the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Illustrations

(a) A finds a rupee on the high road, not knowing to whom the rupee belongs, A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

Corresponding Provision of Previous Statute: Section 403, Indian Penal Code, 1860

Section 403 - Dishonest misappropriation of property - Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

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Illustrations

(a) A takes property belonging to Z out of Z's possession, in good faith believingat the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B, being, joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security or a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Illustrations

(a) A finds a rupee on the high road, not knowing to whom the rupee belongs, A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

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(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

315. Dishonest misappropriation of property possessed by deceased person at the time of his death

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 314 - Dishonest misappropriation of property

Whoever dishonestly misappropriates or converts to his own use any property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine, and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

Corresponding Provision of Previous Statute: Section 404, Indian Penal Code, 1860

Section 404 - Dishonest misappropriation of property possessed by deceased person at the time of his Death - Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine, and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

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Of criminal breach of trust

316. Criminal breach of trust

(1) Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.

Explanation 1.--A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.--A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948) shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Linked Provisions

Religious Endowments Act, 1863 - Section 20 - Proceedings for criminal breach of trust

Religious Endowments Act, 1863 - Section 14 - Persons Interested May Singly Sue In Case of Breach of Trust, Etc.

Religious Endowments Act, 1863 - Section 20 - Proceedings For Criminal Breach of Trust

Government of India Act, 1833 - Section 80 - Disobedience of Orders & Breach of Trust By Officers or Servants or The Company In India, Misdemeanors

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 57 - Person arrested to be taken before Magistrate or officer in charge of police station

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Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Kolkata, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits one lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in illustration (c), not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 58 - Person arrested not to be detained more than twenty- four hours

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 59 - Police to report apprehensions

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(2) Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

(3) Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(4) Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(5) Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 405, Indian Penal Code, 1860

Section 405 - Criminal breach of trust - Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Explanation 1.—A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of

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1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, thought Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

LANDMARK JUDGMENT

R.K. Dalmia vs. Delhi Administration, MANU/SC/0110/1962

Section 406 - Punishment for criminal breach of trust - Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 407 - Criminal breach of trust by carrier, etc. - Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 408 - Criminal breach of trust by clerk or servant - Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

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LANDMARK JUDGMENT

Ambika Prasad Mishra vs. State of U.P. and Ors., MANU/SC/0581/1980

Section 409 - Criminal breach of trust by public servant, or by banker, merchant or agent - Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Of receiving stolen property

317. Stolen property

(1) Property, the possession whereof has been transferred by theft or extortion or robbery or cheating, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as stolen property, whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India, but, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

(2) Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(3) Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 252 - Taking gift to help to recover stolen property, etc.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 96 - When search-warrant may be issued

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 101- Power to compel restoration of abducted females

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(4) Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(5) Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 410, Indian Penal Code, 1860

Section 410 - Stolen property - Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as "stolen property", whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Section 411 - Dishonestly receiving stolen property - Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 412 - Dishonestly receiving property stolen in the commission of a dacoity - Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or hasreason to believe to have been stolen, shall be punished with imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Section 413 - Habitually dealing in stolen property - Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 414 - Assisting in concealment of stolen property - Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

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Of cheating

318. Cheating

(1) Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

Explanation.--A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

Linked Provisions

Information Technology Act, 2000 - Section 66D - Punishment For Cheating By Personation By Using Computer Resource

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

Bharatiya Nyaya Sanhita, 2023 - Section 319 - Cheating by personation

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(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

(2) Whoever cheats shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(3) Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

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(4) Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 415, Indian Penal Code, 1860

Section 415 – Cheating - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamond articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A Intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats

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LANDMARK JUDGMENT

Akhil Kishore Ram vs. Emperor, MANU/BH/0100/1937

Section 417 - Punishment for cheating - Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 418 - Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect - Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 420 - Cheating and dishonestly inducing delivery of property - Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

319. Cheating by personation

(1) A person is said to cheat by personation if he cheats by pretending to be some other person, or by knowingly substituting one person for or another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.--The offence is committed whether the individual personated is a real or imaginary person.

Illustrations

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 318(1) - Cheating

Information Technology Act, 2000 - Section 66D - Punishment For Cheating By Personation By Using Computer Resource

The Standard of Weights and Measures (Enforcement) Act, 1985 - Section 55.

Bharatiya Nyaya Sanhita, 2023 - Section 242 -False personation for purpose of act or proceeding in suit or prosecution

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(2) Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 174 - Punishment for undue influence or personation at an election

Official Secrets Act, 1923 - Section 6 - Unauthorised Use Of Uniforms,Falsification OfReports, Forgery, Personation And False Documents

The Indian Christian Marriage Act, 1872 - Section 67 - Forbidding, By False Personation, Issue Of Certificate By Marriage Registrar

Companies Act, 2013 - Section 57 - Punishment For Personation Of Shareholder

Companies Act, 2013 - Section 38 - Punishment For Personation For Acquisition, Etc., Of Securities

Aadhaar Act, 2016 - Section 34 - Penalty For Impersonation At Time Of Enrolment

Aadhaar Act, 2016 - Section 36 - Penalty For Impersonation

Aadhaar Act, 2016 - Section 35 - Penalty For Impersonation Of

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Aadhaar Number Holder By Changing Demographic Information Or Biometric Information

Collection of Statistics Act, 2008 - Section 21 - Penalty for impersonation of employees

Companies Act, 1956 - Section 68A - Personation For Acquisition, Etc., Of Shares

Companies Act, 1956 - Section 116 - Penalty For Personation Of Shareholder

Corresponding Provision of Previous Statute: Section 416, Indian Penal Code, 1860

Section 416 – Cheating by personation - A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for or another, or representing that he or any other person is a person other than he or such other person really is. Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.
(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Section 419 - Punishment for cheating by personation - Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Of fraudulent deeds and dispositions of property

320. Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors

Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 323 - Dishonest or fraudulent removal or concealment of property

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consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which shall not be less than six months but which may extend to two years, or with fine, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 243 - Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution

321. Dishonestly or fraudulently preventing debt being available for creditors

Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 422, Indian Penal Code, 1860

Section 422 – Dishonestly or fraudulently preventing debt being available for creditors - Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

322. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration

Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 423, Indian Penal Code, 1860

Section 423 – Dishonest or fraudulent execution of deed of transfer containing false statement of Consideration - Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or

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instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

323. Dishonest or fraudulent removal or concealment of property

Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 320 - Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors

Bharatiya Nyaya Sanhita, 2023 - Section 243 - Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution

Corresponding Provision of Previous Statute: Section 424, Indian Penal Code, 1860

Section 424 – Dishonest or fraudulent removal or concealment of property - Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of mischief

324. Mischief

(1) Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits mischief.

Explanation 1.--It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 325 - Mischief by killing or maiming animal

Bharatiya Nyaya Sanhita, 2023 - Section 326 -Mischief by injury, fire or explosive substance, etc

Bharatiya Nyaya Sanhita, 2023 - Section 327 - Mischief with

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cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.--Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.

(g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

intent to destroy or make unsafe a rail, aircraft, decked vessel or one of twenty tons burden

Bharatiya Nyaya Sanhita, 2023 - Section 328 - Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc

Bharatiya Nyaya Sanhita, 2023 - Section 324(6) – Mischief

Bharatiya Nyaya Sanhita, 2023 - Section 353 - Statement conducing to public mischief

Indian Telegraph Act, 1885 – Section 33 - Power To Employ Additional Police In Places Where Mischief To Telegraphs Is Repeatedly Committed

Prevention of Damage to Public Property Act, 1984 - Section 3 - Mischief Causing Damage To Public Property

Prevention of Damage to Public Property Act, 1984 - Section 4 - Mischief Causing Damage To Public Property By Fire Or Explosive Substance

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(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

(2) Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(3) Whoever commits mischief and thereby causes loss or damage to any property including the property of Government or Local Authority shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

(4) Whoever commits mischief and thereby causes loss or damage to the amount of twenty thousand rupees and more but less than one lakh rupees shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(5) Whoever commits mischief and thereby causes loss or damage to the amount of one lakh rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

(6) Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Prevention of Destruction and Loss of Property Act, 1981 - Section 2 - Punishment For Committing Mischief In Respect Of Property

National Highways Act, 1956 - Section 8B - Punishment For Mischief By Injury To National Highway

Corresponding Provision of Previous Statute: Section 425, Indian Penal Code, 1860

Section 425 – Mischief - Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation 1 - It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether belongs

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to that person or not.

Explanation 2 - Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water in to an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.

(g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

Section 426 - Punishment for mischief - Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Section 440 - Mischief committed after preparation made for causing death or hurt - Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

325. Mischief by killing or maiming animal

Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 324(1) - Mischief

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Corresponding Provision of Previous Statute: Section 428, Indian Penal Code, 1860

Section 428 – Mischief by killing or maiming animal of the value of ten rupees - Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of the ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 429 – Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty Rupees - Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

326. Mischief by injury, inundation, fire or explosive substance, etc.

Whoever commits mischief by,--

(a) doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both;

(b) doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both;

(c) doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both;

(d) destroying or moving any sign or signal used for navigation of rail, aircraft or ship or other thing placed as a guide for navigators, or by any act which

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 324(1) – Mischief

National Highways Act, 1956 - Section 8B - Punishment For Mischief By Injury To National Highway

Prevention of Damage to Public Property Act, 1984 - Section 3 - Mischief Causing Damage To Public Property

Prevention of Destruction and Loss of Property Act, 1981 - Section 2 - Punishment For Committing Mischief In Respect Of Property

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renders any such sign or signal less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both;

(e) destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both;

(f) fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property including agricultural produce, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

(g) fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 430, Indian Penal Code, 1860

Section 430 - Mischief by injury to works of irrigation or by wrongfully diverting water - Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Section 431 - Mischief by injury to public road, bridge, river or channel - Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Section 432 - Mischief by causing inundation or obstruction to public drainage attended with damage - Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

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Section 433 - Mischief by destroying, moving or rendering less useful a light-house or sea-mark - Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Section 434 - Mischief by destroying or moving, etc., a land-mark fixed by public authority - Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 435 - Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees - Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards or (where the property is agricultural produce) ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Section 436 - Mischief by fire or explosive substance with intent to destroy house, etc - Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with [2][imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

327. Mischief with intent to destroy or make unsafe a rail, aircraft, decked vessel or one of twenty tons burden

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 324(1) - Mischief

(1) Whoever commits mischief to any rail, aircraft, or a decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that rail, aircraft or vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in sub-section (1), shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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Corresponding Provision of Previous Statute: Section 437, Indian Penal Code, 1860

Section 437 - Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons Burden - Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 438 - Punishment for the mischief described in section 437 committed by fire or explosive Substance - Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

328. Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 324(1) - Mischief

Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 439, Indian Penal Code, 1860

Section 439 - Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc. - Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Of criminal trespass

329. Criminal trespass and house-trespass

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 330 - Lurking house trespass and housebreaking

(1) Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or

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annoy any such person or with intent to commit an offence is said to commit criminal trespass.

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

Explanation.--The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

(3) Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.

(4) Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 329(3) - Criminal trespass and house trespass

Bharatiya Nyaya Sanhita, 2023 - Section 334 - Dishonestly breaking open receptacle containing property

Bharatiya Nyaya Sanhita, 2023 - Section 332 -House-trespass in order to commit offence

Bharatiya Nyaya Sanhita, 2023 - Section 333 - House-trespass after preparation for hurt, assault or wrongful restraint

Corresponding Provision of Previous Statute: Section 441, Indian Penal Code, 1860

Section 441 - Criminal trespass - Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,
is said to commit "criminal trespass".

Section 442 - House-trespass - Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".

***Explanation* -** The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Section 447 - Punishment for criminal trespass - Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Section 448 - Punishment for house-trespass - Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

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330. House-trespass and house-breaking

(1) Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit lurking house-trespass.

(2) A person is said to commit house-breaking who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of the following ways, namely:--

(a) if he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass;

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

(c) if he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened;

(d) if he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass;

(e) if he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault;

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 329 - Criminal trespass and house trespass

Bharatiya Nyaya Sanhita, 2023 - Section 330 - Lurking house trespass and housebreaking

Bharatiya Nyaya Sanhita, 2023 - Section 331 - Punishment for house-trespass or house-breaking

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(f) if he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

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

Illustrations

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

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

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(h) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

Corresponding Provision of Previous Statute: Section 443, Indian Penal Code, 1860

Section 443 - Lurking house-trespass - Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".

Section 444 - Lurking house-trespass by night - Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night".

Section 445 - House-breaking - A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:-

First. – If he enters or quits through a passage made by himself, or by any abettor of the housetrespass, in order to the committing of the house-trespass.

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

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

Fourthly. – If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

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

Sixthly. — If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.
Explanation - Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations

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

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-reaking.

(c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

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(d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

331. Punishment for house-trespass or house-breaking

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 330 - Lurking house trespass and housebreaking

(1) Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

(2) Whoever commits lurking house-trespass or house-breaking after sunset and before sunrise, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(3) Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

(4) Whoever commits lurking house-trespass or house-breaking after sunset and before sunrise, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

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(5) Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description or a term which may extend to ten years, and shall also be liable to fine.

(6) Whoever commits lurking house-trespass or house-breaking after sunset and before sunrise, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

(7) Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(8) If, at the time of the committing of lurking house-trespass or house-breaking after sunset and before sunrise, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass or house-breaking after sunset and before sunrise, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 453, Indian Penal Code, 1860

Section 453 - Punishment for lurking house-trespass or house-breaking - Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Section 454 - Lurking house-trespass or house-breaking in order to commit offence punishable with Imprisonment - Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for

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a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Section 455 - Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful Restraint - Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description or a term which may extend to ten years, and shall also be liable to fine.

Section 456 - Punishment for lurking house-trespass or house-breaking by night - Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Section 457 - Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment - Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Section 458 - Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint - Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Section 459 - Grievous hurt caused whilst committing lurking house-trespass or house-breaking - Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with [1][imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 460 - All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them - If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurkking house-trespass by night or house-breaking by night, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

332. House-trespass in order to commit offence

Whoever commits house-trespass in order to the committing of any offence--

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 329(2) - Criminal trespass and house trespass

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(a) punishable with death, shall be punished with imprisonment for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine;

(b) punishable with imprisonment for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine;

(c) punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine:

Provided that if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

Bharatiya Nyaya Sanhita, 2023 - Section 329(4) - Criminal trespass and house trespass

Bharatiya Nyaya Sanhita, 2023 - Section 332 -House-trespass in order to commit offence

Bharatiya Nyaya Sanhita, 2023 - Section 333 -House-trespass after preparation for hurt, assault or wrongful restraint

Corresponding Provision of Previous Statute: Section 449, Indian Penal Code, 1860

Section 449 - House-trespass in order to commit offence punishable with death - Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with imprisonment for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine

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

Section 451 - House-trespass in order to commit offence punishable with imprisonment - Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

333. House-trespass after preparation for hurt, assault or wrongful restraint

Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 329(4) - Criminal trespass and house trespass

Bharatiya Nyaya Sanhita, 2023 – Section 329(2) - Criminal

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trespass and house trespass

Bharatiya Nyaya Sanhita, 2023 - Section 332 -House-trespass in order to commit offence

Bharatiya Nyaya Sanhita, 2023 - Section 329(2) - Criminal trespass and house trespass

Corresponding Provision of Previous Statute: Section 452, Indian Penal Code, 1860

Section 452 - House-trespass alter preparation for hurt, assault or wrongful restraint - Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting and person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

334. Dishonestly breaking open receptacle containing property

(1) Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 329 - Criminal trespass and house trespass

(2) Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 461, Indian Penal Code, 1860

Section 461 - Dishonestly breaking open receptacle containing property - Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 462 - Punishment for same offence when committed by person entrusted with custody - Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

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CHAPTER XVIII

OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

335. Making a false document

A person is said to make a false document or false electronic record--

(A) Who dishonestly or fraudulently--

(i) makes, signs, seals or executes a document or part of a document;

(ii) makes or transmits any electronic record or part of any electronic record;

(iii) affixes any electronic signature on any electronic record;

(iv) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

(B) Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

(C) Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

Bharatiya Nyaya Sanhita, 2023 - Section 337 - Forgery of record of Court or of public register, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 338 - Forgery of valuable security, will, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 341 - Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 338

The National Service Act, 1972 - Section 25 - False Statement And Forgery

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

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of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Illustrations

(a) A has a letter of credit upon B for rupees 10,000, written by Z. A, in order to defraud B, adds cipher to the 10,000, and makes the sum 1,00,000 intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorises B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

f) Z's will contains these words--"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name,

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intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order", and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery in as much as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1.--A man's signature of his own name may amount to forgery.

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Illustrations

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable; here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate, to Z at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.--The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real

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person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Explanation 3.--For the purposes of this section, the expression "affixing electronic signature" shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

Corresponding Provision of Previous Statute: Section 464, Indian Penal Code, 1860

Section 464 - Making a false document - A person is said to make a false document or false electronic Record –

First. – Who dishonestly or fraudulently –

(a) makes, signs, seals or executes a document or part of a document;
(b) makes or transmits any electronic record or part of any electronic record;
(c) affixes any electronic signature on any electronic record;
(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, singed, sealed, executed or affixed; or

Secondly. – Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly. – Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Illustrations

(a) A has a letter of credit upon B for rupees 10,000, written by Z. A, in order to defraud B, adds cipher to the 10,000, and makes the sum 1,00,000 intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z

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to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order", and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.
Explanation 1. – A man's signature of his own name may amount to forgery.

Illustrations

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had

been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable; here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate, to Z at a nominal rent and for a long period and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2. – The making of a false document in the name of a fictious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration

A draws a bill of exchange upon a fictious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Explanation 3. – For the purposes of this section, the expression "affixing electronic signature" shall have the meaning assigned to it in clause (d) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

336. Forgery

(1) Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Linked Provisions

The Official Secrets Act, 1923 - Section 6 - Unauthorised Use Of Uniforms, Falsification Of Reports, Forgery, Personation And False Documents

The National Service Act, 1972 - Section 25 - False Statement And Forgery

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(2) Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(3) Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(4) Whoever commits forgery, intending that the document or electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Bharatiya Nyaya Sanhita, 2023 - Section 335 - Making a false document

Bharatiya Nyaya Sanhita, 2023 - Section 337 - Forgery of record of Court or of public register, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 338 - Forgery of valuable security, will, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 341 - Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 338

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 463, Indian Penal Code, 1860

Section 463 - Forgery - Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Section 465 - Punishment for forgery - Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 468 - Forgery for purpose of cheating - Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 469 - Forgery for purpose of harming reputation - Whoever commits forgery, intending that the document or electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

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337. Forgery of record of Court or of public register, etc

Whoever forges a document or an electronic record, purporting to be a record or proceeding of or in a Court or an identity document issued by Government including voter identity card or Aadhaar Card, or a register of birth, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.--For the purposes of this section, "register" includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

Bharatiya Nyaya Sanhita, 2023 - Section 335 - Making a false document

Bharatiya Nyaya Sanhita, 2023 - Section 339 - Having possession of document described in section 337 or section 338, knowing it to be forged and intending to use it as genuine.

Bharatiya Nyaya Sanhita, 2023 - Section 342 - Counterfeiting device or mark used for authenticating documents described in section 338, or possessing counterfeit marked material

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 466, Indian Penal Code, 1860

Section 466 - Forgery of record of Court or of public register, etc. - Whoever forges a document or an electronic record, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation. – For the purposes of this section, "register" includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

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338. Forgery of valuable security, will, etc

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

Bharatiya Nyaya Sanhita, 2023 - Section 335 - Making a false document

Bharatiya Nyaya Sanhita, 2023 - Section 339 - Having possession of document described in section 337 or section 338, knowing it to be forged and intending to use it as genuine.

Bharatiya Nyaya Sanhita, 2023 - Section 342 - Counterfeiting device or mark used for authenticating documents described in section 338, or possessing counterfeit marked material

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Bharatiya Nyaya Sanhita, 2023 - Section 341 - Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 338

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Corresponding Provision of Previous Statute: Section 467, Indian Penal Code, 1860

Section 467 - Forgery of valuable security, will, etc. - Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

339. Having possession of document described in section 337 or section 338, knowing it to be forged and intending to use it as genuine

Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 337 of this Sanhita, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 338, shall be punished with imprisonment for life, or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

Bharatiya Nyaya Sanhita, 2023 - Section 335 - Making a false document

Bharatiya Nyaya Sanhita, 2023 - Section 338 - Forgery of valuable security, will, etc.

Corresponding Provision of Previous Statute: Section 474, Indian Penal Code, 1860

Section 474 - Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it genuine - Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with imprisonment for life, or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.

340. Forged document or electronic record and using it as genuine

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged

Linked Provisions

The Official Secrets Act, 1923 - Section 6 - Unauthorised Use Of Uniforms, Falsification of Reports, Forgery, Personation And False Documents

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document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

Bharatiya Nyaya Sanhita, 2023 - Section 335 - Making a false document

Bharatiya Nyaya Sanhita, 2023 - Section 339 - Having possession of document described in section 337 or section 338, knowing it to be forged and intending to use it as genuine.

Bharatiya Nyaya Sanhita, 2023 - Section 337 - Forgery of record of Court or of public register, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 338 - Forgery of valuable security, will, etc.

Corresponding Provision of Previous Statute: Section 470, Indian Penal Code, 1860

Section 470 - Forged document - A false document or electronic record made wholly or in part by forgery is designated "a forged document or electronic record".

Section 471 - Using as genuine a forged document or electronic record - Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

341. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 338

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

(1) Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 338 of

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this Sanhita, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this Chapter other than section 338, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(3) Whoever possesses any seal, plate or other instrument knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. ss

(4) Whoever fraudulently or dishonestly uses as genuine any seal, plate or other instrument knowing or having reason to believe the same to be counterfeit, shall be punished in the same manner as if he had made or counterfeited such seal, plate or other instrument.

Bharatiya Nyaya Sanhita, 2023 - Section 335 - Making a false document

Bharatiya Nyaya Sanhita, 2023 - Section 338 - Forgery of valuable security, will, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 341 - Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 338

Bharatiya Nyaya Sanhita, 2023 - Section 337 - Forgery of record of Court or of public register, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 472, Indian Penal Code, 1860

Section 472 - Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467 - Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 473 - Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise - Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this Chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

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342. Counterfeiting device or mark used for authenticating documents described in section 338, or possessing counterfeit marked material

(1) Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 338, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document or electronic record other than the documents described in section 338, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 341 - Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 338

Bharatiya Nyaya Sanhita, 2023 - Section 342 - Counterfeiting device or mark used for authenticating documents described in section 338, or possessing counterfeit marked material

Bharatiya Nyaya Sanhita, 2023 - Section 338 - Forgery of valuable security, will, etc.

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery Bharatiya Nyaya Sanhita, 2023 - Section 335 - Making a false document

Bharatiya Nyaya Sanhita, 2023 - Section 337 - Forgery of record of Court or of public register, etc. Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 475, Indian Penal Code, 1860

Section 475 - Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material - Whoever counterfeits upon, or in the substance of, any material,

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any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 476 - Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material - Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document or electronic record other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

343. Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security

Linked Provisions

Indian Succession Act, 1925 - Section 61 - Will Obtained By Fraud, Coercion or Importunity

Bharatiya Nyaya Sanhita, 2023 - Section 338 - Forgery of valuable security, will, etc.

Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect of such document, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Corresponding Provision of Previous Statute: Section 477, Indian Penal Code, 1860

Section 477 - Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security - Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect of such document, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

344. Falsification of accounts

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 336 - Forgery

Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, electronic record, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or

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wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, electronic record, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.--It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

Corresponding Provision of Previous Statute: Section 477A, Indian Penal Code, 1860

Section 477A - Falsification of accounts - Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, electronic record, paper, writing valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in. any such book, electronic record, paper, writing]valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Of property marks

345. Property mark

(1) A mark used for denoting that movable property belongs to a particular person is called a property mark.

(2) Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 347 -Counterfeiting a property mark

Bharatiya Nyaya Sanhita, 2023 - Section 348 -Making or possession of any instrument for counterfeiting a property mark

Bharatiya Nyaya Sanhita, 2023 - Section 349 -Selling goods marked with a counterfeit property mark

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(3) Whoever uses any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 346 - Tampering with property mark with intent to cause injury

Corresponding Provision of Previous Statute: Section 479, Indian Penal Code, 1860

Section 479 - Property mark - A mark used for denoting that movable property belongs to a particular person is called a property mark.

