank^{69.}
- (6) All Railway Servants^{70.}
- (7) Teacher in a Government school^{71.}
- (8) Chairman of Managing Committee of a Municipality^{72.}
- (9) Employees of Life Insurance Corporation^{73.}
- (10) Member of Auxiliary Air Force^{74.}
- (11) Employee of Bharat Heavy Electricals (India) Limited^{75.}
- (12) Employees of Government Company^{76.}
- (13) Officers of State Electricity Board^{77.}
- (14) An employee of a Co-operative Society which is controlled or aided by the government, is a public servant covered under [section 2\(c\) of the IPC Act 1988](#)^{78.} as also the manager for the commission of offence under [section 409 of the IPC, 1860](#)^{79.}
- (15) Secretary, Health Supervisor of Municipality^{80.}
- (16) Drug Inspector^{81.}
- (17) Any surveyor while performing his legitimate function under any of the Revenue Civil Court^{82.}
- (18) Government Pleaders^{83.}

(19) An IAS officer posted as the managing director of a State Financial Corporation⁸⁴.

(20) The sarpanch of a Gram Panchayat.⁸⁵

The following persons are not Public Servants:

(1) University Examiner⁸⁶.

(2) Elected office bearers with President and Secretary of a registered Co-operative Society.⁸⁷

(3) A Chartered Accountant who had been appointed as an Investigator by the Central Government under the [Insurance Act 1938](#).⁸⁸

(4) Municipal Councillor⁸⁹.

(5) Laboratory Officer in Municipal Corporation⁹⁰.

(6) Member of IAS whose service placed at the disposal of Co-operative Society.⁹¹

(7) A Government Company is not a public servant though its employees are public servants Government Company.⁹²

(8) Chairperson and Standing Committee Chairman of Municipality.⁹³

(9) Leader of Opposition.⁹⁴

(10) Hospital or the Authorization Committee constituted by the Government under [section 9\(4\) of the Transplantation of Human Organs Act 1994](#).⁹⁵

(11) Branch Manager under the Assam State Warehousing Corporation.⁹⁶

(12) Commissioner appointed by Civil Court to seize account book.⁹⁷

(13) A panel doctor under the ESI Scheme.⁹⁸

33. Clause First omitted by the A.O. 1950.

34. Clause *First* omitted by the A.O. 1950.

35. Subs. by Act 10 of 1927, section 2 and Sch. I, for "or Naval".

36. The original words "of the Queen while serving under the Government of India, or any Government" have successively been amended by the A.O. 1937, the A.O. 1948 and the A.O.1950 to read as above.

37. The words "of the Dominion" omitted by the A.O. 1950.

38. Subs. by Act 40 of 1964, section 2, for clause *Third* (w.e.f. 18-12-1964).

39. Ins. by Act 40 of 1964, section 2 (w.e.f. 18-12-1964).

40. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for the word "Government".

41. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for the word "Government".
42. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for the word "Government".
43. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for the word "Government".
44. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for the word "Government".
45. Subs. by the A.O. 1950, for "the Crown". Earlier the words "the Crown" were substituted by the A.O. 1937, for "the word Government".
46. Certain words omitted by Act 40 of 1964, section 2 (w.e.f. 18-12-1964).
47. Ins. by Act 39 of 1920, section 2.
48. Subs. by Act 40 of 1964, section 2, for clause *Twelfth* (w.e.f. 18-12-1964).
49. Ins. by Act 39 of 1920, section 2.
50. *Explanation 4* omitted by Act 40 of 1964, section 2 (w.e.f. 18-12-1964). Earlier *Explanation 4* was inserted by Act 2 of 1958, section 2 (w.e.f. 12-2-1958).
51. M&M 20.
52. *GA Monterio*, [AIR 1957 SC 13](#) [[LNIND 1956 SC 66](#)] : [1957 Cr LJ 1956](#) . See further *Lakshmimansingh (Dr.) v Naresh KC Jah*, [1990 Cr LJ 1921](#) : [AIR 1990 SC 1976](#) [[LNIND 1990 SC 370](#)] : [\(1990\) 4 SCC 169](#) [[LNIND 1990 SC 370](#)] ; where a municipal officer working on deputation on a Government post (public analyst) committed an act entailing his removal and it was held that his removal would have to be effected by the Municipality and there he was not a public servant and hence, permission of the State under [s 197\(1\) of Cr PC, 1973](#) was not necessary. *Mohinder Singh v State of Punjab*, [2001 Cr LJ 2329](#) (P&H), sanction is necessary only when the offence occurs in the course of the performance of official duty. For offences connected with cheating, preparing false records, misappropriation of public funds, including criminal conspiracy against a public servant, no prior sanction is necessary.
53. *Naresh Kumar Madan v State of MP* [AIR 2008 SC 385](#) [[LNIND 2007 SC 452](#)] : [\(2007\) 4 SCC 766](#) [[LNIND 2007 SC 452](#)] .
54. *Banshilal Luhadia*, [AIR 1962 Raj 250](#) [[LNIND 1962 RAJ 124](#)] .
55. *Abdul Rehman v State of Kerala*, [1999 Cr LJ 4801](#) (Ker).
56. *PV Narsimha Rao v State (CBI/SPE)*, [AIR 1998 SC 2120](#) [[LNIND 1998 SC 1259](#)] : [1998 Cr LJ 2930](#) .
57. *State of Maharashtra v Prabhakar Rao*, [\(2002\) 7 SCC 636](#) : JT 2002 (Supp1) SC 5.
58. *Naresh Kumar Madan v State of MP*, [\(2007\) 4 SCC 766](#) [[LNIND 2007 SC 452](#)] : [AIR 2008 SC 385](#) [[LNIND 2007 SC 452](#)] : [\(2007\) 2 KLT 539](#) : [\(2007\) 54 AIC 87](#) .
59. *K. Veeraswami v Union of India*, [\(1991\) 3 SCC 655](#) [[LNIND 1991 SC 320](#)] : 1991 SCC (Cr) 734 : [1991 Cr LR \(SC\) 677](#) .
60. *Advocate General, AP v Rachapudi Subba Rao*, [1991 Cr LJ 613](#) AP.
61. *Ramkrishna Das*, (1871) 7 Beng LR 446, 448.
62. *Bira Kishore*, [AIR 1964 Orissa 202](#) .
63. *Dhanpal Singh*, AIR 1970 Punj & Haryana 514.
64. *M Karunanidhi v UOI*, [1979 Cr LJ 773](#) : [AIR 1979 SC 598](#) ; See also *Shiv Bahadur*, [1954 Cr LJ 910](#) : [AIR 1954 SC 322](#) [[LNIND 1954 SC 30](#)] ; *AR Antulay*, [\(1984\) Cr LJ 613](#) : AIR 1984; *Rajendra Kumar Singh v State of MP*, [1999 Cr LJ 2807](#) (MP).
65. *PV Narasimha Rao v State (CBI/SPE)*, [AIR 1998 SC 2120](#) [[LNIND 1998 SC 1259](#)] : [\(1998\) 4 SCC 626](#) [[LNIND 1998 SC 1259](#)] (CB) Though another [Constitution Bench](#) in *RS Nayak v AR*

Antulay, AIR 1984 SC 684 [LNIND 1984 SC 43] : (1984) 2 SCC 183 [LNIND 1984 SC 43] that MLA is not a public servant within the meaning of Section 21 IPC, 1860, in view of the Narasimha Rao case (Supra) MLA and MPs are public servant within the meaning of Section 2 (i) of PC Act. See also *Habibulla Khan v State of Orissa*, 1993 Cr LJ 3604 ; *L. K. Advani v Central Bureau of Investigation*, 1997 Cr LJ 2559 (Del) : 1997 (4) Crimes 1 [LNIND 1997 DEL 319] .