Section 481 - Using a false property mark - Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

Section 482 - Punishment for using a false property mark - Whoever uses any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

346. Tampering with property mark with intent to cause injury

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 345 - Property mark

Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 489, Indian Penal Code, 1860

Section 489 - Tampering with property mark with intent to cause injury - Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

347. Counterfeiting a property mark

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 345 - Property mark

Bharatiya Nyaya Sanhita, 2023 - Section 347 - Counterfeiting a property mark

(1) Whoever counterfeits any property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(2) Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been

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manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Bharatiya Nyaya Sanhita, 2023 - Section 348 - Making or possession of any instrument for counterfeiting a property mark

Corresponding Provision of Previous Statute: Section 483, Indian Penal Code, 1860

Section 483 - Counterfeiting a property mark used by another - Whoever counterfeits any property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 484 - Counterfeiting a mark used by a public servant - Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

348. Making or possession of any instrument for counterfeiting a property mark

Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a property mark, or has in his possession a property mark for the purpose of denoting that any goods belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 345 - Property mark

Bharatiya Nyaya Sanhita, 2023 - Section 347 - Counterfeiting a property mark

Corresponding Provision of Previous Statute: Section 485, Indian Penal Code, 1860

Section 485 - Making or possession of any instrument for counterfeiting a property mark – Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a property mark, or has in his possession a property mark for the purpose of denoting that any goods belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

349. Selling goods marked with a counterfeit property mark

Whoever sells, or exposes, or has in possession for sale, any goods or things with a counterfeit property mark affixed to or impressed upon the same or to

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 350 -Making a false mark upon any receptacle containing goods

or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves--

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark; and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(c) that otherwise he had acted innocently, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 486, Indian Penal Code, 1860

Section 486 - Selling goods marked with a counterfeit property mark - Whoever sells, or exposes, or has in possession for sale, any goods or things with a counterfeit property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

350. Making a false mark upon any receptacle containing goods

(1) Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 350 -Making a false mark upon any receptacle containing goods

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acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(2) Whoever makes use of any false mark in any manner prohibited under sub-section (1) shall, unless he proves that he acted without intent to defraud, be punished as if he had committed the offence under sub-section (1).

Corresponding Provision of Previous Statute: Section 487, Indian Penal Code, 1860

Section 487 - Making a false mark upon any receptacle containing goods - Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 488 - Punishment for making use of any such false mark - Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

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CHAPTER XIX

OF CRIMINAL INTIMIDATION, INSULT, ANNOYANCE, DEFAMATION, ETC..

351. Criminal intimidation

(1) Whoever threatens another by any means, with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.--A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration

A, for the purpose of inducing B to resist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

(2) Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(3) Whoever commits the offence of criminal intimidation by threatening to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 352 - Intentional insult with intent to provoke breach of peace

Bharatiya Nyaya Sanhita, 2023 - Section 353 - Statement conducing to public mischief

Bharatiya Nyaya Sanhita, 2023 - Section 354 - Act caused by inducing person to believe that he will be rendered an object of Divine displeasure

Bharatiya Nyaya Sanhita, 2023 - Section 79 -Word, gesture, act intended to insult modesty of a woman

Bharatiya Nyaya Sanhita, 2023 - Section 355 -Misconduct in public by drunken person

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(4) Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence under sub-section (1).

Corresponding Provision of Previous Statute: Section 503, Indian Penal Code, 1860

Section 503 - Criminal intimidation - Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration

A, for the purpose of inducing B to resist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

Section 506 - Punishment for criminal intimidation - Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc. - and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Section 507 - Criminal intimidation by an anonymous communication - Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

352. Intentional insult with intent to provoke breach of peace

Whoever intentionally insults in any manner, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 351 - Criminal intimidation

Bharatiya Nyaya Sanhita, 2023 - Section 353 - Statement conducing to public mischief

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Corresponding Provision of Previous Statute: Section 504, Indian Penal Code, 1860

Section 504 - Intentional insult with intent to provoke breach of the peace - Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

353. Statements conducing to public mischief

(1) Whoever makes, publishes or circulates any statement, false information, rumour, or report, including through electronic means--

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever makes, publishes or circulates any statement or report containing false information, rumour or alarming news, including through electronic means, with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 351 - Criminal intimidation

Bharatiya Nyaya Sanhita, 2023 - Section 355 -Misconduct in public by drunken person

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(3) Whoever commits an offence specified in sub-section (2) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Exception.--It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, false information, rumour or report, has reasonable grounds for believing that such statement, false information, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid.

Corresponding Provision of Previous Statute: Section 505, Indian Penal Code, 1860

Section 505 - Statements conducing to public mischief –

(1) Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army,Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

(2) Statements creating or promoting enmity, hatred or ill-will between classes.—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(3) Offence under sub-section (2) committed in place of worship, etc.—Whoever commits an offence specified in sub-section (2) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid.

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354. Act caused by inducing person to believe that he will be rendered an object of Divine displeasure

Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations

(a) A sits dharna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 351 - Criminal intimidation

Corresponding Provision of Previous Statute: Section 508, Indian Penal Code, 1860

Section 508 - Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure - Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations

(a) A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

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355. Misconduct in public by a drunken person

Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to one thousand rupees, or with both or with community service.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 353 - Statement conducing to public mischief

Bharatiya Nyaya Sanhita, 2023 - Section 351 - Criminal intimidation

Corresponding Provision of Previous Statute: Section 510, Indian Penal Code, 1860

Section 510 - Misconduct in public by a drunken person - Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

Of defamation

356. Defamation

(1) Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes in any manner, any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.--It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.--It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.--An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Linked Provisions

Foreign Relations Act, 1932, 1932 - Section 2 - Power Of Central Government To Prosecute In Certain Cases Of Defamation

Foreign Relations Act, 1932- Section 4 - Proof Of Status Of Persons Defamed

Bharatiya Nyaya Sanhita, 2023 - Section 356 - Defammation

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 222 - Prosecution for defamation

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Explanation 4.--No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 219 - Prosecution for offences against marriage

Illustrations

(a) A says--"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

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

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

Exception 1.--It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Exception 2.--It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Exception 3.--It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

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Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Exception 4.--It is not defamation to publish substantially true report of the proceedings of a Court, or of the result of any such proceedings.

Explanation.--A Magistrate or other officer holding an inquiry in open Court preliminary to a trial in a Court, is a Court within the meaning of the above section.

Exception 5.--It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(a) A says--"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this in good faith, in as much as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says--"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, in as much as the opinion which expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

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Exception 6.--It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.--A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z--"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within the exception, if he says this in good faith, in as much as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, in as much as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Exception 7.--It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with

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that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders, a parent censuring in good faith a child in the presence of other children; a school master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier are within this exception.

Exception 8.--It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father-A is within this exception.

Exception 9.--It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business--"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is

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within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Exception 10.--It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

(2) Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both or with community service.

(3) Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

(4) Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Corresponding Provision of Previous Statute: Section 499, Indian Penal Code, 1860

Section 499 – Defamation - Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the fellings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

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Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loothsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says—"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.
(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.
(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

First Exception.—Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—Public conduct of public servants.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—Publication of reports of proceedings of courts.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which express of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—Merits of public performance.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z - "Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine". A is not within this exception, in as much as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—Censure passed in good faith by person having lawful authority over another - It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders, a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier- are within this exception.

Eighth Exception.—Accusation preferred in good faith to authorised person - It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father-A is within this exception.

Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests - It is not defamation to make an imputation on the character of another provided that the imputation be made in

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good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.— It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

LANDMARK JUDGMENT

C.L. Sagar (Advocate) vs. Ms. Mayawati, D/o Sri Prabhu Dayal and Anr., MANU/UP/1177/2002

Section 500 - Punishment for defamation - Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Section 501 - Printing or engraving matter known to be defamatory - Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Section 502 - Sale of printed or engraved substance containing defamatory matter - Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Of breach of contract to attend on and supply wants of helpless person

357. Breach of contract to attend on and supply wants of helpless person

Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprison ment of either description for a term which may

Linked Provisions

Factoring Regulation Act, 2011 - Section 18 - Breach of Contract

Indian Contract Act, 1872 - Section 73 - Compensation For Loss or Damage Caused By Breach of Contract

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extend to three months, or with fine which may extend to five thousand rupees, or with both.

Corresponding Provision of Previous Statute: Section 313, Indian Penal Code, 1860

Section 491 - Breach of contract to attend on and supply wants of helpless person - Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

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CHAPTER XX

REPEAL AND SAVINGS

358. Repeal and savings

(1) The Indian Penal Code (45 of 1860) is hereby repealed.

(2) Notwithstanding the repeal of the Code referred to in sub-section (1), it shall not affect,--

(a) the previous operation of the Code so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Code so repealed; or

(c) any penalty, or punishment incurred in respect of any offences committed against the Code so repealed; or

(d) any investigation or remedy in respect of any such penalty, or punishment; or

(e) any proceeding, investigation or remedy in respect of any such penalty or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Code had not been repealed.

(3) Notwithstanding such repeal, anything done or any action taken under the said Code shall be deemed to have been done or taken under the corresponding provisions of this Sanhita.

(4) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of the repeal.

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STATEMENT OF OBJECTS AND REASONS

1. In the year 1834, the first Indian Law Commission was constituted under the Chairmanship of Lord Thomas Babington Macaulay to examine the jurisdiction, power and rules of the existing Courts as well as the police establishments and the laws in force in India.

2. The Commission suggested various enactments to the Government. One of the important recommendations made by the Commission was on, the Indian Penal Code, which was enacted in 1860 and the said Code is still continuing in the country with some amendments made thereto from time to time.

3. The Government considered it expedient and necessary to review the existing criminal laws with an aim to strengthen law and order and also focus on simplifying legal procedure so that ease of living is ensured to the common man. The Government also considered to make existing laws relevant to the contemporary situation and provide speedy justice to common man. Accordingly, various stakeholders were consulted keeping in mind contemporary needs and aspirations of the people with a view to create a legal structure which is citizen centric and to secure life and liberty of the citizens.

4. It is proposed to enact a new law, by repealing the Indian Penal Code, to streamline provisions relating to offences and penalties. It is proposed to provide first time community service as one of the punishments for petty offences. The offences against women and children, murder and offences against the State have been given precedence. Some offences have been made gender neutral. In order to deal effectively with the problem of organised crimes and terrorist activities, new offences of terrorist acts and organised crime have been added in the Bill with deterrent punishments. A new offence on acts of armed rebellion, subversive activities, separatist activities or endangering sovereignty or unity and integrity of India has also been added. The fines and punishments for various offences have also been suitably enhanced.

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5. Accordingly, a Bill, namely, the Bharatiya Nyaya Sanhita, 2023 was introduced in the Lok Sabha on 11th August, 2023. The Bill was referred to the Department-related Parliamentary Standing Committee on Home Affairs for its consideration and report. The Committee after deliberations made its recommendations in its report submitted on 10th November, 2023. The recommendations made by the Committee have been considered by the Government and it has been decided to withdraw the Bill pending in Lok Sabha and introduce a new Bill incorporating therein those recommendations made by the Committee that have been accepted by the Government.

6. The Notes on Clauses explains the various provisions of the Bill.

7. The Bill seeks to achieve the above objectives.

LINKED PROVISIONS

Linked Provisions of Section 2(22) of Bharatiya Nyaya Sanhita, 2023:

General Clauses Act, 1897 - Section 13 - Gender and Number:

In all Central Acts and Regulations, unless there is anything repugnant in the subject or context,—

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and vice versa.

Go Back to Section 2(22), Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 2(23) of Bharatiya Nyaya Sanhita, 2023:

Indian Marine Act, 1887 - Section 56 – Oaths:

(1) Before an Indian Marine Court proceeds to try a prisoner, an oath shall be made by every member of the Court in the prescribed manner.

(2) An oath shall be made in the prescribed manner by any person who gives evidence or acts as an interpreter before an Indian Marine Court.

Go Back to Section 2(23), Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 13 of Bharatiya Nyaya Sanhita, 2023:

Burma Salt Act, 1917 - Section 15 - Enhanced Punishment after Previous Conviction:

If any person, after having been previously convicted of an offence punishable under section 9 or section 10, or section 13 read with section 9, or under a similar provision in any enactment repealed by this Act, is subsequently convicted of an offence punishable under

one of those sections he shall be liable to twice the punishment which might be imposed on a first conviction under this Act;

Provided that nothing in this section shall prevent any offence which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure from being so tried.

Coast Guard Act, 1978 - Section 87 - Evidence of Previous Convictions and General Character:

(1) When any person subject to this Act has been convicted by a Coast Guard Court of any offence, such court may inquire into, and receive, and record evidence of any previous convictions of such person, either by a Coast Guard Court or by a criminal court, or any previous award of punishment under section 57 or section 57A, and may further inquire into and record the general character of such person and such other matters as may be prescribed.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, books of Coast Guard Courts or other official records; and it shall not be necessary to give notice before trial to the person tried, that evidence as to his previous convictions or character will be received.

Code on Social Security, 2020 - Section 134 - Enhanced Punishment in Certain Cases after Previous Conviction 2020 Amendment: Date of Enforcement not Notified:

Whoever, having been convicted by a court of an offence punishable under this Code, commits the same offence shall, for second, or every subsequent such offence, be punishable with imprisonment for a term which may extend to two years and with fine of two lakh rupees:

Provided that where such second or subsequent offence is for failure by the employer to pay any contribution, charges, cess, maternity benefit, gratuity or compensation which under this Code he is liable to pay, he shall, for such second or subsequent offence, be punishable with imprisonment for a term which may extend to three years but which shall not be less than two years and shall also be liable to fine of three lakh rupees.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14AA - Enhanced Punishment in Certain Cases after Previous Conviction:

Whoever, having been convicted by a Court of an offence punishable under this Act, the Scheme or the Pension Scheme or the Insurance Scheme, commits the same offence shall be subject for every such subsequent offence to imprisonment for a term which may extend to five years, but which shall not be less than two two years, and shall also be liable to a fine of twenty-five thousand rupees.

Employees' State Insurance Act, 1948 - Section 85A - Enhanced Punishment in Certain Cases After Previous Conviction:

Whoever, having been convicted by a court of an offence punishable under this Act, commits the same offence shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to two years and with fine of five thousand rupees:

Provided that where such subsequent offence is for failure by the employer to pay any contribution which under this Act he is liable to pay, he shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to five years but which shall not be less than two years and shall also be liable to fine of twenty five thousand rupees.

Factories Act, 1934 - Section 61 - Enhanced Penalty in Certain Cases After Previous Conviction:

If any person who has been convicted of any offence punishable under clauses (b) to (g) inclusive of section 60 is again guilty of an offence involving a contravention of the same provision, he shall be punishable on the second conviction with fine which may extend to seven hundred and fifty rupees and shall not be less than one hundred rupees, and if he is again so guilty, shall be punishable on the third or any subsequent conviction with fine which may extend to one thousand rupees and shall not be less than two hundred and fifty rupees:

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished:

Provided further that the Court, if it is satisfied that there are exceptional circumstances warranting such a course, may, after recording its reasons in writing, impose a smaller fine than is required by this section.

Factories Act, 1948 - Section 94 - Enhanced Penalty after Previous Conviction:

(1) If any person who has been convicted of any offence punishable under section 92 is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to three years or with fine which shall not be less than ten thousand rupees but which may extend to two lakh rupees or with both:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a fine of less than ten thousand rupees:

Provided further that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under section 87 has resulted in an accident causing death or

serious bodily injury, the fine shall not be less than thirty-five thousand rupees in the case of an accident causing death and ten thousand rupees in the case of an accident causing serious bodily injury.

(2) For the purposes of sub-section (1) no cognizance shall be taken of any conviction made more than two years before the commission or the offence for which the person is subsequently being convicted.

Motor Transport Workers' Act, 1961 - Section 33 - Enhanced Penalty after Previous Conviction:

If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that, for the purposes of this section, no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 31 - Enhanced Punishment for offences after Previous Conviction:

(1) If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one and one-half times of the

maximum term of imprisonment and also be liable to fine which shall extend to one and one-half times of the maximum amount of fine.

(2) Where the person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment for such person shall be one and one-half times of the maximum term of imprisonment and one and one-half times of the maximum amount of fine:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding the fine for which a person is liable.

(3) Where any person is convicted by a competent court of criminal jurisdiction outside India under any corresponding law, such person, in respect of such conviction, shall be dealt with for the purposes of sub-sections (1) and (2) as if he had been convicted by a court in India.

Opium Act, 1878 - Section 9G - Enhanced Punishment After Previous Conviction:

Whoever, having been convicted of an offence punishable under section 9, 9A, 9B, 9C, 9D, 9E, or 9F, shall be guilty of any offence punishable under any of these sections, shall be liable for each such subsequent offence to twice the punishment which might be imposed on a first conviction under this Act:

Provided that nothing in this section shall prevent any offence, which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure, 1898 (Act V of 1898) from being so tried.

Plantations Labour Act, 1951 - Section 37 - Enhanced Penalty after Previous Conviction:

If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment which may extend to one year, or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both:

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

The Water (Prevention and Control of Pollution) Act, 1974 - Section 45 - Enhanced Penalty after Previous Conviction:

If any person who has been convicted of any offence under section 24 or section 25 or section 26 is again found guilty of an offence involving a contravention of the same provision, he shall, on the second and on every subsequent conviction, be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine:

Provided that for the purpose of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

Go Back to Section 13, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 15 of Bharatiya Nyaya Sanhita, 2023:

Contempt of Courts Act, 1971 - Section 16 - Contempt By Judge, Magistrate or Other Person Acting Judicially:

(1) Subject to the provisions of any law for the time being in force, a judge, magistrate or other person acting judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other individual is liable and the provisions of this Act shall, so far as may be, apply accordingly.

(2) Nothing in this section shall apply to any observation or remarks made by a judge, magistrate or other person acting judicially, regarding a subordinate court in an appeal or revision pending before such judge, magistrate or other person against the order or judgement of the subordinate court.

Go Back to Section 15, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 23 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 48 – Intoxication:

(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and if he is not an officer, be liable, subject to the provisions of sub-section (2), to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

(2) Where an offence of being intoxicated is committed by a person other than an officer when not on active service or not on duty, the period of imprisonment awarded shall not exceed six months.

Army Act, 1950 - Section 48 – Intoxication:

(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by court- martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is not an officer, be liable, subject to the provisions of sub- section (2), to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

(2) Where an offence of being intoxicated is committed by a person other than an officer when not on active service or not on duty, the period of imprisonment awarded shall not exceed six months.

Border Security Force Act, 1968 - Section 26 – Intoxication:

Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to six months or such less punishment as is in this Act mentioned.

Air Force Act 1950 - Section 46 – Certain forms of disgraceful conduct.:

Any person subject to this Act who commits any of the following offences, that is to say,—

(a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or

(b) malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or

(c) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or that person,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 29 – Intoxication:

(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to six months or such less punishment as is in this Act mentioned.

(2) For the purposes of sub-section (1), a person shall be deemed to be in a state of intoxication if, owing to the influence of alcohol or any drug whether alone, or any combination with any other substance, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform or, behaves in a disorderly manner or in a manner likely to bring discredit to the Force.

Sashastra Seema Bal Act, 2007 - Section 29 – Intoxication:

(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by a Froce Court, be liable to suffer imprisonment for a term which may extend to six months or such less punishment as is in this Act mentioned.

(2) For the purposes of sub-section (1), a person shall be deemed to be in a state of intoxication if, owing to the influence of alcohol or any drug whether alone, or any combination with any other substance, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform or, behaves in a disorderly manner or in a manner likely to bring discredit to the Force

Go Back to Section 23, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 24 of Bharatiya Nyaya Sanhita, 2023:

Sashastra Seema Bal Act, 2007 - Section 29 – Intoxication:

(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to six months or such less punishment as is in this Act mentioned.

(2) For the purposes of sub-section *(1)*, a person shall be deemed to be in a state of intoxication if, owing to the influence of alcohol or any drug whether alone, or any combination with any other substance, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform or, behaves in a disorderly manner or in a manner likely to bring discredit to the Force.

Go Back to Section 24, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 27 of Bharatiya Nyaya Sanhita, 2023:

Parsi Marriage and Divroce Act, 1865 - Section 45 - Settlement of Wife's Property For Benefit of Children:

In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or re version the Court may order such settlement as it shall think reasonable to be made of such property or any part thereof for the benefit of the children of the marriage or any of them.

Go Back to Section 27, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 28 of Bharatiya Nyaya Sanhita, 2023:

Indian Contract Act, 1872 - Section 13 - 'Consent' Defined:

Two or more persons are said to consent when they agree upon the same thing in the same sense.

Indian Contract Act, 1872 - Section 14 - 'Free Consent' Defined:

Consent is said to be free when it is not caused by—

(1) coercion, as defined in section 15, or

(2) undue influence, as defined in section 16, or

(3) fraud, as defined in section 17, or

(4) misrepresentation, as defined in section 18, or

(5) mistake, subject to the provisions of sections 20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

New Delhi Municipal Council Act, 1994 - Section 344 - Consent ordinarily To Be Obtained:

Save as otherwise provided in this Act, rules, regulations or any bye-law made thereunder, no land or building shall be entered without the consent of the occupier, or if there is no occupier, of the owner thereof and no such entry shall be made without giving the said owner or occupier, as the case may be, not less than twenty-four hours' written notice of the intention to make such entry.

Provided that no such notice shall be necessary if the place to be inspected is a factory or workshop or trade premises or a place used for any of the purposes specified in section 327 or a stable for horses or a shed for cattle or a latrine or urinal or a work under construction, or for the purpose of ascertaining whether any animal intended for human consumption is slaughtered in that place in contravention of this Act or any bye-law made thereunder.

Go Back to Section 28, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 32 of Bharatiya Nyaya Sanhita, 2023:

Copyright Act, 1957 - Section 60 - Remedy In The Case of Groundless Threat of Legal Proceedings:

Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained in section 34 of the Specific Relief Act, 1963 (47 of 1963), institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit--

(a) obtain an injunction against the continuance of such threats; and

(b) recover such damages, if any, as he has sustained by reason of such threats:

Provided that this section does not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him.

Unlawful Activities (Prevention) Act, 1967 - Section 22 - Punishment For Threatening Witness:

Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with intent to cause any of the said acts, shall be punishable with imprisonment which may extend to three years, and shall also be liable to fine.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 216 - Procedure for witnesses in case of threatening, etc.:

A witness or any other person may file a complaint in relation to an offence under section 232 of the Bharatiya Nyaya Sanhita, 2023.

Bharatiya Sakshya Act, 2023 - Section 22- Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding:

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, coercion or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him:

Provided that if the confession is made after the impression caused by any such inducement, threat, coercion or promise has, in the opinion of the Court, been fully removed, it is relevant:

Provided further that if such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Go Back to Section 32, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 36 of Bharatiya Nyaya Sanhita, 2023:

The Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 48 - Committal To Approved Place of Juvenile or Child Suffering From Dangerous Diseases and His Future Disposal:

(1) When a juvenile or the child who has been brought before a competent authority under this Act, is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the competent authority may send the juvenile or the child to any place recognised to be an approved place in accordance with the rules made under this Act for such period as it may think necessary for the required treatment.

Navy Act, 1957 - Section 180 - Application of Sections 171 To 179 To Persons of Unsound Mind:

The provisions of sections 171 to 179 shall, so far as they can be made applicable, also apply in the case of an officer or sailor subject to naval law who is ascertained in the prescribed manner to be of unsound mind notwithstanding anything contained in the Indian Lunacy

Act, 1912 (4 of 1912), or who, while on active service, is officially reported missing, as if the said officer or sailor had died on the day on which his unsoundness of mind is so ascertained or, as the case may be, on the day on which he is officially reported missing:

Provided that in the case of an officer or sailor so reported missing, no action shall be taken to dispose of the property under sections 171, 172 and 175 until such time as a certificate under the regulations made under this Act is issued by or under the authority of the Chief of the Naval Staff or other prescribed person that he is confirmed or presumed to be dead.

Go Back to Section 36, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 45 of Bharatiya Nyaya Sanhita, 2023:

Black Money (Undisclosed Foreign Income & Assets & Imposition of Tax Act, 2015 - Section 53 – Punishment for Abetment:

If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to tax payable under this Act which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 51, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

Army Act, 1950 - Section 66 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive shall, on conviction by court-martial, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

The Bonded Labour System (Abolition) Act, 1976 - Section 20 - Abetment To Be An offence:

Whoever abets any offence punishable under this Act shall, whether or not the offence abetted is committed, be punishable with the same punishment as is provided for the offence which has been abetted.

Explanation,—For the purpose of this Act, "abetment" has the meaning assigned to it in the Indian Penal Code (45 of 1860).

Border Security Force Act, 1968 - Section 43 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 14 to 41 (both inclusive) shall, on conviction by a Security Force Court, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 46 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 15 to 44 (both inclusive), shall, on conviction by a Coast Guard Court, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment provided for that offence or such less punishment as is in this Act mentioned.

Companies (Profits) Surtax Act, 1964 - Section 22 - Abetment of False Returns, Etc:

If a person makes or induces in any manner another person to make and deliver any account, statement or declaration relating to chargeable profits liable to surtax which is false and which he either knows to be false or does not believe to be true, he shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

The Electricity Act, 2003 - Section 150 – Abetment:

(1) Whoever abets an offence punishable under this Act, shall, notwithstanding anything contained in the Indian Penal Code, be punished with the punishment provided for the offence.

(2) Without prejudice to any penalty or fine which may be imposed or prosecution proceeding which may be initiated under this Act or any other law for the time being in force, if any officer or other employee of the Board or the licensee enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any theft of electricity is committed, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Notwithstanding anything contained in sub-section (1) of section 135, subsection (1) of section 136, section 137 and section 138, the license or certificate of competency or permit or such other authorisation issued under the rules made or deemed to have been made under this Act to any person who acting as an electrical contractor, supervisor or worker abets the commission of an offence punishable under sub-section (1) of section 135, sub-section (1) of section 136, section 137, or section 138, on his conviction for such abetment, may also be cancelled by the licensing authority:

Provided that no order of such cancellation shall be made without giving such person an opportunity of being heard.

Explanation.--For the purposes of this sub-section, "licencing authority" means the officer who for the time being in force is issuing or renewing such licence or certificate of competency of permit or such other authorisation.

Essential Commodities Act, 1955 - Section 8 - Attempts and Abetment:

Any person who attempts to contravene, or abets a contravention of, any order made under section 3 shall be deemed to have contravened that order.

Expenditure-tax Act, 1987 - Section 28 - Abetment of False Returns, Etc:

If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any chargeable expenditure which is false and which he either knows to be false or does not believe to be true or to commit an offence under section 25, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years arid with fine.

Extradition Act, 1962 - Section 26 - Abetment of Extradition offences:

A fugitive criminal who is accused or convicted of abetting conspiring, attempting to commit, incit-ing or participating as an accomplice in the commission of any extradition offence shall be deemed for the purposes of this Act to be accused or convicted of having committed such offence and shall be liable to be arrested and surrendered accordingly.

Hotel Receipts Tax Act, 1980 - Section 30 - Abetment of False Return, Etc:

If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any chargeable receipts which is false and which

he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 26, he shall be punishable,—

(a) in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is willfully attempted to be evaded, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(b) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

Income Tax Act, 1961 - Section 278 - Abetment of False Return, Etc.:

If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income or any fringe benefits chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 276C, he shall be punishable,—

(i) in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds twenty-five hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.

Air Force Act, 1950 - Section 68 – Abetment of offences that have been committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 66 inclusive, shall, on conviction by court-martial, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 69 - Abetment of offences punishable with death and not committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38 shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 70 - Civil offences:

Subject to the provisions of section 72, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say,—

(a) if the offence is one which would be punishable under any law in force in India with death or with transportation, he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; and

(b) in any other case, he shall be liable to suffer any punishment other than whipping "assigned for the offence by any law in force in India, or imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 22 -Sentences which High Courts and Sessions Judges may pass:

(1) A High Court may pass any sentence authorised by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

Bharatiya Sakshya Act, 2023 -Section 117 - Presumption as to abetment of suicide by a married woman:

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.—For the purposes of this section, "cruelty" shall have the same meaning as in section 86 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 45, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 46 of Bharatiya Nyaya Sanhita, 2023:

Explosive Substances Act, 1908 - Section 6 - Punishment of Abettors:

Any person who by the supply or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.

Go Back to Section 46, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 55 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 69 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38 shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 67 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub- section (1) of section 38 shall, on conviction by court- martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to

suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 44 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 14, 17 and sub-section (1) of section 18 shall, on conviction by a Security Force Court, if that offence be not committed on consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 47 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act, who abets the commission of an offence punishable with death under section 17 shall, on conviction by a Coast Guard Court, if that offence be not committed in consequence of that abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 47 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 16, 19 and sub-section (1) of section 20 shall, on conviction by a Force Court, if that offence be not committed in consequence of the abetment, and on express provision is made by this Act for the punishment of such abetment, be liable to

suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Go Back to Section 55, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 56 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 70 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 66 inclusive and punishable with imprisonment shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 68 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive and punishable with imprisonment shall, on conviction by court- martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Assam Rifles Act, 2006 - Section 54 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 21 to 50 (both inclusive) and punishable with imprisonment shall, on conviction by an Assam Rifles Court, if that offence, be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned

Border Security Force Act, 1968 - Section 45 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 14 to 41 (both inclusive) and punishable with imprisonment shall, on conviction by a Security Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 48 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act, who abets the commission of an offence punishable with death under section 17 shall, on conviction by a Coast Guard Court, if that offence be not committed in consequence of that abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 48 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 16 to 44 (both inclusive) and punishable with imprisonment shall, on conviction by a Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to onehalf of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Sashastra Seema Bal Act, 2007 - Section 48 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 16 to 44 (both inclusive) and punishable with imprisonment shall, on conviction by a Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Go Back to Section 56, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 61 of Bharatiya Nyaya Sanhita, 2023:

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 29 - Punishment For Abetment and Criminal Conspiracy:

(1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything

contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which--

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

Trade Unions Act, 1926 - Section 17 - Criminal Conspiracy In Trade Disputes:

No office-bearer or member of a Registered Trade Union shall be liable to punishment under sub-section (2) of section 120B of the Indian Penal Code, 1860 (45 of 1860) in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in section 15, unless the agreement is an agreement to commit an offence.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 217 - Prosecution for offences against the State and for criminal conspiracy to commit such offence:

(1) No Court shall take cognizance of--

(a) any offence punishable under Chapter VII or under section 196, section 299 or sub-section (1) of section 353 of the Bharatiya Nyaya Sanhita, 2023; or

(b) a criminal conspiracy to commit such offence; or

(c) any such abetment, as is described in section 47 of the Bharatiya Nyaya Sanhita, 2023, except with the previous sanction of the Central Government or of the State Government.

(2) No Court shall take cognizance of--

(a) any offence punishable under section 197 or sub-section (2) or sub-section (3) of section 353 of the Bharatiya Nyaya Sanhita, 2023; or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.

(3) No Court shall take cognizance of the offence of any criminal conspiracy punishable under sub-section (2) of section 61 of the Bharatiya Nyaya Sanhita, 2023, other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 215 apply, no such consent shall be necessary.--

(4) The Central Government or the State Government may, before according sanction under sub-section (1) or sub-section (2) and the District Magistrate may, before according sanction under sub-section (2) and the State Government or the District Magistrate may, before giving consent under sub-section (3), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 174.

Go Back to Section 61, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 62 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 69 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38 shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 70 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 66 inclusive and punishable with imprisonment shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 44 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 14, 17 and sub-section (1) of section 18 shall, on conviction by a Security Force Court, if that offence be not committed on consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to

suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 45 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 14 to 41 (both inclusive) and punishable with imprisonment shall, on conviction by a Security Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 47 - Abetment of offence Punishable With Death and Not Committed:

Any person subject to this Act, who abets the commission of an offence punishable with death under section 17 shall, on conviction by a Coast Guard Court, if that offence be not committed in consequence of that abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 48 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 15 to 44 (both inclusive) and punishable with imprisonment shall, on conviction by a Coast Guard Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable

to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 48 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 16 to 44 (both inclusive) and punishable with imprisonment shall, on conviction by a Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 47 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 16, 19 and sub-section (1) of section 20 shall, on conviction by a Force Court, if that offence be not committed in consequence of the abetment, and on express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Sashastra Seema Bal Act, 2007 - Section 47 - Abetment of offences Punishable With Death and Not Committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death, under sections 16, 19 and sub-section *(1)* of section 20 shall, on conviction by a

Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Sashastra Seema Bal Act, 2007 - Section 48 - Abetment of offences Punishable With Imprisonment and Not Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 16 to 44 (both inclusive) and punishable with imprisonment shall, on conviction by a Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 67 – Attempt:

Any person subject to this Act who attempts to commit any of the offences specified in sections 34 to 66 inclusive, and in such attempt does any act towards the commission of the offence shall, on conviction by court-martial, where no express provision is made by this Act for the punishment of such attempt, be liable, 28 if the offence attempted to be committed is punishable with death, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if the offence attempted to be committed is punishable with imprisonment, to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 68 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 66 inclusive, shall, on conviction by court-martial, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Go Back to Section 62, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 63 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 52 -Examination of person accused of rape by medical practitioner:

(1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometres from the place where the offence has been committed, by any other registered medical practitioner, acting at the request of any police officer, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without any delay, examine such person and prepare a report of his examination giving the following particulars, namely:--

(i) the name and address of the accused and of the person by whom he was brought;

(ii) the age of the accused;

(iii) marks of injury, if any, on the person of the accused;

(iv) the description of material taken from the person of the accused for DNA profiling; and

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without any delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 193 as part of the documents referred to in clause (a) of sub-section (6) of that section.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 184 -Medical examination of the victim of rape:

(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:--

(i) the name and address of the woman and of the person by whom she was brought;

(ii) the age of the woman;

(iii) the description of material taken from the person of the woman for DNA profiling;

(iv) marks of injury, if any, on the person of the woman;

(v) general mental condition of the woman; and

(vi) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, within a period of seven days forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 193 as part of the documents referred to in clause (a) of sub-section (6) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Explanation.--For the purposes of this section, "examination" and "registered medical practitioner" shall have the same meanings as respectively assigned to them in section 51.

Bharatiya Sakshya Act, 2023 - Section 120 - Presumption as to absence of consent in certain prosecution for rape:

In a prosecution for rape under sub-section (2) of section 64 of the Bharatiya Nyaya Sanhita, 2023, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

Explanation. – In this section, "sexual intercourse" shall mean any of the acts mentioned in section 63 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 63, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 72 of Bharatiya Nyaya Sanhita, 2023:

Juvenile Justice (Care and Protection of Children) Act, 2015 - Section74 - Prohibition on Disclosure of Identity of Children:

(1) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published:

Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

(2) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in the pending case or in the case which has been closed or disposed of.

(3) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both.

Go Back to Section 72, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 75 of Bharatiya Nyaya Sanhita, 2023:

The Protection of Children From Sexual offences Act, 2012 - Section 11 - Sexual Harassment:

A person is said to commit sexual harassment upon a child when such person with sexual intent,—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefore.

Explanation. – Any question which involves "sexual intent" shall be a question of fact.

The Protection of Children From Sexual offences Act, 2012 - Section 12 - Punishment For Sexual Harassment:

Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 - Section 3 - Prevention of Sexual Harassment:

(1) No woman shall be subjected to sexual harassment at any workplace.

(2) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment: --

(i) implied or explicit promise of preferential treatment in her employment; or

(ii) implied or explicit threat of detrimental treatment in her employment: or

(iii) implied or explicit threat about her present or future employment status; or

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(v) humiliating treatment likely to affect her health or safety.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 - Section 9 - Complaint of Sexual Harassment:

(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

Go Back to Section 75, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 80 of Bharatiya Nyaya Sanhita, 2023:

The Dowry Prohibition Act, 1961 - Section 2 - Definition of 'Dowry':

In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly--

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II.--The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 194 - Police to enquire and report on suicide, etc.:

(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule made by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forwarded to the District Magistrate or the Sub-divisional Magistrate within twenty-four hours.

(3) When--

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical person appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

Bharatiya Sakshya Act, 2023 - Section 117 - Presumption as to abetment of suicide by a married woman:

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard

to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. – For the purposes of this section, "cruelty" shall have the same meaning as in section 86 of the Bharatiya Nyaya Sanhita, 2023.

Bharatiya Sakshya Act, 2023 - Section 118 - Presumption as to dowry death:

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation. – For the purposes of this section, "dowry death" shall have the same meaning as in section 80 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 80, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 82 of Bharatiya Nyaya Sanhita, 2023:

Special Marriage Act, 1954 - Section 15 - Registration of marriages celebrated in other forms:

Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (III of 1872) or under this Act, may be registered under this Chapter by a Marriage officer in the territories to which this Act extends if the following conditions are fulfilled, namely:--

(a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;

(b) neither party has at the time of registration more than one spouse living;

(c) neither party is an idiot or a lunatic at the time of registration;

(d) the parties have completed the age of twenty-one years at the time of registration;

(e) the parties are not within the degrees of prohibited relationship:

Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

Special Marriage Act, 1954 - Section 43 - Penalty On Married Person Marrying Again Under This Act:

Save as otherwise provided in Chapter III, every person who, being at the time married, procures, a marriage of himself or herself to be solemnized under this Act shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code, 1860 (45 of 1860), as the case may be, and the marriage so solemnized shall be void.

Go Back to Section 82, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 84 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 198 - Place of inquiry or trial:

(a) When it is uncertain in which of several local areas an offence was committed; or

(b) where an offence is committed partly in one local area and partly in another; or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one; or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Go Back to Section 84, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 85 of Bharatiya Nyaya Sanhita, 2023:

Divorce Act, 1869 - Section 52 - Competence of Husband and Wife To Give Evidence As To Cruelty or Desertion:

On any petition presented, by a husband or a wife, praying that his or her marriage may be dissolved by reason of his wife or her husband, as the case may be, having been guilty of adultery, cruelty or desertion the husband and wife re-spectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

Hindu Marriage Act, 1955 - Section 13 – Divorce:

(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(i) has, after the solemnization of the marriage, had voluntary sexual inter-course with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(ii) has ceased to be a Hindu by conversion to another religion; or

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.-

In this clause,-

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or

(v) has been suffering from venereal disease in a communicable form; or

vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;

Explanation.-In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution or conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,-

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; or

(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898)], a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation.-This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).

Protection of Women from Domestic Violence Act, 2005 - Section 3 - Definition of Domestic Violence:

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.--For the purposes of this section,--

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

Dissolution of Muslim Marriages Act, 1939 - Section 2 - Grounds For Decree For Dissolution of Marriage:

A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely.--

(i) that the whereabouts of the husband have not been known for a period of four years;

(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;

(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

(iv) that the husband has failed to perform, without reasonable cause his marital obligations for a period of three years;

(v) that the husband was impotent at the time of the marriage and continues to be so;

(vi) that the husband has been insane for a period of two years or is suffering from a virulent venereal disease;

(vii) that she having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years:

Provided that the marriage has not been consummated:.--

(viii) that the husband treats her with cruelty, that is to say.--

(a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or

(b) associates with women of evil repute or leads an infamous life, or

(c) attempts to force her to lead an immoral life, or

(d) disposes of her property or prevents her exercising her legal rights over it, or

(e) obstructs her in the observance of her religious profession or practice, or

(f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran;

(ix) or any other ground which is recognised as valid for the dissolution of marriages under Muslim law:

Provided that.--

(a) no decree shall be passed on ground (iii) until the sentence has become final;

(b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and

(c) before passing a decree on ground (v) the Court shall on application by the husband, make an order requiring the husband to satisfy the Court, within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

Divorce Act, 1869 - Section 10 - Grounds For Dissolution of Marriage:

(1) Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the Dis-trict Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent --

(i) has committed adultery; or

(ii) has ceased to be Christian by conversion to another religion; or

(iii) has been incurably of unsound mind for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(v) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from venereal disease in a communi-cable form; or

(vi) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive; or

(vii) has wilfully refused to consummate the marriage and the marriage has not therefore been consummated; or

(viii) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent; or

(ix) has deserted the petitioner for at least two years immediately preced-ing the presentation of the petition; or

(x) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.

(2) A wife may also present a petition for the dissolution of her marriage on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality."

Bharatiya Sakshya Act, 2023 - Section 117 - Presumption as to abetment of suicide by a married woman:

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide

within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. – For the purposes of this section, "cruelty" shall have the same meaning as in section 86 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 85, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 98 of Bharatiya Nyaya Sanhita, 2023:

The Immoral Traffic (Prevention) Act, 1956 - Section 5 - Procuring, Inducing or Taking Person For The Sake of Prostitution:

(1) Any person who-

(a) procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution; or

(b) induces a person to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a person, or causes a person to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a person to carry on prostitution;

shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-Section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this sub-Section,-

(i) is a child, the punishment provided under this sub-Section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub-Section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;

(3) An offence under this Section shall be triable-

(a) in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such person is made; or

(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.

The Immoral Traffic (Prevention) Act, 1956 - Section 6 - Detaining A Person In Premises Where Prostitution Is Carried On:

(1) Any person who detains any other person, whether with or without his consent,-

(a) in any brothel, or

(b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).

(2A) Where a child or minor found in a brothel, is on medical examination, detected to have been sexually abused, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.

(3) A person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there,-

(a) withholds from her any jewellery, wearing apparel, money or other property belonging to her, or

(b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.

(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.

The Immoral Traffic (Prevention) Act, 1956 - Section 8 - Seducing or Soliciting For Purpose of Prostitution:

Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not-

(a) by words, gestures, willful exposure of his person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution; or

(b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution,

shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with line which may extend to five hundred rupees:

Provided that where an offence under this section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.

But, a man who commits any of offences under this section, shall be punishable with imprisonment for not less than 7 days but upto 3 months.

Go Back to Section 98, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 107 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Sakshya Act, 2023 - Section 117 - Presumption as to abetment of suicide by a married woman:

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard

to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. – For the purposes of this section, "cruelty" shall have the same meaning as in section 86 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 107, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 108 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Sakshya Act, 2023 - Section 117 - Presumption as to abetment of suicide by a married woman:

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. – For the purposes of this section, "cruelty" shall have the same meaning as in section 86 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 108, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 114 of Bharatiya Nyaya Sanhita, 2023:

Indian Railways Act, 1890 - Section 127 - Maliciously hurting or attempting to hurt persons travelling by railway:

If a person unlawfully throws or causes to fall or strike at, against, into or upon any rolling-stock forming part of a train any wood, stone or other matter or thing with intent, or with

knowledge that he is likely, to endanger the safety of any person being in or upon such rolling-stock or in or upon any other rolling-stock forming part of the same train, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years.

Metro Railway (Operations and Maintenance) Act, 2002 - Section 76 - Maliciously Hurting or Attempting to Hurt Persons Travelling By Metro Railway:

If any person unlawfully throws or causes to fall or strike at, against, into or upon any rolling stock forming part of a train, any wood, stone or other matter or thing with intent, or with knowledge that it is likely to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train, he shall be punishable with imprisonment for life or with imprisonment for a term which may extend to ten years.

Railways Act, 1989 - Section 152 - Maliciously Hurting or Attempting to Hurt Persons Travelling By Railway:

If any person unlawfully throws or causes to fall or strike at, against, into or upon any rolling stock forming part of a train, any wood, stone or other matter or thing with intent, or with knowledge that he is likely to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train, he shall be punishable with imprisonment for life, or with imprisonment for a term which may extend to ten years.

Go Back to Section 114, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 115 of Bharatiya Nyaya Sanhita, 2023:

Indian Railways Act, 1890 - Section 127 - Maliciously hurting or attempting to hurt persons travelling by railway:

If a person unlawfully throws or causes to fall or strike at, against, into or upon any rolling-stock forming part of a train any wood, stone or other matter or thing with intent, or with knowledge that he is likely, to endanger the safety of any person being in or upon such rolling-stock or in or upon any other rolling-stock forming part of the same train, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years.

Metro Railway (Operations and Maintenance) Act, 2002 - Section 76 - Maliciously Hurting or Attempting to Hurt Persons Travelling By Metro Railway:

If any person unlawfully throws or causes to fall or strike at, against, into or upon any rolling stock forming part of a train, any wood, stone or other matter or thing with intent, or with knowledge that it is likely to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train, he shall be punishable with imprisonment for life or with imprisonment for a term which may extend to ten years.

Railways Act, 1989 - Section 152 - Maliciously Hurting or Attempting to Hurt Persons Travelling By Railway:

If any person unlawfully throws or causes to fall or strike at, against, into or upon any rolling stock forming part of a train, any wood, stone or other matter or thing with intent, or with knowledge that he is likely to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train, he

shall be punishable with imprisonment for life, or with imprisonment for a term which may extend to ten years.

Go Back to Section 115, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 116 of Bharatiya Nyaya Sanhita, 2023:

Motor Vehicles Act, 1988 - Section 164 - Payment of Compensation In Case of Death or Grievous Hurt, Etc.:

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.

(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.

Go Back to Section 116, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 117(1) of Bharatiya Nyaya Sanhita, 2023:

Motor Vehicles Act, 1988 - Section 164 - Payment of Compensation In Case of Death or Grievous Hurt, Etc.:

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.

(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.

Go Back to Section 117(1), Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 123 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 368 - Procedure in case of person of unsound mind tried before Court:

(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such

unsoundness of mind and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) If during trial, the Magistrate or Court of Session finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be, shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind:

Provided that if the accused is aggrieved by the information given by the psychiatrist or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of--

(a) head of psychiatry unit in the nearest Government hospital; and

(b) a faculty member in psychiatry in the nearest Government medical college.

(3) If the Magistrate or Court is informed that the person referred to in sub-section (2) is a person of unsound mind, the Magistrate or Court shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no prima facie case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in the manner provided under section 369:

Provided that if the Magistrate or Court finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

(4) If the Magistrate or Court finds that a prima facie case is made out against the accused and he is incapable of entering defence by reason of intellectual disability, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 369.

Bharatiya Nagarik Suraksha Sanhita, 2023 -Section 369 - Release of person of unsound mind pending investigation or trial:

(1) Whenever a person if found under section 367 or section 368 to be incapable of entering defence by reason of unsoundness of mind or intellectual disability, the Magistrate or Court, as the case may be, shall, whether the case is one in which bail may be taken or not, order release of such person on bail:

Provided that the accused is suffering from unsoundness of mind or intellectual disability which does not mandate in-patient treatment and a friend or relative undertakes to obtain regular out-patient psychiatric treatment from the nearest medical facility and to prevent from doing injury to himself or to any other person.

(2) If the case is one in which, in the opinion of the Magistrate or Court, as the case may be, bail cannot be granted or if an appropriate undertaking is not given, he or it shall order the accused to be kept in such a place where regular psychiatric treatment can be provided, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a public mental health establishment shall be made otherwise than in accordance with such rules as the State Government may have made under the Mental Healthcare Act, 2017 (10 of 2017).

(3) Whenever a person is found under section 367 or section 368 to be incapable of entering defence by reason of unsoundness of mind or intellectual disability, the Magistrate or Court, as the case may be, shall keeping in view the nature of the act committed and the extent of unsoundness of mind or intellectual disability, further determine if the release of the accused can be ordered:

Provided that--

(a) if on the basis of medical opinion or opinion of a specialist, the Magistrate or Court, as the case may be, decide to order discharge of the accused, as provided under section 367 or section 368, such release may be ordered, if sufficient security is given that the accused shall be prevented from doing injury to himself or to any other person;

(b) if the Magistrate or Court, as the case may be, is of the opinion that discharge of the accused cannot be ordered, the transfer of the accused to a residential facility for persons with unsoundness of mind or intellectual disability may be ordered wherein the accused may be provided care and appropriate education and training.