66. *M Karunanidhi v UOI*, AIR 1979 SC 898 [LNIND 1979 SC 135] : (1979) 3 SCC 431 [LNIND 1979 SC 135] ; *R Sai Bharathi v J Jayalalitha*, AIR 2004 SC 692 [LNIND 2003 SC 1023] : (2004) 2 SCC 9 [LNIND 2003 SC 1023] , Minister is a Public Servant -*R Balakrishna Pillai v State of Kerala*, AIR 1996 SC 901 [LNIND 1995 SC 1239] : (1996) 1 SCC 478 [LNIND 1995 SC 1239] , *Dattatraya Narayan Patil v State of Maharashtra*, AIR 1975 SC 1685 [LNIND 1975 SC 157] : (1976) 1 SCC 11 [LNIND 1975 SC 157] ; *Rajendra Kumar Singh and etc. v State of MP*, 1999 Cr LJ 2807 (MP).

67. *K Veeraswami v UOI*, (1991) 3 SCC 655 [LNIND 1991 SC 320] : (1991) 1 SCC (Cr) 734.

68. *P Nallammal v State*, 1999 Cr LJ 1591 (Mad).

69. *UOI v Ashok Kumar Mitra*, AIR 1995 SC 1976 [LNIND 1995 SC 295] : (1995) 2 SCC 768 [LNIND 1995 SC 295] ; *Mir Nagvi Askari v CBI*, AIR 2010 SC 528 [LNIND 2009 SC 1651] : (2009) 15 SCC 643 [LNIND 2009 SC 1651] ; *State (Delhi Administration) v S R Vij*, 1999 Cr LJ 4762 (Del).

70. *Ram Krishan v State of Delhi*, AIR 1956 SC 476 [LNIND 1956 SC 157] : 1956 Cr LJ 837 , *Shamrao Vishnu Parulekar v The District Magistrate*, AIR 1957 SC 23 [LNIND 1956 SC 60] : 1957 Cr LJ 5 ; *GA Monterio v State of Ajmer*, AIR 1957 SC 13 [LNIND 1956 SC 66] : 1957 Cr LJ 1 ; *Bajrang Lal v State of Rajasthan* AIR 1976 SC 1008 [LNIND 1976 SC 57] : (1976) 2 SCC 217 [LNIND 1976 SC 57] . But see *KN Shukla v Navnit Lal Manilal Bhatt*, AIR 1967 SC 1331 [LNIND 1966 SC 310] : 1967 Cr LJ 1200 .

71. *State of Ajmer v Shiv Lal*, AIR 1959 SC 847 [LNIND 1959 SC 67] : 1959 Cr LJ 1127 .

72. *Maharudrappa Danappa Kesarappanavar v The State of Mysore*, AIR 1961 SC 785 [LNIND 1961 SC 60] : 1961 Cr LJ 857 .

73. *State through Central Bureau of Investigation v D P Dogra*, AIR 1986 SC 312 : (1985) 4 SCC 319 .

74. *State (SPE, Hyderabad) v Air Commodore Kailash Chand*, AIR 1980 SC 522 [LNIND 1979 SC 504] : (1980) 1 SCC 667 [LNIND 1979 SC 504] .

75. *State of MP v M v Narasimhan*, AIR 1975 SC 1835 [LNIND 1975 SC 212] : (1975) 2 SCC 377 [LNIND 1975 SC 212] .

76. *National Small Industries Corporation Ltd v State* AIR 2009 SC 1284 [LNIND 2008 SC 2243] : (2009) 1 SCC 407 [LNIND 2008 SC 2243] .

77. *Bihar State Electricity Board v Nand Kishore Tamakhuwala*, AIR 1986 SC 1653 [LNIND 1986 SC 82] : (1986) 2 SCC 414 [LNIND 1986 SC 82] , *Naresh Kumar Madan v State of MP* AIR 2008 SC 385 [LNIND 2007 SC 452] : (2007) 4 SCC 766 [LNIND 2007 SC 452] .

78. *Govt. of AP v P Venken Reddy* AIR 2002 SC 3346 : (2002) 7 SCC 631 .

79. *Haridas Mondal v State of WB*, 2016 Cr LJ 4335 : 2016 (4) Crimes 530 (Cal).

80. *Chairperson, Kanhangad Municipality v State of Kerala*, 2012 Cr LJ 4366 (Ker); *G S K Janardhana Rao v Guntupalli Guru Prasad*, 2000 Cr LJ 2927 (A.P) - officers of Municipal Corporation.