Go Back to Section 123, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 128 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 148 - Dispersal of assembly by use of civil force:

(1) Any Executive Magistrate or officer in charge of a police station or, in the absence of such officer in charge, any police officer, not below the rank of a sub-inspector, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Executive Magistrate or police officer referred to in sub-section (1), may proceed to disperse such assembly by force, and may require the assistance of any person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form

part of it, in order to disperse such assembly or that they may be punished according to law.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 147 - Enforcement of order of maintenance:

A copy of the order of maintenance or interim maintenance and expenses of proceedings, as the case may be, shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be, is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance, or as the case may be, expenses, due.

Go Back to Section 128, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 130 of Bharatiya Nyaya Sanhita, 2023:

National Security Guard Act, 1986 - Section 22 - Assault and Obstruction:

Any person subject to this Act who commits any of the following offences, that is to say,-

(a) being concerned in any quarrel, affray or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to, or assaults any such officer; or

(b) uses criminal force to, or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or

(c) resists an escort whose duty it is to apprehend him or have him in charge; or

(d) breaks out of barracks, camp or quarters; or

(e) refuses to obey any general, local or other order,

shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend, in the case of offences specified in clauses (d) and (e), to two years, and in the case of the offences specified in the other clauses, to ten years, or in either case such less punishment as is in this Act mentioned.

Protection of Children from Sexual offences Act, 2012 - Section 3 - Penetrative Sexual Assault:

A person is said to commit "penetrative sexual assault" if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

Protection of Children from Sexual offences Act, 2012 - Section 4 - Punishment For Penetrative Sexual Assault:

Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

Protection of Children from Sexual offences Act, 2012 - Section 5 - Aggravated Penetrative Sexual Assault:

(a) Whoever, being a police officer, commits penetrative sexual assault on a child —

(i) within the limits of the police station or premises at which he is appointed; or

(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as, a police officer; or

(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the forces or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child.

Explanation. – When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public,

is said to commit aggravated penetrative sexual assault.

Protection of Children from Sexual offences Act, 2012 - Section 6 - Punishment For Aggravated Penetrative Sexual Assault:

Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

Protection of Children from Sexual offences Act, 2012- Section 7 - Sexual Assault:

Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

Protection of Children from Sexual offences Act, 2012 - Section 8 - Punishment For Sexual Assault:

Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

Protection of Children from Sexual offences Act, 2012- Section 9 - Aggravated Sexual Assault:

(a) Whoever, being a police officer, commits sexual assault on a child—

(i) within the limits of the police station or premises where he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as a police officer; or

(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the security or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or

(g) whoever commits gang sexual assault on a child.

Explanation. – when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

(ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or

(l) whoever commits sexual assault on the child more than once or repeatedly; or

(m) whoever commits sexual assault on a child below twelve years; or

(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or

(o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or

(p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits sexual assault on a child knowing the child is pregnant; or

(r) whoever commits sexual assault on a child and attempts to murder the child; or

(s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated sexual assault.

Protection of Children from Sexual offences Act, 2012 - Section 10 - Punishment For Aggravated Sexual Assault:

Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Go Back to Section 130, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 137(1) of Bharatiya Nyaya Sanhita, 2023:

Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 84 - Kidnapping and Abduction of Child:

For the purposes of this Act, the provisions of sections 359 to 369 of the Indian Penal Code (45 of 1860), shall mutatis mutandis apply to a child or a minor who is under the age of eighteen years and all the provisions shall be construed accordingly.

Guardians and Wards Act, 1890 - Section 7 - Power of The Court To Make orders As To Guardianship:

(1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made—

(a) appointing a guardian of his person or property or both, or (b) declaring a person to be such a guardian,

the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

Hindu Minority and Guardianship Act, 1956 - Section 7 - Natural Guardianship of Adopted Son:

The natural guardianship of an adopted son who is a minor passes, on adoption, to the adoptive father and after him to the adoptive mother.

Hindu Widows' Remarriage Act, 1856 - Section 3 - Guardianship of Children of Deceased Husband On The Remarriage of His Widow:

On the re-marriage of a Hindu widow, if neither the widow nor any other person has been expressly constituted by the will or testamentary disposition of the deceased husband the guardian of his children the father or paternal grandfather or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who when appointed shall be entitled to have the care and custody of the said children, or of any of them during their minority, in the place of their mother; and in making such appointment the Court shall be guided, so far as may be by the laws and rules in force touching the guardianship of children who have neither father nor mother:

Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

Go Back to Section 137, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 137(2) of Bharatiya Nyaya Sanhita, 2023:

Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 24 - Removal of Disqualification On The Findings of An offence:

(1) Notwithstanding anything contained in any other law for the time being in force, a child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attached to a conviction of an offence under such law:

Provided that in case of a child who has completed or is above the age of sixteen years and is found to be in conflict with law by the Children's Court under clause (i) of sub-section (1) of section 19, the provisions of sub-section (1) shall not apply.

(2) The Board shall make an order directing the Police, or by the Children's court to its own registry that the relevant records of such conviction shall be destroyed after the expiry of the period of appeal or, as the case may be, a reasonable period as may be prescribed:

Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub-section (1) of section 19, the relevant records of conviction of such child shall be retained by the Children's Court.

Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 76 - Employment of Child For Begging:

(1) Whoever employs or uses any child for the purpose of begging or causes any child to beg shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees:

Provided that, if for the purpose of begging, the person amputates or maims the child, he shall be punishable with rigorous imprisonment for a term not less than seven years which may extend up to ten years, and shall also be liable to fine of five lakh rupees.

(2) Whoever, having the actual charge of, or control over the child, abets the commission of an offence under sub-section (1), shall be punishable with the same punishment as provided for in sub-section (1) and such person shall be considered to be unfit under sub-clause (v) of clause (14) of section 2:

Provided that the said child, shall not be considered a child in conflict with law under any circumstances, and shall be removed from the charge or control of such guardian or custodian and produced before the Committee for appropriate rehabilitation.

The Juvenile Justice Act, 1986 - Section 42 - Employment of Juveniles For Begging:

(1) Whoever employs or uses any juvenile for the purposes of begging or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever, having the actual charge of, or control over, a juvenile abets the commission of the offence punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine.

(3) Tile offence punishable under this section shall be cognizable.

Go Back to Section 137(2), Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 138 of Bharatiya Nyaya Sanhita, 2023:

Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 84 - Kidnapping and Abduction of Child:

For the purposes of this Act, the provisions of sections 359 to 369 of the Indian Penal Code (45 of 1860), shall mutatis mutandis apply to a child or a minor who is under the age of eighteen years and all the provisions shall be construed accordingly.

Go Back to Section 138, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 143 of Bharatiya Nyaya Sanhita, 2023:

Constitution of India - Article 23 - Prohibition of Traffic In Human Beings and Forced Labour:

(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Go Back to Section 143, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 146 of Bharatiya Nyaya Sanhita, 2023:

Protection of Civil Rights Act, 1955 - Section 7A - Unlawful Compulsory Labour To Be Deemed To Be A Practice of "Untouchability":

(1)Whoever compels any person, on the ground of "untouchability", to do any scavenging or sweeping or to remove any carcass or to flay any animal, or to remove the umbilical cord or to do any other job of a similar nature shall be deemed to have enforced a disability arising out of "untouchability".

(2)Whoever is deemed under sub-section (1) to have enforced a disability arising out of "untouchability" shall be punishable with imprisonment for a term which shall not be less than three months and not more than six months and also with fine which shall not be less than one hundred rupees and not more than five hundred rupees.

Explanation-- For the purposes of this section, "compulsion" includes a threat of social or economic boycott.

Go Back to Section 146, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 156 of Bharatiya Nyaya Sanhita, 2023:

Collection of Statistics Act, 2008 - Section 29 - Public Servants:

Any statistics officer and any person authorised for the collection of statistics or preparation of official statistics under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860(45 of 1860).

Go Back to Section 156, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 157 of Bharatiya Nyaya Sanhita, 2023:

Collection of Statistics Act, 2008 - Section 29 - Public Servants:

Any statistics officer and any person authorised for the collection of statistics or preparation of official statistics under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860(45 of 1860).

Go Back to Section 157, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 159 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 37 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes, or conspires with any other persons to cause, any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny; does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to commit such mutiny or any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or

(e) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 37 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes, or conspires with any other person to cause any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d)knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny, or of any such conspiracy, does not, without delay, give information thereof to his commanding or mentioned.

Border Security Force Act, 1968 - Section 17 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his Commandant or other superior officer; or

(e) endeavours to seduce any person in the Force or in the military, naval or air forces of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Security Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 17 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Coast Guard or in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not without delay, give information thereof to his Commanding officer or other superior officer; or

(e) endeavours to seduce any person in the Coast Guard or in the military, naval or air forces of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Coast Guard Court, be liable to suffer death or such less punishment as is in this Act mentioned:

Provided that a sentence of death awarded under this section shall not be carried out unless it is confirmed by the Central Government.

Air Force Act, 1950 - Section 35 - offences Punishable More Severely On Active Service Than At Other Times:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) forces a safeguard, or forces or uses criminal force to a sentry; or

(b) breaks into any house or other place in search of plunder; or

(c) being a sentry sleeps upon his post, or is intoxicated; or

(d) without orders from his superior officer leaves his guard, piquet, patrol or post; or

(e) intentionally or through neglect occasions a false alarm in camp or quarters; or spreads reports calculated to create unnecessary alarm or despondency; or

(f) makes known the parole, watchword or countersign to any person not entitled to receive it; or knowingly gives a parole, watchword or countersign different from what he received: or

(g) without due authority alters or interferes with any air signal;

shall, on conviction by court-martial,

if he commits any such offence when on active service, be liable to suffer imprisonment for a term, which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits any such offence when not on active service, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 19 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,-

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the military, naval or air force of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not without delay, give information thereof to his commanding officer or other superior officer; or

(e) endeavours, to seduce any person in the Force or in the military, naval or air force of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.

National Security Guard Act, 1986 - Section 17 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the security Guard or in the military, naval, air forces or any other armed force of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his Commander or other superior officer; or

(e) endeavours to seduce any person in the Security Guard or in the military, naval, air forces or any other armed force of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Security Guard Court, be liable to suffer death or such less punishment as is in this Act mentioned.

Navy Act, 1957 - Section 42 - Mutiny Defined:

Mutiny means any assembly or combination of two or more persons subject to naval law, the Army Act, 1950, or the Air Force Act, 1950, or between persons two at least of whom are subject to naval law or any such Act,--

(a) to overthrow or resist lawful authority in the Navy, regular Army or Air Force or any part of any one or more of them or any forces co-operating therewith or any part thereof; or

(b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline or with the object of avoiding any duty or service against, or in connection with operations against, the enemy; or

(c) to show contempt to such authority in such circumstances as to make such conduct subversive of discipline; or

(d) to impede the performance of any duty or service in the Navy, regular Army or Air Force or any part of any one or more of them or any forces co-operating therewith or any part thereof.

Navy Act, 1957 - Section 43 - Punishment For Mutiny:

Every person subject to naval law, who,--

(a) joins in a mutiny; or

(b) begins, incites, causes or conspires with any other persons to cause, a mutiny; or

(c) endeavours to incite any person to join in a mutiny or to commit an act of mutiny; or

(d) endeavours to seduce any person in the regular Army, Navy or Air Force from his allegiance to the Constitution or loyalty to the State or duty to his superior officers or uses any means to compel or induce any such person to abstain from acting against the enemy or discourage such person from acting against the enemy; or

(e) does not use his utmost exertions to suppress 1[or prevent] a mutiny; or

(f) willfully conceals any traitorous or mutinous practice or design or any traitorous words spoken against the State; or

(g) knowing or having reason to believe in the existence of any mutiny or of any intention to mutiny does not without delay give information thereof to the commanding officer of his ship or other superior officer; or

(h) utters words of sedition or mutiny; shall be punished with death or such other punishment as is hereinafter mentioned.

Sashastra Seema Bal Act, 2007 - Section 19 – Mutiny:

Any person subject to this Act who commits any of the following offences, namely:--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the military, naval or air force of India or any forces cooperating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his commanding officer or other superior officer; or

(e) endeavours to seduce any person in the Force or in the military, naval or air force of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 57 - Falsifying official Documents and False Declaration:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) in any report, return, list, certificate; book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and. with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Army Act, 1950 – Section 66 – Abetment of offences that have been committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive shall, on conviction by court-martial, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 67 - Abetment of offences punishable with death and not committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38, shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 68 - Abetment of offences punishable with imprisonment and not committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive and punishable with imprisonment shall, on conviction by courl-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Go Back to Section 159, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 160 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 37 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes, or conspires with any other persons to cause, any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny; does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to commit such mutiny or any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or

(e) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 37 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes, or conspires with any other person to cause any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d)knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny, or of any such conspiracy, does not, without delay, give information thereof to his commanding or mentioned.

Border Security Force Act, 1968 - Section 17 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his Commandant or other superior officer; or

(e) endeavours to seduce any person in the Force or in the military, naval or air forces of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Security Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 17 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Coast Guard or in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not without delay, give information thereof to his Commanding officer or other superior officer; or

(e) endeavours to seduce any person in the Coast Guard or in the military, naval or air forces of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Coast Guard Court, be liable to suffer death or such less punishment as is in this Act mentioned:

Provided that a sentence of death awarded under this section shall not be carried out unless it is confirmed by the Central Government.

Air Force Act, 1950 - Section 35 - offences Punishable More Severely On Active Service Than At Other Times:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) forces a safeguard, or forces or uses criminal force to a sentry; or

(b) breaks into any house or other place in search of plunder; or

(c) being a sentry sleeps upon his post, or is intoxicated; or

(d) without orders from his superior officer leaves his guard, piquet, patrol or post; or

(e) intentionally or through neglect occasions a false alarm in camp or quarters; or spreads reports calculated to create unnecessary alarm or despondency; or

(f) makes known the parole, watchword or countersign to any person not entitled to receive it; or knowingly gives a parole, watchword or countersign different from what he received: or

(g) without due authority alters or interferes with any air signal;

shall, on conviction by court-martial,

if he commits any such offence when on active service, be liable to suffer imprisonment for a term, which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits any such offence when not on active service, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 19 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,-

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the military, naval or air force of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not without delay, give information thereof to his commanding officer or other superior officer; or

(e) endeavours, to seduce any person in the Force or in the military, naval or air force of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.

National Security Guard Act, 1986 - Section 17 – Mutiny:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the security Guard or in the military, naval, air forces or any other armed force of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his Commander or other superior officer; or

(e) endeavours to seduce any person in the Security Guard or in the military, naval, air forces or any other armed force of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Security Guard Court, be liable to suffer death or such less punishment as is in this Act mentioned.

Navy Act, 1957 - Section 42 - Mutiny Defined:

Mutiny means any assembly or combination of two or more persons subject to naval law, the Army Act, 1950, or the Air Force Act, 1950, or between persons two at least of whom are subject to naval law or any such Act,--

(a) to overthrow or resist lawful authority in the Navy, regular Army or Air Force or any part of any one or more of them or any forces co-operating therewith or any part thereof; or

(b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline or with the object of avoiding any duty or service against, or in connection with operations against, the enemy; or

(c) to show contempt to such authority in such circumstances as to make such conduct subversive of discipline; or

(d) to impede the performance of any duty or service in the Navy, regular Army or Air Force or any part of any one or more of them or any forces co-operating therewith or any part thereof.

Navy Act, 1957 - Section 43 - Punishment For Mutiny:

Every person subject to naval law, who,--

(a) joins in a mutiny; or

(b) begins, incites, causes or conspires with any other persons to cause, a mutiny; or

(c) endeavours to incite any person to join in a mutiny or to commit an act of mutiny; or

(d) endeavours to seduce any person in the regular Army, Navy or Air Force from his allegiance to the Constitution or loyalty to the State or duty to his superior officers or uses any means to compel or induce any such person to abstain from acting against the enemy or discourage such person from acting against the enemy; or

(e) does not use his utmost exertions to suppress or prevent a mutiny; or

(f) willfully conceals any traitorous or mutinous practice or design or any traitorous words spoken against the State; or

(g) knowing or having reason to believe in the existence of any mutiny or of any intention to mutiny does not without delay give information thereof to the commanding officer of his ship or other superior officer; or

(h) utters words of sedition or mutiny; shall be punished with death or such other punishment as is hereinafter mentioned.

Sashastra Seema Bal Act, 2007 - Section 19 – Mutiny:

Any person subject to this Act who commits any of the following offences, namely:--

(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the military, naval or air force of India or any forces cooperating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his commanding officer or other superior officer; or

(e) endeavours to seduce any person in the Force or in the military, naval or air force of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 68 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 66 inclusive, shall, on conviction by court-martial, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 66 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive shall, on conviction by court-martial, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 43 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 14 to 41 (both inclusive) shall, on conviction by a Security Force Court, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 46 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 15 to 44 (both inclusive), shall, on conviction by a Coast Guard Court, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment provided for that offence or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 46 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 16 to 44 (both inclusive) shall, on conviction by a Force Court, if the act abetted is committed in consequence of the abetment and no express provision is made by the Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 67 - Abetment of offences punishable with death and not committed:

Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38, shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 68 - Abetment of offences punishable with imprisonment and not committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive and punishable with imprisonment shall, on conviction by courl-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Go Back to Section 160, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 161 of Bharatiya Nyaya Sanhita, 2023:

Army Act, 1950 - Section 40 - Striking or threatening superior officers:

Any person

(b) uses threatening language to such officer, or

(c) uses insubordinate language to such officer,

shall, on conviction by court-martial, if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act

Provided that in the case of an offence specified in clause (c), the imprisonment

Air Force Act, 1950 - Section 40 - Striking or threatening superior officers:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) uses criminal force to, or assaults his superior officer, or

(b) uses threatening language to such officer; or

(c) uses insubordinate language to such officer

shall, or, conviction by court-martial,

if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

Coast Guard Act, 1978 - Section 19 - Striking or threatening superior officers:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) uses criminal force to or assaults his superior officer; or

(b) uses threatening language to such officer; or

(c) uses insubordinate language to such officer; or

(d) behaves with contempt to such officer,

shall, on conviction by a Coast Guard Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Provided that in the case of offences specified in clauses (c) and (d), the imprisonment shall not exceed five years.

Navy Act, 1957 - Section 45 - Striking superior officers:

Every person subject to naval law who commits any of the following offences, that is to say,--

(a)strikes or attempts to strike his superior officer; or

(b)draws or lifts up any weapon against such officer; or

(c)uses or attempts to use any violence against such officer;

shall be punished.--

if the offence is committed on active service with imprisonment for a term which may extend to ten years or such other punishment as is hereinafter mentioned; and

in any other case, with imprisonment for a term which may extend to five years or such other punishment as is hereinafter mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 22 - Striking or threatening superior officer:

Any person subject to this Act who commits any of the following offences, that is to say,-

(a) uses criminal force to or assaults his superior officer; or

(b) uses threatening language to such officer; or

(c) uses insubordinate language to such officer,

shall, on conviction by a Force Court,-

(i) if such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

(ii) in other cases be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

National Security Guard Act, 1986 - Section 20 - Striking or threatening superior officer:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) uses criminal force to or assaults his superior officer; or

(b) uses threatening language to such officer; or

(c) uses insubordinate language to such officer, shall, on conviction by a Security Guard Court,--

(i) if such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

(ii) in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of any offence specified in clause (c), the imprisonment shall not exceed five years.

Sashastra Seema Bal Act, 2007 - Section 22 - Striking or threatening superior officer:

Any person subject to this Act who commits any of the following offences, namely:--

(a) uses criminal force to or assaults his superior officer; or

(b) uses threatening language to such officer; or

(c) uses insubordinate language to such officer, shall, on conviction by a Force Court,--

(i) if such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

(ii) in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

Border Security Force Act, 1968 - Section 20 - Striking or threatening superior officer:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a)uses criminal force to or assaults his superior officer; or

(b)uses threatening language to such officer; or

(c)uses insubordinate language to such officer;

shall, on conviction by a Security Force Court,--

(A)if such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

(B)in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

Go Back to Section 161, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 162 of Bharatiya Nyaya Sanhita, 2023:

Army Act, 1950 - Section 66 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive shall, on conviction by court-martial, if the Act abetted is

committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 43 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 14 to 41 (both inclusive) shall, on conviction by a Security Force Court, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 46 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 15 to 44 (both inclusive), shall, on conviction by a Coast Guard Court, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment provided for that offence or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 46 - Abetment of offences That Have Been Committed:

Any person subject to this Act who abets the commission of any of the offences specified in sections 16 to 44 (both inclusive) shall, on conviction by a Force Court, if the act abetted is committed in consequence of the abetment and no express provision is made by the Act

for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Indian Air Force Act, 1932 - Section 57 - Falsifying official Documents and False Declaration:

Any person subject to this Act who commits any of the following offences, that is to say,-

(a) in any report, return list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement, shall, on conviction by Court-Martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 20 - Striking or threatening superior officer:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a)uses criminal force to or assaults his superior officer; or

(b)uses threatening language to such officer; or

(c)uses insubordinate language to such officer;

shall, on conviction by a Security Force Court,--

(A)if such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

(B)in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

Army Act, 1950 - Section 40 - Striking or threatening superior officers:

Any person

(b) uses threatening language to such officer, or

(c) uses insubordinate language to such officer,

shall, on conviction by court-martial, if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act

Provided that in the case of an offence specified in clause (c), the imprisonment

Go Back to Section 162, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 163 of Bharatiya Nyaya Sanhita, 2023:

National Security Guard Act, 1986 - Section 18 - Desertion and aiding desertion:

(1)Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by a Security Guard Court,--

(i)if he commits the offence when on active duty or when under orders for active duty, be liable to suffer death or such less punishment as is in this Act mentioned; and

(ii)if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2)Any person subject to this Act who knowingly harbours any such deserter shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

(3)Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned. (4) For the purposes of this Act, a person deserts,--

(a)if he absents from his unit or the place of duty at any time with the intention of not reporting back to such unit or place, or who, at any time and under any circumstances when absent from his unit or place of duty, does any act which shows that he has an intention of not reporting to such unit or place of duty;

(b)if he absents himself without leave with intent to avoid any active duty.

Border Security Force Act, 1968 - Section 18 - Desertion and aiding desertion:

1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by a Security Force Court,--

(a) if he commits the offence when on active duty or when under order for active duty, be liable to suffer death or such less punishment as is in this Act mentioned; and

(b) if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who knowingly harbours any such deserter shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(3) Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 38 - Desertion and aiding desertion:

subject to this Act who deserts or attempts to desert the service orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and

if he commits the offence under any other' circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

subject to this Act who, knowingly harbours any such deserter mentioned.

subject to this Act, who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some his power to cause such person to be apprehended, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

Air Force Act, 1952 - Section 38 - Desertion and aiding desertion:

(1)Any person subject to this Act who deserts or attempts to desert the service shall on conviction by court-martial,

if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and

if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2)Any person subject to this Act who knowingly harbours any such deserter shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(3)Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be

apprehended, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 16 - Deserting post and neglect of duty:

Any person subject to this Act, who,--

(a) treacherously holds correspondence with, or communicates intelligence to, an offender; or

(b) willfully fails to make known to the proper authorities any information he may have received from an offender; or

(c) assists the offender in any manner; or

(d) having been captured by an offender, voluntarily serves with or aids him,

shall, on conviction by a Coast Guard Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Explanation.-- For the purposes of this section, "offender" includes--

(a) all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to this Act to take action; and

(b) any person or persons engaged in smuggling, unlawful exploration or exploitation or any other unlawful activity in the maritime zones of India.

Indo-Tibetan Border Police Force Act, 1992 - Section 20 - Desertion and aiding desertion:

(1) Any person subject to this Act deserts or attempts to desert the service shall, on conviction by a Force Court-

(a) if he commits the offence when on active duty or when under orders for active duty, be liable to suffer death or such less punishment as is in this Act mentioned; and

(b) if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who knowingly harbours any such deserter shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in the Act mentioned.

(3) Any reason subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such pension to be apprehended, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

(4) For the purposes of this Act, a person deserts,-

(a) if he absents from his unit or the place of duty at any time with the intention of not reporting back to such unit or place, or who, at any time and under any circumstances when absent from his unit or place of duty, does any act which shows that he has an intention of not reporting to such unit or place of duty;

(b) if he absents himself without leave with intent to avoid any active duty.

Navy Act, 1957 - Section 41 - Deserting post and neglect of duty:

Every person subject to naval law, who,--

(a) deserts his post; or

(b) sleeps upon his watch; or

(c) fails to perform or negligently performs the duty imposed on him; or

(d) willfully conceals any words, practice or design tending to the hindrance of the naval service;

shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

Go Back to Section 163, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 170 of Bharatiya Nyaya Sanhita, 2023:

Indian Telegraph Act, 1885 - Section 31 – Bribery:

A telegraph officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code, 1860 (45 of 1860); and in the definition of "legal remuneration" contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act.

Go Back to Section 170, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 173 of Bharatiya Nyaya Sanhita, 2023:

Indian Telegraph Act, 1885 - Section 31 – Bribery:

A telegraph officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code, 1860 (45 of 1860); and in the definition of "legal remuneration" contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act.

Go Back to Section 173, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 174 of Bharatiya Nyaya Sanhita, 2023:

The Representation of People Act, 1951 - Section 123(2) - Corrupt Practices:

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

Provided that--

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who-

(i) thereatens any candidate or any elector, or any person in whom a candidate or an elector interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

Indian Contract Act, 1872 - Section 16 - 'Undue Influence' Defined:

(1) A Contract is said to be induced by `undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another-

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other.

(4) Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872).

Illustrations

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services, B employs undue influence.

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts

the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

Go Back to Section 174, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 178 of Bharatiya Nyaya Sanhita, 2023:

Coinage Act, 2011 - Section 2(a) - "Coin":

"coin" means any coin which is made of any metal or any other material stamped by the Government or any other authority empowered by the Government in this behalf and which is a legal tender including commemorative coin and Government of India one rupee note.

Explanation. – For the removal of doubts, it is hereby clarified that a "coin" does not include the credit card, debit card, postal order and e-money issued by any bank, post office or financial institution;

Coinage Act, 2011 - Section 10 - Power To Certain Persons To Cut Counterfeit Coins:

Where any coin minted or issued by or under the authority of the Government is tendered to any person authorised by the Government under section 9 and such person has reason to believe that the coin is counterfeit, he shall by himself or through another person cut or break the coin, and the tenderer shall bear the loss caused by such cutting or breaking.

Indian Stamp Act, 1899 - Section 2(26):

"stamp" means any mark, seal or endorsement by any agency or person duly authorised by the State Government, and includes an adhesive or impressed stamp, for the purposes of duty chargeable under this Act.

Go Back to Section 178, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 179 of Bharatiya Nyaya Sanhita, 2023:

Coinage Act, 2011 - Section 2(a) - "Coin":

"coin" means any coin which is made of any metal or any other material stamped by the Government or any other authority empowered by the Government in this behalf and which is a legal tender including commemorative coin and Government of India one rupee note.

Explanation. – For the removal of doubts, it is hereby clarified that a "coin" does not include the credit card, debit card, postal order and e-money issued by any bank, post office or financial institution;

Go Back to Section 179, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 189 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 130 - order to be made:

When a Magistrate acting under section 126, section 127, section 128 or section 129, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number of sureties, after considering the sufficiency and fitness of sureties.

Go Back to Section 189, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 195 of Bharatiya Nyaya Sanhita, 2023:

National Security Guard Act, 1986 - Section 22 - Assault and Obstruction:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) being concerned in any quarrel, affray or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to, or assaults any such officer; or

(b) uses criminal force to, or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or

(c) resists an escort whose duty it is to apprehend him or have him in charge; or

(d) breaks out of barracks, camp or quarters; or

(e) refuses to obey any general, local or other order,

shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend, in the case of offences specified in clauses (d) and (e), to two years, and in the case of the offences specified in the other clauses, to ten years, or in either case such less punishment as is in this Act mentioned.

Go Back to Section 195, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 203 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 Section 527 - Public servant concerned in sale not to purchase or bid for property

A public servant having any duty to perform in connection with the sale of any property under this Sanhita shall not purchase or bid for the property.

Go Back to Section 203, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 205 of Bharatiya Nyaya Sanhita, 2023:

Collection of Statistics Act, 2008 - Section 29 - Public Servants:

Any statistics officer and any person authorised for the collection of statistics or preparation of official statistics under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Go Back to Section 205, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 208 of Bharatiya Nyaya Sanhita, 2023:

Collection of Statistics Act, 2008 - Section 29 - Public Servants:

Any statistics officer and any person authorised for the collection of statistics or preparation of official statistics under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Go Back to Section 208, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 209 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 90 - Issue of warrant in lieu of, or in addition to, summons:

A Court may, in any case in which it is empowered by this Sanhita to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest--

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 84 - Proclamation for person absconding:

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:--

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence which is made punishable with imprisonment of ten years or more, or imprisonment for life or with death under the Bharatiya Nyaya Sanhita, 2023 or under any other law for the time being in force, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 203 - offence committed on journey or voyage:

When an offence is committed whilst the person by or against whom, or the thing in respect of which, the offence is committed is in the course of performing a journey or voyage, the offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage.

Go Back to Section 209, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 227 of Bharatiya Nyaya Sanhita, 2023:

The Administrator-General's Act, 1913 - Section 51 - False Evidence:

Whoever, during any examination authorised by this Act, makes upon oath a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Administrators-General Act, 1963 - Section 50 - Power To Make Rules:

(1) The Government shall make rules for carrying into effect the objects of this Act and for regulating the proceedings of the Administrator General.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for--

(a) the accounts to be kept by the Administrator General and the audit and inspection thereof,

(b) the safe custody, deposit and investment of assets and securities which come into the hands of the Administrator General,

(c) the remittance of sums of money in the hands of the Administrator General, in cases in which such remittances are required,

(d) subject to the provisions of this Act, the fees to be paid under this Act, and the collection and accounting for any such fees,

(e) the statements, schedules and other documents to be submitted to the Government or to any other authority by the Administrator General, and the publication of such statements, schedules or other documents,

(f) the realization of the cost of preparing any such statements, schedules or other such documents,

(g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed,

(h) the manner in which summonses issued under the provisions of section 46 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination, and

(i) any matter in this Act directed to be prescribed.

(3) All rules made under this Act shall be published in the official Gazette and, on such publication, shall have effect as if enacted in this Act.

Air Force Act, 1950 - Section 120 - Prohibition of Second Trial:

When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under section 82 or section 86, he shall not be liable to be tried again for the same offence by a court-martial or dealt with under the said sections.

Army Act, 1950 - Section 60 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any court-martial or other court competent under this Act to admin-ister an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 38 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Security Force Court or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Marine Act, 1887 - Section 35 - False Evidence:

A person subject to this Act who, when examined on oath before an Indian Marine Court or a commanding officer exercising jurisdiction under this Act, intentionally gives false evidence, shall suffer imprisonment for a term which may extend to seven years.

Indo-Tibetan Border Police Force Act, 1992 - Section 41 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Force Court or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

National Security Guard Act, 1986 - Section 37 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Security Guard Court, or before any officer competent under this Act to administer oath or affirmation or before a Court of inquiry constituted under this Act, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Sashastra Seema Bal Act, 2007 - Section 41 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Force Court or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Go Back to Section 227, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 228 of Bharatiya Nyaya Sanhita, 2023:

The Administrator-General's Act, 1913 - Section 51 - False Evidence:

Whoever, during any examination authorised by this Act, makes upon oath a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Administrators-General Act, 1963 - Section 50 - Power To Make Rules:

(1) The Government shall make rules for carrying into effect the objects of this Act and for regulating the proceedings of the Administrator General.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for--

(a) the accounts to be kept by the Administrator General and the audit and inspection thereof,

(b) the safe custody, deposit and investment of assets and securities which come into the hands of the Administrator General,

(c) the remittance of sums of money in the hands of the Administrator General, in cases in which such remittances are required,

(d) subject to the provisions of this Act, the fees to be paid under this Act, and the collection and accounting for any such fees,

(e) the statements, schedules and other documents to be submitted to the Government or to any other authority by the Administrator General, and the publication of such statements, schedules or other documents,

(f) the realization of the cost of preparing any such statements, schedules or other such documents,

(g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed,

(h) the manner in which summonses issued under the provisions of section 46 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination, and

(i) any matter in this Act directed to be prescribed.

(3) All rules made under this Act shall be published in the official Gazette and, on such publication, shall have effect as if enacted in this Act.

Air Force Act, 1950 - Section 120 - Prohibition of Second Trial:

When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under section 82 or section 86,

he shall not be liable to be tried again for the same offence by a court-martial or dealt with under the said sections.

Army Act, 1950 - Section 60 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any court-martial or other court competent under this Act to admin-ister an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 38 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Security Force Court or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Marine Act, 1887 - Section 35 - False Evidence:

A person subject to this Act who, when examined on oath before an Indian Marine Court or a commanding officer exercising jurisdiction under this Act, intentionally gives false evidence, shall suffer imprisonment for a term which may extend to seven years.

Indo-Tibetan Border Police Force Act, 1992 - Section 41 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Force Court or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

National Security Guard Act, 1986 - Section 37 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Security Guard Court, or before any officer competent under this Act to administer oath or affirmation or before a Court of inquiry constituted under this Act, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Sashastra Seema Bal Act, 2007 - Section 41 - False Evidence:

Any person subject to this Act who, having been duly sworn or affirmed before any Force Court or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Go Back to Section 228, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 229 of Bharatiya Nyaya Sanhita, 2023:

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 - Section 14 - Punishment For False or Malicious Complaint and False Evidence:

(1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

Companies Act, 2013 - Section 449 - Punishment for False Evidence:

Save as otherwise provided in this Act, if any person intentionally gives false evidence--

(a) upon any examination on oath or solemn affirmation, authorised under this Act; or

(b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act,

he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 383 -Summary procedure for trial for giving false evidence:

(1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to one thousand rupees, or with both.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

(3) Nothing in this section shall affect the power of the Court to make a complaint under section 379 for the offence, where it does not choose to proceed under this section.

(4) Where, after any action is initiated under sub-section (1), it is made to appear to the Court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.

Go Back to Section 229, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 232 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 216 - Procedure for witnesses in case of threatening, etc.:

A witness or any other person may file a complaint in relation to an offence under section 232 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 232, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 235 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 57 - Falsifying official Documents and False Declaration:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) in any report, return, list, certificate; book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and. with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Go Back to Section 235, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 237 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 57 - Falsifying official Documents and False Declaration:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) in any report, return, list, certificate; book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and. with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Air Force Act, 1950 - Section 116 - Composition of Summary General Court-Martial:

A, summary, general court-mar-tial shall consist of not less than three officers.

Go Back to Section 237, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 246 of Bharatiya Nyaya Sanhita, 2023:

Disaster Management Act, 2005 - Section 52 - Punishment for false claim:

Whoever knowingly makes a claim which he knows or has reason to believe to be false for obtaining any relief, assistance, repair, reconstruction or other benefits consequent to disaster from any officer of the Central Government, the State Government, the National Authority, the State Authority or the District Authority, shall, on conviction be punishable with imprisonment for a term which may extend to two years, and also with fine.

Metro Railway (Operations and Maintenance) Act, 2002 - Section 80 - Penalty for making a false claim for compensation:

If any person requiring compensation from the metro railway administration under Chapter X makes a claim which is false or which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Go Back to Section 246, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 249 of Bharatiya Nyaya Sanhita, 2023:

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 27A - Punishment for financing illicit traffic and harbouring offenders:

Whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (i) to (v) of 2[clause (viiib) of section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

official Secrets Act, 1923 - Section 13 - Restriction on trial of offences:

(1) No court (other than that of a Magistrate of the first class specially empowered in this behalf by the Appropriate Government which is inferior to that of a District or Presidency Magistrate, shall try any offence under this Act.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed, claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that court, notwithstanding that it is not a case exclusively triable by that court.

(3) No court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the Appropriate Government or some-officer empowered by the Appropriate Government in this behalf:

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in India in which the offender may be found.

(5) In this section, the appropriate Government means--

(a) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the State Government; and

(b) in relation to any other offence, the Central Government.

Go Back to Section 249, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 253 of Bharatiya Nyaya Sanhita, 2023:

official Secrets Act, 1923 - Section 13 - Restriction on trial of offences:

(1) No court (other than that of a Magistrate of the first class specially empowered in this behalf by the Appropriate Government which is inferior to that of a District or Presidency Magistrate, shall try any offence under this Act.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed, claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that court, notwithstanding that it is not a case exclusively triable by that court.

(3) No court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the Appropriate Government or some-officer empowered by the Appropriate Government in this behalf:

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in India in which the offender may be found.

(5) In this section, the appropriate Government means--

(a) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the State Government; and

(b) in relation to any other offence, the Central Government.

Go Back to Section 253, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 254 of Bharatiya Nyaya Sanhita, 2023:

official Secrets Act, 1923 - Section 13 - Restriction on trial of offences:

(1) No court (other than that of a Magistrate of the first class specially empowered in this behalf by the Appropriate Government which is inferior to that of a District or Presidency Magistrate, shall try any offence under this Act.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed, claims to be tried by the Court of Session, the Magistrate shall,

if he does not discharge the accused, commit the case for trial by that court, notwithstanding that it is not a case exclusively triable by that court.

(3) No court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the Appropriate Government or some-officer empowered by the Appropriate Government in this behalf:

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in India in which the offender may be found.

(5) In this section, the appropriate Government means--

(a) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the State Government; and

(b) in relation to any other offence, the Central Government.

Go Back to Section 254, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 266 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 178 - Cancellation of Conditional Pardon, Release On Parole or Remission:

(1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of, the Court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of transportation, imprisonment or detention is carried into effect under the provisions of sub-section (1), shall undergo only the unexpired portion of his sentence.

Army Act, 1950 - Section 180 - Cancellation of Conditional Pardon, Release On Parole or Remission:

(1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of transportation* or imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.

Border Security Force Act - Section 129 - Cancellation of Conditional Pardon, Release On Parole or Remission:

(1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.

Border Security Force Act, 1968 Section 129: Cancellation of conditional pardon, release on parole or remission:

(1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.

National Security Guard Act, 1986 - Section 125 - Cancellation of Conditional Pardon, Release On Parole or Remission:

Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil prison, a warrant in accordance with such order shall be forwarded by the officer making the order or his staff officer or such other person as may be prescribed, to the officer in charge of the prison in which such person is confined.

Go Back to Section 266, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 270 of Bharatiya Nyaya Sanhita, 2023:

Code of Civil Procedure, 1908 - Section 91 - Public Nuisances and Other Wrongful Acts Affecting The Public:

(1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,--

(a) by the Advocate-General, or

(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 162 -Magistrate may prohibit repetition or continuance of public nuisance:

A District Magistrate or Sub-divisional Magistrate, or any other Executive Magistrate or Deputy Commissioner of Police empowered by the State Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Bharatiya Nyaya Sanhita, 2023, or any special or local law.

Go Back to Section 270, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 274 of Bharatiya Nyaya Sanhita, 2023:

Prevention of Food Adulteration Act, 1954 - Section 2(ia) - "Adulterated":

an article of food shall be deemed to be adulterated --

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(b) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof;

(c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;

(d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof;

(e) if the article has been prepared, packed or kept under in sanitary conditions whereby it has become contaminated or injurious to health;

(f) if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;

(g) if the article is obtained from a diseased animal;

(h) if the article contains any poisonous or other ingredient which renders it injurious to health;

(i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;

(j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;

(k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

(l) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, which renders it injurious to health;

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the

control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.

Explanation: Where two or more articles of primary food are mixed together and the resultant article of food--

(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and

(b) is not injurious to health,

then, such resultant article shall not be deemed to be adulterated within the meaning of this clause;

Go Back to Section 274, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 276 of Bharatiya Nyaya Sanhita, 2023:

Drugs and Cosmetics Act, 1940 - Section 9A - Adulterated Drugs:

For the purposes of this Chapter, a drug shall be deemed to be adulterated,--

(a) if it consists, in whole or in part, of any filthy, putrid or decomposed substance; or

(b) if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic substance which may render it injurious to health; or

(f) if any substance has been mixed therewith so as to reduce its quality or strength.

Drugs and Cosmetics Act, 1940 - Section 17A - Adulterated Drugs:

For the purposes of this Chapter, a drug shall be deemed to be adulterated,--

(a) if it consists in whole or in part, of any filthy, putrid or decomposed substance; or

(b) if it has been prepared, packed or stored under in sanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic substance which may render it injurious to health; or

(f) if any substance! has been mixed therewith so as to reduce its quality or strength.

Drugs and Cosmetics Act, 1940 - Section 33EE - Adulterated Drugs:

For the purposes of this Chapter, an Ayurvedic, Siddha or Unani drug shall be deemed to be adulterated,--

(a) if it consists, in whole or in part, of any filthy, putrid or decomposed Substance; or

(b) if it has been prepared, packed or stored under unsanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed, in whole or in part, of any poisonous or deleterious Substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic Substance which may render it injurious to health; or

(f) if any substance has been mixed therewith so as to reduce its quality or strength.

Explanation.--For the purpose of clause (a), a drug shall not be deemed to consist, in whole or in part, of any decomposed substance only by reason of the fact that such decomposed substance is the result of any natural decomposition of the drug:

Provided that such decomposition is not due to any negligence on the part of the manufacturer of the drug or the dealer thereof and that it does not render the drug injurious to health.

Go Back to Section 276, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 277 of Bharatiya Nyaya Sanhita, 2023:

Drugs and Cosmetics Act, 1940 - Section 9A - Adulterated Drugs:

For the purposes of this Chapter, a drug shall be deemed to be adulterated,--

(a) if it consists, in whole or in part, of any filthy, putrid or decomposed substance; or

(b) if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic substance which may render it injurious to health; or

(f) if any substance has been mixed therewith so as to reduce its quality or strength.

Drugs and Cosmetics Act, 1940 - Section 17A - Adulterated Drugs:

For the purposes of this Chapter, a drug shall be deemed to be adulterated,--

(a) if it consists in whole or in part, of any filthy, putrid or decomposed substance; or

(b) if it has been prepared, packed or stored under in sanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic substance which may render it injurious to health; or

(f) if any substance! has been mixed therewith so as to reduce its quality or strength.

Drugs and Cosmetics Act, 1940 - Section 33EE - Adulterated Drugs:

For the purposes of this Chapter, an Ayurvedic, Siddha or Unani drug shall be deemed to be adulterated,--

(a) if it consists, in whole or in part, of any filthy, putrid or decomposed Substance; or

(b) if it has been prepared, packed or stored under unsanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed, in whole or in part, of any poisonous or deleterious Substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic Substance which may render it injurious to health; or

(f) if any substance has been mixed therewith so as to reduce its quality or strength.

Explanation.--For the purpose of clause (a), a drug shall not be deemed to consist, in whole or in part, of any decomposed substance only by reason of the fact that such decomposed substance is the result of any natural decomposition of the drug:

Provided that such decomposition is not due to any negligence on the part of the manufacturer of the drug or the dealer thereof and that it does not render the drug injurious to health.

Go Back to Section 277, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 278 of Bharatiya Nyaya Sanhita, 2023:

Drugs and Cosmetics Act, 1940 - Section 3(b) – Drugs:

includes—

(i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;

(ii) such substances (other than food) intended to affect the structure or any function of human body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the official Gazette;]

(iii) all substances intended for use as components of a drug including empty gelatin capsules; and

(iv) such devices intended for internal or external use in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, as may be specified from time to time by the Central Government by notification in the official Gazette, after consultation with the Board.

Go Back to Section 278, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 281 of Bharatiya Nyaya Sanhita, 2023:

Motor Vehicles Act, 1988 - Section 184 - Driving Dangerously:

Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, or which causes a sense of alarm or distress to the occupants of the vehicle, other road users, and persons near roads, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to one year but shall not be less than six months or with fine which shall not be less than one thousand rupees but may extend to five thousand rupees, or with both, and for any second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine of ten thousand rupees, or with both.

Explanation.-- For the purpose of this section,--

(a) jumping a red light;

(b) violating a stop sign;

(c) use of handheld communications devices while driving;

(d) passing or overtaking other vehicles in a manner contrary to law;

(e) driving against the authorised flow of traffic; or

(f) driving in any manner that falls far below what would be expected of a competent and careful driver and where it would be obvious to a competent and careful driver that driving in that manner would be dangerous, shall amount to driving in such manner which is dangerous to the public.

Go Back to Section 281, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 282 of Bharatiya Nyaya Sanhita, 2023:

Northern India Ferries Act, 1878 - Section 28 - Penalty For Rash Navigation and Stacking of Timber:

Whoever navigates, anchors, moors or fastens any vessel or raft, or stacks any timber, in a manner so rash or negligent as to damage a public ferry, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and the toll-collector or lessee of the tolls of such ferry or any of his assistants, may seize and detain such vessel, raft or timber pending the inquiry and assessment hereinafter mentioned.

Go Back to Section 282, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 293 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 152 - Conditional order for removal of nuisance:

(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers—

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure,

substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order,

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.—A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

Go Back to Section 293, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 294 of Bharatiya Nyaya Sanhita, 2023:

Information Technology Act, 2000 - Section 67 - Punishment For Publishing or Transmitting Obscene Material In Electronic Form:

Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

Go Back to Section 294, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 303 of Bharatiya Nyaya Sanhita, 2023:

The Electricity Act, 2003 - Section 135 - Theft of Electricity:

(1) Whoever, dishonestly,--

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use--

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 Kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is provided that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that

any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hour from the time of such disconnect:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause., restore the supply line of electricity within forty-eight hours of such deposit or payment;

(2) Any officer of the licensee or supplier as the case may be, authorised in this behalf by the State Government may--

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being, used unauthorised;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been or is being, used for unauthorised use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow

the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

PROVIDED that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

The Electricity Act, 2003 - Section 136 - Theft of Electric Lines and Materials:

(1) Whoever, dishonestly--

(a) cuts or removes or takes away or transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located, including during transportation, without the consent of the licensee or the owner, as the case may be, whether or not the act is done for profit or gain; or

(b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain; or

(c) loads, carries, or moves from one place to another any electric line, material or meter without the consent of its owner, whether or not the act is done for profit or gain,

is said to have committed an offence of theft of electric lines and materials, and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) If a person, having been convicted of an offence punishable under sub-section (1) is again guilty of an offence punishable under that sub-section, he shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees.

Indian Electricity Act, 1910 - Section 39 - Theft of Energy:

Whoever dishonestly abstracts, consumes or uses any energy shall be punishable with imprisonment for a term which may extend to three years, or with fine which shall not be less than one thousand rupees, or with both: and if it is proved that any artificial means or means not authorised by the licensee exist for the abstraction, consumption or use of energy by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of energy has been dishonestly caused by such consumer.

Information Technology Act, 2000 - Section 66C - Punishment For Identity Theft:

Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine with may extend to rupees one lakh Rupees.

Railway Property (Unlawful Possession) Act, 1966 - Section 3 - Penalty For Theft, Dishonest Misappropriation or Unlawful Possession of Railway Property:

Whoever commits theft, or dishonestly misappropriates or is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawful obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable--

(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;

(b) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees.

Explanation.-For the purposes of this section, "theft" and "dishonest misappropriation" shall have the same meanings as assigned to them respectively in section 378 and section 403 of the Indian Penal Code.'.(45 of 1860.)