81. *Laxmi Medical Distributors v State of AP*, 2005 Cr LJ 1601 (A.P).

82. *Ram Avtar Sah v State of Bihar*, 2002 Cr LJ 3899 (Pat).

83. *Appadurai v State*, Rep. By The Station House Officer, Cid Branch, Pondicherry 2001 Cr LJ 3129 (Mad).

84. *Girish Chandra Patra v Pinakee Enterprises Ltd*, 1989 Cr LJ 527 (Ori).

85. *Sarat Chandra Dehury v Sankirtan Behera*, 1989 Cr LJ (NOC) 162 Orissa; *Sukhdev Singh v State of Punjab*, 1988 Cr LJ 265 P&H.

86. *Dilaver Babu Khurana v State of Maharashtra*, AIR 2002 SC 564 [LNIND 2002 SC 1739] : (2002) 2 SCC 135 [LNIND 2002 SC 1739] ; *State of Gujarat v Manshanker Prabhashanker Dwivedi*, AIR 1973 SC 330 [LNIND 1972 SC 257] : (1972) 2 SCC 392 [LNIND 1972 SC 257] .
87. *Govt. of AP v P Venken Reddy*, AIR 2002 SC 3346 : (2002) 7 SCC 631 : *Rabindra Nath Bera v State Of WB*, 2012 Cr LJ 913 (Cal); *Haladhar Sasml v State Of WB*, 2012 Cr LJ 1726 (CAL) A 'public servant' within the meaning of Maharashtra [Co-operative Societies Act](#), 1960 is not a public servant under [Section 21 of IPC, 1860](#); *State of Maharashtra v Laljit Rajshi Shah*, AIR 2000 SC 937 [LNIND 2000 SC 387] : (2000) 2 SCC 699 [LNIND 2000 SC 387] .
88. *Ram Krishna Dalmia v Delhi Administration*, (1963 (1) SCR 253 [LNIND 1962 SC 146] : AIR 1962 SC 1821 [LNIND 1962 SC 146] ; Insurance surveyer is not public servant- 1988 Cr LJ 311 (Delhi).
89. *State of TN v T Thulasingham*, AIR 1995 SC 1314 [LNIND 1994 SC 1256] : (1994) Supp 2 SCC 405; *Ramesh Balkrishna Kulkarni v State of Maharashtra*, 1985 (3) SCC 606 [LNIND 1985 SC 235] : AIR 1985 SC 1655 [LNIND 1985 SC 235] .
90. *Lakshmansingh Himatsingh Vaghela v Naresh Kumar Chandrashanker Jha*, AIR 1990 SC 1976 [LNIND 1990 SC 370] : (1990) 4 SCC 169 [LNIND 1990 SC 370] .
91. *SS Dhanoa v Municipal Corporation Delhi*, AIR 1981 SC 1395 [LNIND 1981 SC 282] : (1981) 3 SCC 431 [LNIND 1981 SC 282] .
92. *National Small Industries Corporation Ltd v State*, AIR 2009 SC 1284 [LNIND 2008 SC 2243] : (2009) 1 SCC 407 [LNIND 2008 SC 2243] .
93. *Chairperson, Kanhangad Municipality v State of Kerala*, 2012 Cr LJ 4366 (Ker).
94. *Sushil Modi v Mohan Guruswamy*, 2008 Cr LJ 541 (Del).
95. *Santosh Hospitals Private Ltd Chennai v State Human Rights Commission, TN* AIR 2005 Mad. 348 [LNIND 2005 MAD 935] .
96. *Ghulam Rabbani v State of Assam*, 2001 Cr LJ 2331 : 2002 (1) Crimes 132 [LNIND 2001 GAU 403] (Gau).
97. *Padam Sen v State of UP* AIR 1961 SC 218 [LNIND 1960 SC 221] : 1961 Cr LJ 322 .
98. *State of Maharashtra v Dr. Rustom Franrose Hakim*, 2000 Cr LJ 3401 (Bom).