Indian Post office Act, 1898 - Section 52 - Penalty For Theft, Dishonest Misappropriation, Secretion, Destruction, or Throwing Away of Postal Articles:

Whoever, being an officer of the Post office, commits theft in respect of, or dishonestly misappropriates, or, for any purpose whatsoever, secretes, destroys or throws away, any postal article in course of transmission by post or anything contained therein, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be punishable with fine.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 57 - Person arrested to be taken before Magistrate or officer in charge of police station:

A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 58 - Person arrested not to be detained more than twenty- four hours:

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 59 - Police to report apprehensions:

officers in charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 463 - Warrant for levy of fine issued by a Court in any territory to which this Sanhita does not extend:

Notwithstanding anything in this Sanhita or in any other law for the time being in force, when an offender has been sentenced to pay a fine by a Criminal Court in any territory to

which this Sanhita does not extend and the Court passing the sentence issues a warrant to the Collector of a district in the territories to which this Sanhita extends, authorising him to realise the amount as if it were an arrear of land revenue, such warrant shall be deemed to be a warrant issued under clause (b) of sub-section (1) of section 461 by a Court in the territories to which this Sanhita extends, and the provisions of sub-section (3) of the said section as to the execution of such warrant shall apply accordingly.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 464 - Suspension of execution of sentence of imprisonment:

(1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may--

(a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three installments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days;

(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond or bail bond, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the installments thereof, as the case may be, is to be made; and if the amount of the fine or of any installment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order

has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 60 - Discharge of person apprehended:

No person who has been arrested by a police officer shall be discharged except on his bond, or bail bond, or under the special order of a Magistrate.

Go Back to Section 303, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 308 of Bharatiya Nyaya Sanhita, 2023:

Air Force Act, 1950 - Section 53 - Extortion and Corruption:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) commits extortion; or

(b) without proper authority extracts from any person money, provisions or services.

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 53 - Extortion and Corruption:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Border Security Force Act, 1968 - Section 31 - Extortion and Corruption:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Indo-Tibetan Border Police Force Act, 1992 - Section 34 - Extortion and Corruption:

Any person subject to this Act who commits any of the following offences, that is to say,—

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service,

shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

National Security Guard Act, 1986 - Section 30 - Extortion and Corruption:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service,

shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Sashastra Seema Bal Act, 2007 - Section 34 - Extortion and Corruption:

Any person subject to this Act who commits any of the following offences, namely:--

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service,

shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned

Go Back to Section 308, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 316 of Bharatiya Nyaya Sanhita, 2023:

Religious Endowments Act, 1863 - Section 20 - Proceedings for criminal breach of trust:

No suit or proceeding before any Civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

Religious Endowments Act, 1863 - Section 14 - Persons Interested May Singly Sue In Case of Breach of Trust, Etc.:

Any person or persons interested in any mosque, temple or religious establishment, or in the per-formance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to, them respectively;

Powers of Civil Court.-and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent or member of a committee,

and may decree damages and costs against such trustee, manager, superintendent or member of a committee,

and may also direct the removal of such trustee, manager, superintendent or member of a committee.

Government of India Act, 1833 - Section 80 - Disobedience of orders & Breach of Trust By officers or Servants or The Company In India, Misdemeanors:

every willful disobeying, and every willful omitting, forbearing, or neglecting to execute the orders or instructions of the said court of directors by any governor general of India, governor, member of council, or commander in chief, or by any other of the officers or servants of the said company, unless in cases of necessity (the burthen of the proof of which necessity shall be on the person so disobeying or omitting, forbearing or neglecting, to execute such orders or instructions as aforesaid), and every willful breach of the trust and duty of any office or employment by any such governor general, governor, member of council, or commander in chief, or any of the officers or servants of the said company, shall be deemed and taken to be a misdemeanor at law, and shall or may be proceeded against and punished as such by virtue of this Act.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 57 - Person arrested to be taken before Magistrate or officer in charge of police station:

A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 58 - Person arrested not to be detained more than twenty- four hours:

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 59 - Police to report apprehensions:

officers in charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Go Back to Section 316, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 317 of Bharatiya Nyaya Sanhita, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 96 - When search-warrant may be issued:

(1) Where--

(a) any Court has reason to believe that a person to whom a summons order under section 94 or a requisition under sub-section (1) of section 95 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition; or

(b) such document or thing is not known to the Court to be in the possession of any person; or

(c) the Court considers that the purposes of any inquiry, trial or other proceeding under this Sanhita will be served by a general search or inspection, it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

(3) Nothing contained in this section shall authorise any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal authority.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 101- Power to compel restoration of abducted females:

Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child for any unlawful purpose, a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Go Back to Section 317, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 318 of Bharatiya Nyaya Sanhita, 2023:

Information Technology Act, 2000 - Section 66D - Punishment For Cheating By Personation By Using Computer Resource:

Whoever, by means for any communication device or computer resource cheats by personating, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupee.

Go Back to Section 318, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 319 of Bharatiya Nyaya Sanhita, 2023:

Information Technology Act, 2000 - Section 66D - Punishment For Cheating By Personation By Using Computer Resource:

Whoever, by means for any communication device or computer resource cheats by personating, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupee.

The Standard of Weights and Measures (Enforcement) Act, 1985 - Section 55 - Penalty for personation of officials:

Whoever personates in any way the Controller, Additional Controller or an Inspector or any other officer authorised by the Controller, shall be punished with imprisonment for a term which may extend to three years.

official Secrets Act, 1923 - Section 6 - Unauthorised Use of Uniforms, Falsification of Reports, Forgery, Personation and False Documents:

(1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State--

(a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document) or knowingly uses or has in his possession any such forged, altered, or irregular official document; or

(d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under Government, or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement; or

(e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by any department of the Government, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp,

he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State--

(a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or willfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof; or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued, for, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself, or, on obtaining possession of any official document by finding or otherwise, willfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer; or

(c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid,

he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs of Government, or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State, to prosecutions for offences punishable under that section

The Indian Christian Marriage Act, 1872 - Section 67 - Forbidding, By False Personation, Issue of Certificate By Marriage Registrar:

Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a parson whose consent to the marriage is required by law, knowing or believing such representation to be false, or not hiving reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Indian Penal Code (45 of 1860).

Companies Act, 2013 - Section 57 - Punishment for Personation of Shareholder:

If any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Companies Act, 2013 - Section 38 - Punishment for Personation for Acquisition, Etc., of Securities:

(1) Any person who--

(a) makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or

(b) makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or

(c) otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name,

shall be liable for action under section 447.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.

(3) Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person.

(4) The amount received through disgorgement or disposal of securities under subsection (3) shall be credited to the Investor Education and Protection Fund.

Aadhaar Act, 2016 - Section 34 - Penalty For Impersonation At Time of Enrolment:

Whoever impersonates or attempts to impersonate another person, whether dead or alive, real or imaginary, by providing any false demographic information or biometric information, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or with both.

Aadhaar Act, 2016 - Section 35 - Penalty For Impersonation of Aadhaar Number Holder By Changing Demographic Information or Biometric Information:

Whoever, with the intention of causing harm or mischief to an Aadhaar number holder, or with the intention of appropriating the identity of an Aadhaar number holder changes or attempts to change any demographic information or biometric information of an Aadhaar number holder by impersonating or attempting to impersonate another person, dead or alive, real or imaginary, shall be punishable with imprisonment for a term which may

extend to three years and shall also be liable to a fine which may extend to ten thousand rupees.

Aadhaar Act, 2016 - Section 36 - Penalty For Impersonation:

Whoever, not being authorised to collect identity information under the provisions of this Act, by words, conduct or demeanour pretends that he is authorised to do so, shall be punishable with imprisonment for a term which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.

Collection of Statistics Act, 2008 - Section 21 - Penalty for impersonation of employees:

Whoever, not being authorised to collect statistics under the provisions of this Act, by words, conduct or demeanor pretends that he is authorised to do so, shall be punishable with simple imprisonment for a term which may extend to six months or with a fine which may extend to two thousand rupees or, in the case of a company, with a fine which may extend to ten thousand rupees or with both.

Companies Act, 1956 - Section 68A - Personation For Acquisition, Etc., of Shares:

(1) Any person who -

(a) makes in a fictitious name an application to a company for acquiring, or subscribing for, any shares therein, or

(b) otherwise induces a company to allot, or register any transfer of, shares therein to him, or any other person in a fictitious name, shall be punishable with imprisonment for a term which may extend to five years.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by the company and in every form of application for shares which is issued by the company to any person.

Companies Act, 1956 - Section 116 - Penalty For Personation of Shareholder:

If any person deceitfully personates an owner of any share or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such share or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

Go Back to Section 319, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 324 of Bharatiya Nyaya Sanhita, 2023:

Indian Telegraph Act, 1885 - Section 33 - Power To Employ Additional Police In Places Where Mischief To Telegraphs Is Repeatedly Committed:

(1) Whenever it appears to the State Government that any act causing or likely to cause wrongful damage to any telegraph is repeatedly and maliciously committed in any place, and that the employment of an additional police- force in that place is thereby rendered necessary, the State Government may send such additional police-force as it thinks fit to the place, and employ the same therein so long as, in the opinion of that Government, the necessity of doing so continues.

(2) The inhabitants of the place shall be charged with the cost of the additional police-force, and the District Magistrate shall, subject to the orders of the State Government, assess the proportion in which the cost shall be paid by the inhabitants according to his judgment of their respective means.

(3) All moneys payable under sub-section (2) shall be recoverable either under the warrant of a Magistrate by distress and sale of the movable property of the defaulter within the local limits of his jurisdiction, or by suit in any competent court.

(4) The State Government may, by order in writing, define the limits of any place for the purposes of this section.

Prevention of Damage to Public Property Act, 1984 - Section 3 - Mischief Causing Damage To Public Property:

(1) Whoever commits mischief by doing any act in respect of any public properly,otherthan public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

(2) Whoever commits mischief by doing any act in respect of any public property being-

(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;

(b) any oil installations;

(c)any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of tele-communications, or any building, installation or otherproperty used in connection therewith.

shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine:

Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

Prevention of Damage to Public Property Act, 1984 - Section 4 - Mischief Causing Damage To Public Property By Fire or Explosive Substance:

Whoever commits an offence under sub-section (1) or sub-section (2) of section 3 by fire or explosive substance shall be punished with rigorous imprisonment for a term which shall not be less than one year, but which may extend to ten years with fine:

Provided that the court may, for special reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than one year.

Prevention of Destruction and Loss of Property Act, 1981 - Section 2 - Punishment For Committing Mischief In Respect of Property:

Whoever,--

(a) commits or attempts to commit, or instigates, incites or otherwise abets the commission of mischief within the meaning of section 425 of the Indian Penal Code, 1860 (Central Act 45 of 1860) and causes loss or damage to any property; or

(b) causes loss or damage to any property in any area during the period when an assembly of five or more persons in such area is prohibited by or under any law for the time being in force, or when such assembly is deemed as an unlawful assembly under section 141 of the Indian Penal Code, 1860 (Central Act 45 of 1860),

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine which may extend to two thousand rupees:

Provided that the court may for reasons to be recorded in writing, impose lesser punishment.

National Highways Act, 1956 - Section 8B - Punishment For Mischief By Injury To National Highway:

Whoever commits mischief by doing any act which renders or which he knows to be likely to render any national highway referred to in sub-section (1) of section 8A impassable or less safe for traveling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with a fine, or with both.

Go Back to Section 324, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 326 of Bharatiya Nyaya Sanhita, 2023:

National Highways Act, 1956 - Section 8B - Punishment For Mischief By Injury To National Highway:

Whoever commits mischief by doing any act which renders or which he knows to be likely to render any national highway referred to in sub-section (1) of section 8A impassable or less safe for traveling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with a fine, or with both.

Prevention of Damage to Public Property Act, 1984 - Section 3 - Mischief Causing Damage To Public Property:

(1) Whoever commits mischief by doing any act in respect of any public properly,otherthan public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

(2) Whoever commits mischief by doing any act in respect of any public property being-

(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;

(b) any oil installations;

(c)any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of tele-communications, or any building, installation or otherproperty used in connection therewith.

shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine:

Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

Prevention of Destruction and Loss of Property Act, 1981 - Section 2 - Punishment For Committing Mischief In Respect of Property:

Whoever,--

(a) commits or attempts to commit, or instigates, incites or otherwise abets the commission of mischief within the meaning of section 425 of the Indian Penal Code, 1860 (Central Act 45 of 1860) and causes loss or damage to any property; or

(b) causes loss or damage to any property in any area during the period when an assembly of five or more persons in such area is prohibited by or under any law for the time being in force, or when such assembly is deemed as an unlawful assembly under section 141 of the Indian Penal Code, 1860 (Central Act 45 of 1860),

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine which may extend to two thousand rupees:

Provided that the court may for reasons to be recorded in writing, impose lesser punishment.

Go Back to Section 326, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 335 of Bharatiya Nyaya Sanhita, 2023:

The National Service Act, 1972 - Section 25 - False Statement and Forgery:

(1) if any qualified person--

(a) on whom an enlistment notice has been served under this Act and in respect of whom no postponement certificate is in force or no application or appeal for postponement of national service is pending, fails or omits to render the service which he is required by such notice to render, or

(b) having commenced to render national service, leaves that service without obtaining a discharge under section 17.

he shall be punished with imprisonment for a term which may extend to five years and also with fine which may extend to two thousand rupees. (2) Any person who--

(a) in giving any information for the purposes of this Act, knowingly or recklessly makes a statement which is false in material particulars or which he does not believe to be true, or

(b) (i) with the intention of deceiving, forges or uses or lends or allows to be used for any person any certificate issued under this Act, or

(ii) makes, or has in his possession, any document so closely resembling any certificate so issued as to be calculated to deceive,

shall be punished with imprisonment for a term not exceeding three years, or with fine not exceeding one thousand rupees, or with both.

Go Back to Section 335, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 336 of Bharatiya Nyaya Sanhita, 2023:

The official Secrets Act, 1923 - Section 6 - Unauthorised Use of Uniforms, Falsification of Reports, Forgery, Personation and False Documents:

(1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State--

(a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document) or knowingly uses or has in his possession any such forged, altered, or irregular official document; or

(d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under Government, or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement; or

(e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by any department of the Government, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp,

he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State--

(a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or willfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof; or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued, for, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself, or, on obtaining possession of any official document by finding or otherwise, willfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer; or

(c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid,

he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs of Government, or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State, to prosecutions for offences punishable under that section

The National Service Act, 1972 - Section 25 - False Statement and Forgery:

(1) if any qualified person--

(a) on whom an enlistment notice has been served under this Act and in respect of whom no postponement certificate is in force or no application or appeal for postponement of national service is pending, fails or omits to render the service which he is required by such notice to render, or

(b) having commenced to render national service, leaves that service without obtaining a discharge under section 17.

he shall be punished with imprisonment for a term which may extend to five years and also with fine which may extend to two thousand rupees. (2) Any person who--

(a) in giving any information for the purposes of this Act, knowingly or recklessly makes a statement which is false in material particulars or which he does not believe to be true, or

(b) (i) with the intention of deceiving, forges or uses or lends or allows to be used for any person any certificate issued under this Act, or

(ii) makes, or has in his possession, any document so closely resembling any certificate so issued as to be calculated to deceive,

shall be punished with imprisonment for a term not exceeding three years, or with fine not exceeding one thousand rupees, or with both.

Go Back to Section 336, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 340 of Bharatiya Nyaya Sanhita, 2023:

The official Secrets Act, 1923 - Section 6 - Unauthorised Use of Uniforms, Falsification of Reports, Forgery, Personation and False Documents:

(1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State--

(a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character

(hereinafter in this section referred to as an official document) or knowingly uses or has in his possession any such forged, altered, or irregular official document; or

(d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under Government, or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement; or

(e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by any department of the Government, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp,

he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State--

(a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or willfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof; or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued, for, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself, or, on obtaining possession

of any official document by finding or otherwise, willfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer; or

(c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid,

he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs of Government, or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State, to prosecutions for offences punishable under that section.

Go Back to Section 340, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 343 of Bharatiya Nyaya Sanhita, 2023:

Indian Succession Act, 1925 - Section 61 - Will Obtained By Fraud, Coercion or Importunity:

A Will or any part of a Will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Illustrations

(i) A, falsely and knowingly, represents to the testator, that the testator's only child is dead, or that he has done some undutiful act and thereby induces the testator to make a will in his, A 's favour; such Will has been obtained by fraud, and is invalid.

(ii) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(iii) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(iv) A threatens to shoot B, or to burn his house or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B, in consequence, makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(v) A, being of sufficient intellect, if undisturbed by the influence of others, to make a will yet being so much under the control of B that he is not a free agent, makes a Will dictated by B. It appears that he would not have executed the will but for fear of B. The Will is invalid.

(vi) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a Will of a certain purport and does so merely to purchase peace and in submission to B. The Will is invalid.

(vii) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a Will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition makes his Will in the manner recommended by B. The Will is not rendered invalid by the intercession and persuasion of B.

(viii) A with a view to obtaining a legacy from B, pays him attention and flatters him and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery makes his Will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

Go Back to Section 343, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 356 of Bharatiya Nyaya Sanhita, 2023:

Foreign Relations Act, 1932, 1932 - Section 2 - Power of Central Government To Prosecute In Certain Cases of Defamation:

Where an offence falling under Chapter XXI of the Indian Penal Code is committed against a Ruler of a State outside but adjoining India, or against the consort or son or principal Minister of such Ruler, the Central Government may make, or authorize any person to make, complaint in writing of such offence, and notwithstanding anything contained in Section 198 of the Code of Criminal Procedure, 1898, any Court competent in other respects to take cognizance of such offence may take cognizance thereof on such complaint.

Foreign Relations Act, 1932- Section 4 - Proof of Status of Persons Defamed:

Where in any trial of an offence upon a complaint under Section 2, or in any proceeding before a High Court arising out of Section 3, there is a question whether any person is a Ruler of any State, or is the consort or son or principal Minister of such Ruler a certificate under the hand of a Secretary to the Central Government that such person is such Ruler, consort, son or principal Minister shall be conclusive proof of that fact.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 222 - Prosecution for defamation:

(1) No Court shall take cognizance of an offence punishable under section 356 of the Bharatiya Nyaya Sanhita, 2023 except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is a child, or is of unsound mind or is having intellectual disability or is from sickness or infirmity unable to make a complaint, or is a woman who,

according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Sanhita, when any offence falling under section 356 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction--

(a) of the State Government,--

(i) in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(ii) in the case of any other public servant employed in connection with the affairs of the State;

(b) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 219 - Prosecution for offences against marriage:

(1) No Court shall take cognizance of an offence punishable under sections 81 to 84 (both inclusive) of the Bharatiya Nyaya Sanhita, 2023 except upon a complaint made by some person aggrieved by the offence:

Provided that--

(a) where such person is a child, or is of unsound mind or is having intellectual disability requiring higher support needs, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under section 82 of the Bharatiya Nyaya Sanhita, 2023 is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.

(2) For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 84 of the Bharatiya Nyaya Sanhita, 2023.

(3) When in any case falling under clause (a) of the proviso to sub-section (1), the complaint is sought to be made on behalf of a child or of a person of unsound mind by a person who has not been appointed or declared by a competent authority to be the guardian of the child, or of the person of unsound mind, and the Court is satisfied that there is a guardian so appointed or declared, the Court shall, before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard.

(4) The authorisation referred to in clause (b) of the proviso to sub-section (1), shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by his Commanding officer, and shall be accompanied by a certificate signed by that officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(5) Any document purporting to be such an authorisation and complying with the provisions of sub-section (4), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine and shall be received in evidence.

(6) No Court shall take cognizance of an offence under section 64 of the Bharatiya Nyaya Sanhita, 2023, where such offence consists of sexual intercourse by a man with his own

wife, the wife being under eighteen years of age, if more than one year has elapsed from the date of the commission of the offence.

(7) The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence.

Go Back to Section 356, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 357 of Bharatiya Nyaya Sanhita, 2023:

Factoring Regulation Act, 2011 - Section 18 - Breach of Contract:

If the assignor commits any breach of the original contract with the debtor, such breach shall not entitle the debtor to recover from the assignee any sum paid by the debtor to the assignor or the assignee pursuant to the factoring transactions:

Provided that nothing contained in this section shall affect the rights of the debtor to claim from the assignor any loss or damages caused to him by reason of breach of the original contract.

Indian Contract Act, 1872 - Section 73 - Compensation for Loss or Damage Caused by Breach of Contract:

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.-In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations

(a) A contracts to sell and deliver 50 maunds of saltpeter to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpeter of like quality at the time when the saltpeter ought to have been delivered.

(b) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo which A is to provide and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(e) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(g) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freights rise, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(h) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount

of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(j) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(k) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(l) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house for the rent lost, and for the compensation made to C.

(m) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be

not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(o) A contracts to deliver 50 maunds of saltpeter to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpeter to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(q) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(r) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being in consequence detained in Calcutta for some time and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money.

A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Go Back to Section 357, Bharatiya Nyaya Sanhita, 2023

Back to Section 2 of Indian Penal Code, 1860

MANU/SC/0043/1957

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 200 of 1956

Decided On: 06.09.1957

Mobarik Ali Ahmed Vs. The State of Bombay

Hon'ble Judges/Coram:

B. Jagannadhadas, Parakulangara Govinda Menon and Syed Jaffer Imam, JJ.

JUDGMENT

B. Jagannadhadas, J.

1. This is an appeal by special leave. The appellant before us was convicted by the learned Presidency Magistrate. Third Court, Esplanade, Bombay, for the offence of cheating under s. 420 read with s. 34 of the Indian Penal Code on three counts of cheating, viz., the first relating to a sum of Rs. 81,000, the second relating to a sum of Rs. 2,30,000, and the third relating to a sum of Rs. 2,36,900.

He was sentenced by the learned Magistrate to two years rigorous imprisonment and a fine of Rs. 1,000 on the first count, to twenty-two months rigorous imprisonment and a fine of Rs. 1,000 on the second count, and two months rigorous imprisonment on the third count. It was directed that the substantive sentences only on the second and third counts are to run concurrently.

2. The prosecution was initiated on a private complaint filed by one Luis Antonio Correa on June 30, 1952, against four persons of whom the appellant was designated therein as the first accused and one Santram as the fourth accused and two other persons, A.A. Rowji and S.A. Rowji, as second and third accused respectively. Bailable warrants were issued against all the four by the learned Magistrate but it appears that warrants could not be executed against accused 2, 3 and 4.
They were reported as absconding. The trial was accordingly separated as against them and proceeded only as against (the first accused) the appellant herein. The convictions and sentences have been confirmed on appeal by the High Court at Bombay.

3. The complainant is a businessman from Goa and was the director of a firm in Goa which was trading in the name of Colonial Limitada doing business in import and export. At the relevant time there was severe scarcity of rice in Goa. The complainant was accordingly anxious to import rice urgently into Goa. He got into touch with a friend of his by name Rosario Carvalho in Bombay who was doing business as a commission agent.

Carvalho in his turn got into touch with one Jasawalla who was also doing business of commission agent at Bombay in the name of Universal Supply Corporation. This Jasawalla was previously in correspondence with the appellant about business in rice. The appellant was at the time in Karachi and was doing business in the name of Atlas Industrial and Trading Corporation and also in the name of Ifthiar Ahmed & Co. The telegraphic address of the complainant was Colodingco and that of the appellant was Ifthy.

As a result of exchange of telegrams, letters and telephone messages between Jasawalla and the appellant on one side, Jasawalla and the complainant on the other, followed up by direct contacts between the appellant and the complainant through telephone, telegrams and letters, a contract was brought about for purchase, by the complainant from the appellant, of 1,200 tons of rice at the rate of Pounds 51 per ton, to be shipped from Karachi to Goa.

The contract appears originally to have been for payment of the price in sterling at Karachi. But it is the prosecution case (which has been accepted by both the courts below) that a subsequent arrangement was arrived at between the parties by which the payment was to be made in Bombay in Indian currency, in view of the difficulties experienced in opening a letter of credit in a Bank at Karachi through the Portuguese Bank at Goa.

It is also the prosecution case, which has been accepted, that the understanding was that 25% of the price was to be paid as advance by the complainant to Jasawalla as the agent of the appellant for this purpose and that on receiving intimation thereof the appellant was to ship the rice and that the balance of the purchase money was to be paid on presentation of the shipping documents. It appears that at a later stage the quantity of rice to be supplied was raised to 2,000 tons and advance to be paid to 50% of the total stipulated price.

It is also the prosecution case that the appellant represented at various stages by telephone talks, telegrams, and letters, to Jasawalla as well as to the complainant directly that he had adequate stock of rice and that he had reserved shipping space in certain steamers which were about to leave for Goa and that he was in a position to ship the rice on being satisfied that the requisite advance was paid. It is in evidence that on receiving such assurances, the complainant paid moneys as shown below to Jasawalla and obtained receipts from him, purporting to be the agent of the appellant.

On July 23, 1951

Rs. 81,000

On August 28, 1951

Rs. 2,30,000

On August 29, 1951

Rs. 2,36,900

4. All these amounts are held to have been received by the appellant in due course. It is admitted, however, that no rice was in fact shipped to the complainant and the amounts have not been returned back to the complainant. The defence of the appellant is to the effect that the amounts were not in fact paid to any person who was his agent and not in fact received by him at all and that he was unable to supply the rice as the complainant did not comply with the terms of the contract by opening a letter of credit at Karachi or paying him in Pakistani currency.

This defence has not been accepted and the appellant has been found guilty as charged by the courts below. He was therefore convicted and sentenced as above stated.

5. It is necessary to set out somewhat in detail the essential facts held to have been proved by the courts below to appreciate the legal contentions that have been urged before us. As previously stated, the complainant got into touch with his friend Carvalho of Bombay to help him in getting rice for consumption in Goa and Carvalho in turn contacted Jasawalla for the purpose.

Before that time, Jasawalla, in the course of his usual business, had received a letter, Ex. O, dated June 5, 1951, from the appellant offering that he would be prepared to do business in rice if a letter of credit is opened or cash payment is made in Karachi. Carvalho came to know of this from Jasawalla and informed the complainant. Jasawalla also wrote a letter to the complainant. The complainant sent a telegram showing his willingness to open credit, if 1,200 tons of rice could be shipped to Goa.

Jasawalla wrote a letter, Ex. P, dated June 6, 1951, to the appellant quoting the telegram of the complainant and asking for an offer. The appellant by his letter dated June 10 to Jasawalla, offered to supply as much rice as he wanted and demanded 25% cash payment as advance. After some tripartite correspondence, the appellant by his letter dated June 26, agreed to accept money in Bombay, at the price of Pounds 51 per ton of rice. Jasawalla by telegram dated July 5, 1951, informed the appellant that the Goa party accepted the 25% arrangement.

The appellant by a letter dated July 7, accepted the offer but wanted 50% deposit and gave time till the 10th, suggesting that since the rice was scarce the deal must be finished at once. Jasawalla intimated this to the complainant and asked him to start at once with money and informed him that if there was delay the party at the other end would claim damages. The appellant did not get any information for the next few days.

He accordingly sent one Santram (accused 4 in the complaint) to Bombay as his agent for discussing the matter in question and authorising him to fix the deal on the spot. Santram appears to have fixed the bargain for shipping 1,200 tons of rice on the complainant paying an advance sum of Rs. 1,50,000 at Bombay as 25% deposit towards the price of the said 1,200 tons of rice. On receipt of this information the appellant wrote a letter dated July 12, to Jasawalla wherein he confirmed the arrangement arrived at by Santram.

Jasawalla was thereupon taken by Santram to accused 2 and 3. They were introduced to him as the agents of the appellant who were to receive the moneys in this transaction on appellant's behalf. At the same time the appellant was also writing letters to Jasawalla which seem to indicate that he was trying to shift his position by asking for 50% as advance deposit. For a few days thereafter the complainant did not turn up at Bombay with the funds and the appellant by his telegram dated July 16, asked Jasawalla why there is no further information about the transaction.

By a telegram dated July 17, he informed Jasawalla that S.S. Olinda was sailing in a few days and that it would be too late to ship the rice and that the matter should be hurried up. On July 18, the complainant sent a telegram to Jasawalla informing him that he was coming with funds and that if the rice was not shipped it may be shipped by S.S. Olinda which was about to start on July 21. The appellant also sent a telegram to Jasawalla on July 18, asking why the deal was not coming on and that he had already reserved space by the steamer of the 21st.

On July 19 again Jasawalla received a telegram from the appellant informing him definitely that space was reserved in the steamer. The complainant also sent a telegram to Jasawalla on the same day informing him that he was coming and that at least 500 tons must be shipped at once. The complainant arrived at Bombay on July 20. The indent, Ex. A, was prepared in triplicate and signed by the complainant on the same day.

The complainant brought cheques and drafts to the tune of Rs. 81,000. It would appear that at this stage the complainant was asking that he should be allowed (for the time being) to deposit only Rs. 50,000 as deposit for a shipment of 500 tons. But appellant insisted that Rs. 1,50,000 should be paid as advance for 1,200 tons. On or about July 21, the appellant sent a letter to Jasawalla with a pro-forma receipt for Rs. 1,50,000 signed by him to be made use of by Jasawalla in whatever manner he thought proper in connection with the transaction then under way.

The said receipt was shown to the complainant who was shown also the other correspondence that was received from the appellant. Jasawalla by his letter dated July 22, to the appellant confirmed the shipment of the deal of 1,200 tons of rice and intimated that some portion of the money was immediately ready and some portion would be brought in a day or two, totalling over Rs. 80,000 and that the balance would be paid after hearing about shipment of 1,200 tons.

This was agreed to by the appellant. On July 23, Jasawalla telephoned to the appellant that he was going to pay the money to accused 2 as directed by the appellant. In the afternoon of that very day the parties went to the office of accused 2 and there was again a further conversation on the phone with the appellant who, on the phone, conveyed the assurance that payment to accused 2 would be as good as payment to himself.

The complainant and Carvalho were hearing both the morning and afternoon talks between the appellant and Jasawalla, on a second line. Thereupon the complainant paid the sum of Rs. 81,000 to Jasawalla who passed a receipt (Ex. B) therefor on behalf of the appellant and the said amount was passed on to accused 2. The fact of this payment was intimated to the appellant by telephone as well as by a telegram. A letter was also written on July 24 to the appellant referring to the telephone calls and telegram and informing him that the amount was paid.

He was also asked therein to ship the rice at once promising that the balance will be paid in a week. On July 23 itself the appellant sent a telegram saying that he had received the messages and was trying to book 1,000 tons. According to the prosecution case the appellant having received the sum of Rs. 81,000 as above, changed his front from July 24, 1951. The facts held to have been proved in respect of this change of front may now be stated.

6. On July 24, 1951, the appellant sent to Jasawalla a telegram mentioning difficulties created by the Exchange Controller in shipping the goods. When Jasawalla conveyed his protest and insisted upon the shipping of the goods at once, the appellant sent a telegram on July 25, informing him that the difficulties were of a minor character and that the space for shipping was already booked. Jasawalla by his telegram of the same date asked for confirmation of loading of 1,200 tons by S.S. Olinda and requested him that if the full quantity could not be loaded, a portion thereof might be sent immediately.

The appellant by his letter dated July 26, acknowledged Jasawalla's letter dated 23rd (informing him about the payment of Rs. 81,000) and intimated that the rice would be shipped by the next steamer S.S. Umaria sailing for Malaya and that the said steamer can touch Goa if the quantity of rice to be shipped is raised to 2,000 tons. By a letter dated July 26, Jasawalla protested against the new condition. The complainant sent a letter dated July 27, to Jasawalla asking whether the rice was shipped by S.S. Olinda or not.

On July 27, the appellant sent a telegram to Jasawalla asking for bank-guarantee (for payment of balance). It does not appear that any question of bank-guarantee was raised in the correspondence between the parties, after Santram (accused 4) fixed up the deal on the footing of payment of advance of Rs. 1,50,000, in cash at Bombay by way of 25% deposit. On receiving this letter raising the question of bank-guarantee, Jasawalla wrote back on the 27th to the appellant about the change of front and charging him with cheating and not fulfilling his part of the contract after receiving the money.

By a letter dated July 30 and also a telegram of the same date the appellant replied to Jasawalla wherein he promised to send the rice by S.S. Umaria and also threatened to break off negotiations if the parties had no confidence in him. Jasawalla thereupon asked the appellant by telegram to fix the sailing date of S.S. Umaria and inform him. The appellant wrote back on August 1, admitting receipt of letters from Jasawalla and attempting to pacify him.

Jasawalla replied thanking him and asked for a clear date of the sailing of S.S. Umaria. By that time Jasawalla had made enquiries with Mackinons & Mackenzie (shipping agents) and was informed that no shipping space had been reserved by the appellant and found the statement of the appellant in this behalf to be false. Jasawalla sent copies of this correspondence between him and the appellant to the complainant.

That correspondence indicated the appellant's position to be that the rice would be shipped by S. S. Umaria only if the load could be increased to 2,000 tons and that the appellant stated that he got the sailing of S.S. Umaria delayed by two days for the purpose. The complainant thereupon informed Jasawalla that he was prepared to accept the new deal for 2,000 tons. Jasawalla by his telegram dated August 2, to the appellant confirmed this new arrangement and by another telegram dated August 3, asked the appellant to hurry up with the shipment.

Thereafter the appellant raised a fresh matter. On August 6, the appellant sent a direct telegram to the complainant and asked him to request the Portuguese Pro-Consul at Karachi to obtain exchange-guarantee. Between August 7 and 12, several letters and telegrams passed between the complainant and Jasawalla on the one hand and the appellant on the other. As a result of efforts made in this interval, it appears that the Pro-Consul, Mr. Alphonso, was prepared to give the exchange-guarantee of the State Bank of Pakistan for payment in sterling of the price of rice.

The appellant then by his letter dated August 13, informed Jasawalla that the State Bank was not insisting on exchange guarantee but that it would be sufficient if a certificate was issued by the Portuguese authority that the rice was required for replenishing the ration shops in Goa. A similar letter was also written by the appellant on August 14, to the complainant. Thereupon the complainant and Jasawalla approached the concerned

authority at Goa, viz., one Mr. Campos, the Trade Agent to the Portuguese Government. Mr. Campos thereupon sent telegrams on August 16, to the State Bank of Pakistan, to the Pro-Consul, Mr. Alphonso, and to the appellant certifying that rice was required for replenishing the ration shops in Goa.

7. After this there was a further change of tactics by the appellant. By a telegram dated August 20, 1951, the appellant informed the complainant that the papers before the Government were ready and that he had done his best but that payment must be made. In reply the complainant sent a telegram to the appellant on the same date stating that he did not understand the contents of his telegram and promised to send the balance on loading.

The complainant also informed Jasawalla about these telegrams exchanged between him and the appellant. This was followed up by some further correspondence between the parties on August 22. The appellant sent telegrams both to the complainant and to Jasawalla demanding 90% deposit as advance and threatened to break off if it was not complied with. Thereupon Jasawalla sent a telegram on the 22nd to the complainant to come to Bombay.

He informed the appellant the same day that the complainant was coming down to Bombay to arrange for 50% deposit and asked the appellant to start loading. On the 24th he wrote also a letter to the appellant to the effect that the complainant would pay 50% advance minus the amount already paid and informed him that the complainant would fly to Karachi to supervise the loading. The appellant thereupon sent a telegram dated the 25th informing Jasawalla that everything was ready but hinted about the opening of a letter of credit.

Again on August 27, the appellant sent a telegram to Jasawalla that stocks could not be released unless the arrangement was fulfilled, i.e., 90% amount was paid. The complainant came to Bombay with drafts and cheques to the tune of about Rs. 4,75,000 and contacted Jasawalla. He contacted also the appellant on phone. He paid the sum of Rs. 2,30,000 on August 28, 1951, to Jasawalla who passed a receipt, Ex. F, therefor, on behalf of the appellant.

On August 29, the complainant paid another sum of Rs. 2,36,900 to Jasawalla who passed a receipt, Ex. G, therefore, on behalf of the appellant. It is the case of the prosecution that both these were also passed on to the second accused and through him to the appellant and that the appellant acknowledged receipt of these amounts in his correspondence and that case has been also accepted. On the 29th itself the appellant sent a telegram to Jasawalla as follows:

"Part consignment received, rest tomorrow, Pentakota for the 1st certain goods required alongside."

8. On receiving this telegram Jasawalla informed him by a telegram dated August 31, that he was shocked that no space was reserved, though everything had been done on his side. The appellant sent a reply by telegram dated September 1, 1951, protesting against the language used by Jasawalla in the telegram and informed him that space was reserved but the Company could not wait as the goods could not be shipped.

On September 5, the appellant informed Jasawalla by a letter that space was reserved by S.S. Pentakota and that everything was ready for shipment. Meanwhile the complainant feeling very nervous and anxious about the fulfilment of the transaction proceeded in person to Karachi on September 4. According to the complainant he stayed at Karachi for about two weeks. He was shown some godowns containing rice bags suggesting that they belonged to the appellant and were ready for shipment.

But he was not afforded any opportunity for verifying that the stock was intended for shipment in respect of his transaction. The complainant went to Karachi on a Visa for three months. But after a stay of less than two weeks he was served with a quit-order from the Pakistan Government on September 18, and was bundled out of Karachi. It is the complainant's impression that this was manoeuvred by the appellant. On his return back, correspondence was again resumed between the appellant and the complainant.

By a letter dated September 21, the appellant promised to ship the goods by S.S. Ismalia which would not be sailing in September but would leave on October 3. On September 23, the appellant sent another letter stating that S.S. Ismalia was arriving on October 3 and not on September 26. On October 3, the appellant wrote another letter to the complainant informing him that S.S. Ismalia was not available.

The complainant thereafter sent a telegram to the appellant dated September 29, calling upon him to ship the goods by S.S. Shahjehan if S.S. Ismalia was not available. The complainant by a further letter dated October 1, called upon the appellant to ship the rice at once. By a telegram dated October 2, the appellant informed the complainant that S.S. Shahjehan was arriving the next day and that he would wire the position. By his telegram dated the 3rd, he informed the complainant that the loading had commenced. On October 6, the complainant received another telegram from the appellant that he would not ship per S.S. Shahjehan until demands in his letter dated September 29 are complied with.

It is the complainant's case that no such letter was ever received by him. Jasawalla also informed the appellant that no letter dated September 29 was received. By telegram dated October 8, 1951, Jasawalla called upon the appellant to refund the money and cancel the contract. On October 12, the appellant sent a telegram which conveyed a suggestion that he would ship rice by S.S. Shahjehan arriving on October 19, instead of October 9.

There were some further telegrams exchanged. Finally the complainant sent a telegram on October 26, calling upon the appellant to ship rice immediately or refund the money.

This was followed by further exchange of correspondence which ultimately resulted in a letter by the appellant to the complainant dated November 17, denying all the allegations made against him.

9. The above facts were held to have been proved by the courts below on the basis of a good deal of correspondence between the parties consisting of telegrams and letters and supported by the oral evidence mainly of three persons, viz., (1) the complainant, (2) Jasawalla, and (3) an ex-employee of the appellant at Karachi by name Sequeria. All this evidence has been accepted by the courts below after full consideration of the various comments and criticisms against acceptability of the same.

10. In a case of this kind a question may well arise at the outset whether the evidence discloses only a breach of civil liability or a criminal offence. That of course would depend upon whether the complainant in parting with his money to the tune of about Rs. 5 1/2 lakhs acted on the representations of the appellant and in belief of the truth thereof and whether those representations, when made were in fact false to the knowledge of the appellant and whether the appellant had a dishonest intention from the outset.

Both the courts below have found these facts specifically against the appellant in categorical terms. These being questions of fact are no longer open to challenge in this Court before us in an appeal on special leave.

11. Learned counsel for the appellant accordingly raised before us the following contentions:

1. the appellant is a Pakistani national, who, during the entire period of the commission of the offence never stepped into India and was only at Karachi. Hence he committed no offence punishable under the Indian Penal Code and cannot be tried by an Indian Court.

2. The appellant was brought over from England, where he happened to be, by virtue of extradition proceedings in connection with another offence, the trial for which was then pending in the Sessions Court at Bombay and accordingly he could not be validly tried and convicted for a different offence like the present.

3. The various telegrams and letters relied upon by the prosecution were held to have been proved on legally inadmissible material.

4. The charge being under s. 420 read with s. 34 of the Indian Penal Code for alleged conjoint acts of the appellant along with the persons designated as accused 2, 3 and 4, in the complaint and the said three accused not being before the Court and the appellant not having been in Bombay at the time, the conviction is unsustainable.

12. We have heard elaborate arguments on all these matters but have felt satisfied that there is no substance in contentions 2, 3 and 4 above. Accordingly we did not call upon the counsel for the State to reply to the same. It is, therefore, unnecessary to deal with them at any length. They will be disposed of in the first instance.

13. To understand contention 3, it is convenient to take the letters and telegrams separately. The letters which have been relied on for the prosecution fall under the following categories.

1. Letters from the appellant either to Jasawalla or to the complainant.

2. Letters to the appellant from Jasawalla or the complainant.

14. Most of the letters from the appellant relied upon bear what purport to be his signatures. A few of them are admitted by the appellant. There are also a few letters without signatures. Both the complainant and Jasawalla speak to the signatures on the other letters. The objection of the learned counsel for the appellant is that neither of them has actually seen the appellant write any of the letters nor are they shown to have such intimate acquaintance with his correspondence, as to enable them to speak to the genuineness of these signatures.

Learned trial Judge as well as the learned Judges of the High Court have found that there were sufficient number of admitted or proved letters which might well enable Jasawalla and the complainant to identify the signatures of the appellant in the disputed letters. They also laid stress substantially on the contents of the various letters, in the context of the other letters and telegrams to which they purport to be replies and which form the chain of correspondence as indicating the genuineness of the disputed letters.

Learned counsel objected to this approach on a question of proof. We are, however, unable to see any objection. The proof of the genuineness of a document is proof of the authorship of the document and is proof of a fact like that of any other fact. The evidence relating thereto may be direct or circumstantial. It may consist of direct evidence of a person who saw the document being written or the signature being affixed. It may be proof of the handwriting of the contents, or of the signature, by one of the modes provided in Sections 45 and 47 of the Indian Evidence Act.

It may also be proved by internal evidence afforded by the contents of the document. This last mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the court. In such a situation the person who is the recipient of the document, be it either a letter or a telegram, would be in a reasonably good position both with reference to his prior knowledge of the writing or the signature of the alleged

sender, limited though it may be, as also his knowledge of the subject matter of the chain of correspondence, to speak to its authorship.

In an appropriate case the court may also be in a position to judge whether the document constitutes a genuine link in the chain of correspondence and thus to determine its authorship.

We are unable, therefore, to say that the approach adopted by the courts below in arriving at the conclusion that the letters are genuine is open to any serious legal objection. The question, if any, can only be as to the adequacy of the material on which the conclusion as to the genuineness of the letters is arrived at. That however is a matter which we cannot permit to be canvassed before us.
15. A few of the letters said to have been received from the appellant, as stated above, do not bear his signatures. There were held to have been proved by the circumstantial evidence as pointed out and we see no objection thereto.

16. The next objection is as regards the letters said to have been sent by Jasawalla and the complainant to the appellant. Jasawalla and the complainant have produced copies of the originals. It has been contended that these copies are inadmissible. But such a contention is obviously untenable. The appellant cannot be expected to produce them, if true, since he disputes them. There is also the evidence of his ex-employee, Sequeria, that the originals were received but taken away by his son.

The main contention in respect of these letters is that there is no proof that they were received by the appellant at Karachi. It is contended that evidence given by either Jasawalla or the complainant that the originals were written and posted is not relevant to show that the same have been received. It is urged that the proof of mere posting of a letter is not presumptive evidence of the receipt thereof by the addressee unless there is also proof that the original had not been returned from the Dead Letter Office.

Illustration (b) to s. 16 of the Indian Evidence Act, 1872, is relied on for the purpose and it is urged that a combination of the two facts is required to raise such a presumption. We are quite clear that the illustration only means that each one of these facts is relevant. It cannot be read as indicating that without a combination of these facts no presumption can arise. Indeed that section with the illustrations thereto has nothing to do with presumptions but only with relevance. Some cases relating to this have been cited before us. We have considered the same but it is unnecessary to deal with them.

17. Next taking the question relating to telegrams the main objection is as to the proof of the genuineness of the various telegrams said to have been received from the appellant. In this case since we are largely concerned with the nature and contents of the representations said to have been made by the accused to the complainant or to Jasawalla,

it is obvious that what are relevant or important are the telegraphic messages delivered to the complainant or Jasawalla provided the authorship of the original is made out.

These messages have been proved by producing the messages actually handed over to either of these persons or the transit copies of the originals recorded at the receiving end. The real objection, however, appears to be that there is no proof as to the appellant having been the author of these messages. It is true that under s. 88 of the Evidence Act there is a presumption only that the message received by the addressee corresponds with the message delivered for transmission at the office of origin.

There is no presumption as to the person who delivered such a message for transmission. But here again proof of authorship of the message need not be direct and may be circumstantial as has been explained above in the case of letters. The contents of the messages received, in the context of the chain of correspondence may well furnish proof of the authorship of the messages at the dispatching end. A number of other minor objections have been also raised before us connected with the proof of these telegrams.

They have all been fully dealt with by one of the learned Judges of the High Court. Most of these objections are unsubstantial and it is enough to say that we are in general agreement with the conclusions of the High Court in this matter.

18. As regards both the letters and the telegrams considerable argument was attempted before us as to the mode in which they were let in for proof in the course of the examination of the witnesses. But in the absence of any clear indication on the record that any objection in that behalf was seriously taken, we could not permit any challenge in this behalf.

19. We may add that as regards the main objection both in respect of letters as well as telegrams, viz., the use of the contents of the disputed documents, for proof thereof there is this that could be said, viz., in view of the fact that quite a large number of the documents are not admitted and only a few have been held to be admitted or indubitably proved it may have been a question open before the Court of appeal whether the internal evidence with reference to such a large mass of correspondence substantial portion of which is disputed was adequate to arrive at a satisfactory conclusion as to the genuineness of these documents.

That question is not open before us. But even if we were inclined to go into this, it was well nigh impossible, having regard to the fact that most of the documents relied upon by the trial court as well as the appellate court have not been printed in the record before us. However, there is no reason to think that the learned Judges who have considered the matter very elaborately have not come to a satisfactory conclusion.

They have acted not merely on the internal evidence of the documents but also on the oral evidence of three main witnesses, viz., the complainant, Jasawalla and Sequeria, each set of evidence having been considered as affirmative of the other and in the aggregate as proving the authorship of the disputed documents.

20. The fourth contention raised by the appellant's counsel relates to the validity of the conviction under s. 420/34 of the Indian Penal Code. Learned counsel argued that persons designated as accused 2, 3 and 4 in the complaint, were all in Bombay and the appellant in Karachi and that therefore no conjoint offence could be committed by them within the meaning of s. 34 of the Indian Penal Code.

He relies upon the dictum in Shreekantiah Ramayya Munipalli v. The State of Bombay MANU/SC/0050/1954: 1955CriLJ857 to the effect that it is essential that the accused should join in the "actual doing" of the act and not merely in planning its perpetration. We do not think that that case or the dictum therein relied on, have any bearing on the facts of the present case. It is also necessary to observe that what in fact has been found in this case is the commission of the offence by the appellant himself. Though the trial Magistrate and one of the learned Judges of the High Court referred to the conviction as a conviction under s. 420/34 of the Indian Penal Code, the actual findings support a conviction of the appellant under s. 420 itself. Such a conviction would be valid though the charge is under s. 420 read with s. 34 of the Indian Penal Code. (See Willie (William) Slaney v. The State of Madhya Pradesh MANU/SC/0038/1955: 1956CriLJ291, unless prejudice is shown to have occurred.

21. Thus there is no substance in contentions 3 and 4.

22. Contention No. 2 arises under the following circumstances. It appears that the appellant was previously undergoing trial in the Court of the Sessions Judge at Bombay for the offences of forgery and fraud and was on bail in connection with that trial. While thus on bail he fled away first to Pakistan and from there to England. The Indian authorities made an application to the Metropolitan Magistrate, Bow Street, under the Fugitive Offenders Act, for his being arrested and surrendered.

That application was granted by the Magistrate. Thereupon the appellant moved the Queens Bench Division of the High Court in England for a writ of habeas corpus challenging the validity of his arrest and surrender to the Indian authorities. Judgment of Lord Goddard C.J. dealing with this matter is reported as Re. Government of India and Mubarak Ali Ahmed [1952] 1 All E.R. 1060.. The application was dismissed and the order for surrender made under the Fugitive Offenders Act was upheld. It appears that when he was brought back to Bombay and was in jail custody with reference to the resumed sessions trial, the complainant got to know about it and filed his complaint on June 30, 1952.

The Presidency Magistrate took it on his file and issued warrant against the accused and had him brought up before his court in due course for trial (presumably after the sessions trial was completed). The objection raised before us is that the appellant having been surrendered by the order of the Metropolitan Magistrate only for the sessions trial which was pending against him in Bombay, he could not be tried for any other offence said to have been committed by him in India. Learned Counsel relies on s. 3(2) of the English Extradition Act, 1870 (33 & 34 Vict. c. 52) which shows that it is contemplated thereby that a fugitive criminal who has been surrendered under the Extradition Act in respect of a particular offence should not be tried for any other offence until he has been restored or has been given an opportunity of returning.

This section, however, has no bearing in the present case, since, as already stated, the appellant was surrendered under the Fugitive Offenders Act which contains no analogous provision. Section 8 of the Fugitive Offenders Act only provides for an optional repatriation of the surrendered person at his request if he is acquitted of the offence for which he is surrendered. Learned counsel urges that the principle underlying s. 3(2) of the English Extradition Act is a general one and that it should be applied by analogy also to a surrender under the Fugitive Offenders Act.

We are unable to accede to that contention. It may also be mentioned that even if his arrest in India for the purpose of a trial in respect of a fresh offence is considered not to be justified, this by itself cannot vitiate the conviction following upon his trial. This is now well-settled by a series of cases. (See Parbhu v. Emperor MANU/PR/0035/1944; Lumbhardar Zutshi v. The King A.I.R. 1950 P.C. 26.; and H.N. Rishbud v. The State of Delhi MANU/SC/0049/1954: 1955CriLJ526. This contention must accordingly be overruled.

23. We are left, therefore, with the first contention raised by the learned counsel for the appellant which is the only substantial question that has been raised before us requiring careful consideration.

24. The first contention is raised on the assumption that the appellant is a Pakistani national. At the outset, it may be stated that it is doubtful whether in fact the appellant at the time of the offence could be considered a Pakistani national. The complainant asserted in his complaint, that he came to know the appellant to be an Indian citizen and described him as hailing from Hyderabad (Deccan) and as having absconded to Pakistan and from there to England. In a long written-statement filed after the prosecution closed its case, the appellant himself gave details of his previous history from the year 1928. He stated that he became a Graduate with Honours from the Punjab University in 1928, that he joined the Indian Finance Service and served in various capacities and at various places, that he ultimately resigned from the Government service in 1943 and joined an industrial concern at Hyderabad (Deccan), that he did a lot of business there and that he entered into a large business contract with the Government of Hyderabad, which was revived by

the Military Government after the Police Action. He winds up the narration of his previous history with the following significant statement.

"The contract was satisfactorily fulfilled prior to my migration to Pakistan in July, 1950."
25. This is a categorical statement of the appellant himself which shows that he continued to be in India till July 1950. If so, it appears prima facie that by virtue of Art. 5 of the Constitution read with Art. 7 thereof, he was a citizen of India on the date of the Constitution and continued to be so at the date of the offence in July-August, 1951, unless he shows that under Art. 9 of the Constitution, he voluntarily acquired the citizenship of a foreign State. Prima facie mere migration to Pakistan is not enough to show that he had lost Indian citizenship.

This question has not been considered or dealt with in the courts below, probably because it was not properly raised at the early stages. Being a fundamental objection to jurisdiction this should have been raised at the trial by the appellant (accused), at any rate, soon after the charge was framed. We might well have declined, therefore, to permit the question of jurisdiction in this specific form to be argued before us. But the learned Judges of the High Court have entertained it and dealt with it on the stated assumption that the appellant is a Pakistani national. To overrule the objection at this stage without finally deciding whether the appellant continues to be an Indian citizen (after remanding for additional finding, if need be,) would not be fair or satisfactory. In the circumstances we have felt it desirable to allow arguments to proceed on the same assumption which the High Court has made. We, therefore, proceed to deal with it.

26. The learned Judges of the High Court decided against the objection of the appellant as to the jurisdiction of the court to try him for the alleged offence relying on s. 179 of the Code of Criminal Procedure which provides as follows:

"When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued."
27. In view of the above provision, the learned Judges say as follows:

"Even upon the footing that the representations were made, or the deception was practised by the appellant, while he was in Pakistan, the consequence of the deception, namely, the delivery of the property, took place in Bombay."
28. They held that the appellant could, therefore, be tried in Bombay in respect of the delivery of the money in Bombay. The argument of the learned counsel for the appellant is that s. 179 of the Code of Criminal Procedure proceeds on the assumption that the person to be tried is substantively liable for an offence under the Indian Penal Code and that s. 179 prescribes the place of trial but does not create the liability. He urges that since the appellant is a Pakistani national who was not physically present at Bombay at any

stage of the commission of the offence, the Indian Penal Code has no application to him. He is therefore not liable for an offence under the Penal Code and hence is not triable under s. 179 of the Code of Criminal Procedure. It appears from s. 5(1) of the Code of Criminal Procedure that the provisions of the said Code relating to the place of trial assume the existence of substantive liability under the Indian Penal Code or under any other law. Section 5(1) says that

"all offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained."
Now the point raised by the learned counsel is that to hold a person in the position of appellant substantively liable for the offence charged against him in the circumstances of this case, would be to give extraterritorial operation to the provisions of the Indian Penal Code. He contends that such extra-territorial operation can only be by reason of specific legislation in this behalf and does not arise from any general provisions of the Indian Penal Code.

29. To deal with this contention, it is necessary to appreciate clearly the basic facts found in this case. The offence of cheating under s. 420 of the Penal Code as defined in s. 415 of the Code has two essential ingredients, viz., (1) deceit, i.e., dishonest or fraudulent misrepresentation to a person, and (2) the inducing of that person thereby to deliver property.

In the present case the volume of evidence set out above and the facts found to be true show that the appellant though at Karachi was making, representations to the complainant through letters, telegrams and telephone talks, some times directly to the complainant and some times through Jasawalla, that he had ready stock of rice, that he had reserved shipping space and that on receipt of money he would be in a position to ship the rice forthwith.

These representations were made to the complainant at Bombay, notwithstanding that the appellant was making the representations from Karachi. The position is quite clear where the representations were made through the trunk phone. The statement of the appellant at the Karachi-end of the telephone becomes a representation to the complainant only when it reaches cognition of the complainant at the Bombay-end. This indeed has not been disputed.

It makes no difference in principle if the representations have in some stages been conveyed by telegrams or by letters to the complainant directly or to some one of the appellant's agents, including Jasawalla in that category. There is also no question that it is as a result of these representations that the complainant parted with his money to the tune of about Rs. 5½ lakhs on three different dates. It has been found that the representations were made without being supported by the requisite facts and that this

was so to the knowledge of the appellant and that the representations were so made with an initial dishonest intention.

On these facts it is clear that all the ingredients necessary for finding the offence of cheating under s. 420 read with s. 415 have occurred at Bombay. In that sense the entire offence was committed at Bombay and not merely the consequence, viz., delivery of money, which was one of the ingredients of the offence. Learned counsel for the appellant has not seriously contested this position.

But he urges that even so the appellant who was not corporeally present in India at the relevant time does not fall within the purview of the Indian Penal Code. Now there can be no doubt that prima facie the Indian Penal Code is intended to deal with all unlawful acts and omissions defined to be offences and committed within India and to provide for the punishment thereof the person or persons found guilty therefor. This is implicit in the preamble and s. 2 of the Indian Penal Code.

What is, therefore, to be seen is whether there is any reasons to think that a foreigner not corporeally present at the time of the commission of the offence does not fall within the range of persons punishable therefore under the Code. It appears to us that the answer must be in the negative unless there is any recognised legal principle on which such exclusion can be founded or the language of the Code compels such a construction.

It is strenuously urged that to consider a foreigner guilty under the Penal Code for an offence committed in India though attributable to him and to punish him therefor in a case where he is not corporeally present in India for the commission of the offence, would be to give extraterritorial operation to the Indian Penal Code and that an interpretation which brings such extra-territorial operation must be avoided.

The case of the Privy Council in Macleod v. Attorney-General for New South Wales (1891) A.C. 455. is relied upon. But this argument is based on a misconception. The fastening of criminal liability on a foreigner in respect of culpable acts or omissions in India which are juridically attributable to him notwithstanding that he is corporeally present outside India at the time, is not to give any extra-territorial operation to the law; for it is in respect of an offence, whose locality is in India, that the liability is fastened on the person and the punishment is awarded by the law, if his presence in India for the trial can be secured.

That this is part of the ordinary jurisdiction of a Municipal Court is well-recognised in the common law of England as appears from Halsbury's Laws of England (Third Edition) Vol. 10, p. 318. Paragraph 580 therein shows that the exercise of criminal jurisdiction at common law is limited to crimes committed within the territorial limits of England and para. 581 states the jurisdiction in respect of acts outside English territory as follows:

"For the purposes of criminal jurisdiction, an act may be regarded as done within English territory, although the person who did the act may be outside the territory; for instance, a person who, being abroad procures an innocent agent or uses the post office to commit a crime in England is deemed to commit an act in England. If a person, being outside England, initiates an offence, part of the essential elements of which take effect in England, he is amenable to English jurisdiction. It appears that even though the person who has initiated such an offence is a foreigner, he can be tried if he subsequently comes to England."

30. Thus the exercise of criminal jurisdiction in such cases under the common law is exercise of municipal jurisdiction and much more so in a case like the present, where all the ingredients of the offence occur within the municipal territory.

31. It would be desirable at this stage to notice certain well-recognised concepts of International Law bearing on such a situation. Wheaton in his book on Elements of International Law (Fourth Edition) at p. 183, dealing with criminal jurisdiction states as follows:

"By the Common Law of England, which has been adopted, in this respect, in the United States, criminal offences are considered as altogether local, and are justiciable only by the courts of that country where the offence is committed."

32. At p. 182 thereof it is stated as follows:

"The judicial power of every independent State, extends (with the qualifications mentioned earlier) to the punishment of all offences against the municipal laws of the State, by whomsoever committed, within the territory."

33. In Hackworth's Digest of International Law (1941 Edition), Vol. II, at p. 188 there is reference to opinions of certain eminent American Judges. It is enough to quote the following dictum of Holmes J. noticed therein:

"Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power."

34. In Hyde's International Law (Second Edition), Vol. I, at p. 798, the following quotation from the judgment of the permanent Court of International Justice dated September 7, 1927, in the case relating to S.S. Lotus [Publications, Permanent Court of International Justice, Series A, Nos. 10, 23.] is very instructive:

"It is certain that the courts of many countries, even of countries which have given their criminal legislation a strictly territorial character, interpret criminal law in the sense that offences, the authors of which at the moment of commission are in the territory of another State, are nevertheless to be regarded as having been committed in the national territory, if one of the constituent elements of the offence, and more especially its effects, have taken place there."

35. This quotation is also noticed in Openheim's International Law (Eighth Ed.), Vol. I at p. 332 in the foot-note. In noticing the provisions of International Law in this context we are conscious that what we have to deal with in the present case is a question merely of municipal law and not of any International Law. But as is seen above, the principles recognised in International Law in this behalf are virtually based on the recognition of those principles in the municipal law of various countries and is really part of the general jurisprudence relating to criminal responsibility under municipal law.

No doubt some of the above dicta have reference to offences actually committed outside the State by foreigners and treated as offences committed within the State by specific legislation. But the principle emerging therefrom is clear that once it is treated as committed within the State the fact that he is a foreigner corporeally present outside at the time of such commission is no objection to the exercise of municipal jurisdiction under the municipal law. This emphasises the principle that exercise of criminal jurisdiction depends on the locality of the offence and not on the nationality of the alleged offender (except in a few specified cases such as ambassadors, Princes etc.).

36. Learned counsel for the appellant has relied on various passages in the judgment of Cockburn C.J. in the well-known case The Queen v. Keyn (Franconia's case) (1876) 2 Ex.D. 63.. Fourteen learned Judges participated in that case and the case appears to have been argued twice. Eight of them including Cockburn C.J. formed the majority. Undoubtedly there are various passages in the judgment of Cockburn C.J. which prima facie seem capable of being urged in favour of the appellant's contention. In particular the following passage at p. 235 may be noticed:

"The question is not whether the death of the deceased, which no doubt took place in a British ship, was the act of the defendant in such ship, but whether the defendant, at the time the act was done, was himself within British jurisdiction."
37. The learned Chief Justice, however, recognised at p. 237 that there were certain American decisions to the contrary. Now the main debate in that case was whether the sea up to three mile limit from the shore is part of British territory or whether in respect of such three mile limit only limited and defined extra territorial British jurisdiction extended which did not include the particular criminal jurisdiction under consideration.

In respect of this question, as a result of the judgment, the Parliament had to enact the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict., c. 73) which in substance overruled the view of the majority and of the learned Chief Justice on this point. The main principle of criminal jurisdiction, however, relevant for our purpose was enunciated in the minority judgment of Amphlett, J.A., at p. 118, that "it is the locality of the offence that determines the jurisdiction" implying by contrast that it is not the nationality of the offender.

38. The question, however, that still remains for consideration is whether there is anything in the language of the sections of the Indian Penal Code relating to the general scheme of the Code which compels the construction that the various sections of the Penal Code are not intended to apply to a foreigner who has committed an offence in India while not being corporeally present therein at the time.

For this purpose we are not concerned with such of the sections of the Penal Code, if any, which indicate the actual presence of the culprit as a necessary ingredient of the offence. Of course, for such offences a foreigner ex hypothesi not present at the time in India cannot be guilty. The only general sections of the Indian Penal Code which indicate its scheme in this behalf are Sections 2, 3, and 4 and as they stand at present, they are as follows:

"2. Every person 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 India.

3. Any person liable, by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.

4. The Provisions of this Code apply also to any offence committed by -

(1) any citizen of India in any place without and beyond India;

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

Explanation:- In this section the word 'offence' includes every act committed outside India which, if committed in India, would be punishable under this Code."

39. Sections 3 and 4 deal with offences committed beyond the territorial limits of India and s. 2 obviously and by contrast refers to offences committed within India. It appears clear that it is s. 2 that has to be looked to determine the liability and punishment of persons who have committed offences within India. The section asserts categorically that every person shall be liable to punishment under the Code for every act or omission contrary to the provisions of the Code and of which he shall be guilty within India.

This recognises the general principle of criminal jurisdiction over persons with reference to the locality of the offence committed by them, being within India. The use of the phrase "every person" in s. 2 as contrasted with the use of the phrase "any person" s. 3 as well as s. 4(2) of the Code is indicative of the idea that to the extent that the guilty for an offence committed within India can be attributed to a person, every such person without exception is liable for punishment under the Code.

Learned counsel for the appellant suggests that the phrase "within India" towards the end of s. 2 must be read with the phrase "every person" at the commencement thereof. But this is far-fetched and untenable. The plain meaning of the phrase "every person" is that it comprehends all persons without limitation and irrespective of nationality, allegiance, rank, status, caste, colour or creed.

This section must be understood as comprehending every person without exception barring such as may be specially exempt from criminal proceedings or punishment thereunder by virtue of the Constitution (See Art. 361(2) of the Constitution) or any statutory provisions or some well-recognised principle of international law, such as foreign sovereigns, ambassadors, diplomatic agents and so forth, accepted in the municipal law.

40. Learned counsel drew our attention to a number of sections in the Penal Code, viz., Sections 108A, 177, 203, 212, 216, 216A and 236. The argument based on reference to these sections is that wherever the legislature in framing the Penal Code wanted to legislate about anything that has reference to something done outside India it has specifically said so and that therefore it may be expected that if it was intended that the Penal Code would refer to a person actually present outside India at the time of the commission of the offence, it would have specifically said so. We are unable to accept this argument.

These sections have reference to particular difficulties which arose with reference to what may be called, a related offence being committed in India in the context of the principal offence itself having been committed outside India - that is for instance, abetment, giving false information and harbouring within India in respect of offences outside India. Questions arose in such cases as to whether any criminal liability would arise with reference to the related offence, the principal offence itself not being punishable in India and these sections were intended to rectify the lacunae.

On the other hand, a reference to s. 3 of the Code clearly indicates that it is implicit therein that a foreigner who commits an offence within India is guilty and can be punished as such without any limitation as to his corporeal presence in India at the time. For if it were not so, the legal fiction implicit in the phrase "as if such act had been committed within India" in s. 3 would not have been limited to the supposition that such act had been committed within India, but would have extended also to a fiction as to his physical presence at the time in India.

41. In the argument before us, there has been some debate as to what exactly is the implication of the clause "of which he shall be guilty within India" in s. 2 of the Code. It is unnecessary to come to any definite conclusion in respect thereto. But it is clear that it does not support the contention of the appellant's counsel. We have, therefore, no doubt that on a plain reading of s. 2 of the Penal Code, the Code does apply to a foreigner who

has committed an offence within India notwithstanding that he was corporeally present outside.

42. It has next been urged before us that the exercise of jurisdiction over a foreigner by municipal courts depends on the theory of temporary allegiance to the State by reason of his entry into the State, which carries with it the protection of its laws and therefore his submission thereto. Dicta from some of the decided cases have been cited before us. It is unnecessary to deal with any of those cases.

On an examination of those cases it will be found that allegiance, temporary or otherwise, has not been laid down anywhere as a limiting principle in respect of criminal jurisdiction, which is primarily concerned with questions of security of the State and of the citizens of the State.

43. A number of early cases of the High Courts in India have been brought to our notice as bearing on the question now under consideration. (See Reg. v. Elmstone, Whitwell (1870) 7 Bom. H.C.R. 89; Reg. v. Pirtai [(1873) 10 Bom. H.C.R. 356.]; Mussummat Kishen Kour v. The Crown [(1878) 13 P.R. 49 (Criminal Judgments).]; and Gokaldas Amarsee v. Emperor (1934) 35 Cr.L.J. 585.. As against them may be noticed the case in Emperor v. Chhotalal Babar (1912) I.L.R. 36 Bom. 524..

It is unnecessary to consider them at any length. Undoubtedly some of them seem to support the view pressed before us on behalf of the appellant that criminal jurisdiction cannot extend to foreigners outside the State. These, however, are decisions rendered at a time when the competence of the Indian Legislature was considered somewhat limited, under the influence of the decisions like those in Macleod's case [(1891) A.C. 455.] in spite of the decision in Queen v. Burah (1878) 3 A.C. 889..

However that may be these concepts are no longer tenable after India became a Dominion by the Indian Independence Act of 1947 and after it become an independence free sovereign republic under the present Constitution. It is enough to refer to the case of Croft v. Dunphy (1933) A.C. 156. and to the decision of Spens, C.J., in Governor-General v. Raleigh Investment MANU/FE/0015/1944.

In the latter case Spens, C.J., indicates that there has been considerable change in the concept of the doctrine of extra-territorial legislation, subsequent to Macleod's case (1891) A.C. 455. and the criticism of Macleod's case (1891) A.C. 455. in certain Canadian decisions and of the Privy Council itself has been adverted to.

44. Learned counsel invited our attention to a passage from the report of the Indian Law Commissioners quoted at p. 274 of Ratanlal's Law of Crimes (Eighteenth Ed.). It is enough to say that though this quotation may be valuable as a matter of history, it cannot be a legitimate guide for the construction of the section. That construction must be based on

the meaning of the words used, to be gathered according to the ordinary rules of interpretation and in consonance with the generally accepted principles of exercise of criminal jurisdiction.

It is not necessary and indeed not permissible to construe the Indian Penal Code 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.

45. After giving our careful consideration to the questions raised before us, we are clearly of the opinion that even on the assumption that the appellant has ceased to be an Indian citizen and was a Pakistani national at the time of the commission of the offence, he must be held guilty and punished under the Indian Penal Code notwithstanding his not being corporeally present in India at the time.

46. We have been asked to consider the question of sentence. As has been stated at the outset the substantive sentences of imprisonment are two years under the first count and twenty-two months under the second. The sentences were concurrent on the second and third counts. As a result, the total imprisonment which has been awarded against the appellant would be a period of three years and ten months. We are not prepared to say that the discretion of the trial court in awarding that sentence has been wrongly exercised.

47. The appeal is accordingly dismissed.

48. Appeal dismissed.

MANU/WB/0119/1912

Back to Section 3 of Indian Penal Code, 1860

IN THE HIGH COURT OF CALCUTTA

Decided On: 12.12.1912

Kari Singh Vs. Emperor

Hon'ble Judges/Coram:
Saiyid Sharfuddin and Henry Reynell Holled Coxe, JJ.

JUDGMENT
Saiyid Sharfuddin and Henry Reynell Holled Coxe, JJ.

1. The accused in this case has been convicted of defaming one, Mr. Macpherson. It appears that in a former case lie applied to the District Magistrate for a transfer, and in that application he stated that Mr. Macpherson had brought to Court the manager of the Majhoul Factory, who was the trying Magistrate's tenant, and had had a private talk with the trying Magistrate. He inferred that this was done to put pressure on the trying Magistrate, and to induce him to convict the petitioner.

2. It appears that this was all pure invention. The manager of the Majhoul Factory was not brought to Court at all, and Mr. Macpherson had no private talk with the trying Magistrate. The assertion clearly amounted to an accusation against Mr. Macpherson that he had attempted to corrupt justice, and it cannot be gainsaid that it was defamatory, and made in bad faith.

3. The petitioner has obtained a rule on the Magistrate to show cause why the conviction should not be set aside, on the ground that the statement in the application for transfer was absolutely privileged.

4. It is evident on reference to the terms of the, section itself that statements made in bad faith are not protected. But it is argued by the learned pleader who appeal's in support of this rule, following the decision in Potaraju Venkata Reddy v. Emperor (1912) 13 Or. L. J. 275 that the English common law doctrine of absolute privilege is also law in this country. Speaking with the utmost respect for that decision, we are unable ourselves to take this view. The learned pleader has not shown us any authority, historical or otherwise, for holding that the English common law ever had any application to the Indian mofussil, and despite some casual expressions, in certain decisions, we are unable to understand how it could ever have had any application. It is argued, however, that as the Exceptions in Section 499 of the Penal Code correspond only to the classes of qualified privilege in English law, and as there is no reference in the Penal Code to the cases of absolute privilege, it must be assumed that the framers of the Code, who were introducing the English law into this country, cannot have intended to exclude that portion of it. The rule

laid down in Bank of England v. Vagliano [18011 A. C. 107 quoted in Norendra Nath Sircar v. Kamalbasini Dasi ILR(1896)Calc. 563 was that the proper course to adopt in construing an Act was to ascertain the natural meaning of its language, and not to assume that it was intended to leave the existing law unaltered, except when that intention was stated. This decision is distinguished on the ground that Lord Herschell, in laying down that rule, was dealing With an Act codifying the existing law, and not with an Act introducing new law. It seems to us that the distinction tells rather against the appellant than for him. If it is wrong to assume that in codifying existing law the Legislature intended to leave it unaltered, unless that intention is expressly stated, it seems to us that it would be more, and not less, wrong-to assume that in introducing a foreign law into a country the Legislature intended to introduce the whole of it, unless the contrary is expressly stated. It was held in Gokul Mandar v. Pudmanund Singh ILR(1902) Calc. 707 that it is " the essence of a Code to be exhaustive on the matters in respect of which it declares the law, and it is not the province of a Judge to disregard or go outside the letter of the enactment, according to its true construction." The Penal Code certainly declares the law in respect of defamation. It contains a definition of defamation, and sets out a number of Exceptions. It appears to us that it must be regarded as exhaustive on the point. Section 2 enacts that every person shall be liable to punishment under this Code, and not otherwise, for their acts. If there are a number of Exceptions to the offence of defamation, other than those contained in Section 499, it appears to us that an offender must be liable to punishment for defamation otherwise than under the Code. On principle, therefore, it would seem to us that Section 499 is exhaustive, and that if a defamatory statement does not come within the specified Exceptions, it is not privileged.

5. It appears to us also that in Bengal the matter is concluded by authority. The cases of Greene v. Delanney (1870) 14 W. R. Cr 27 Augada Ram Shaha v. Nemai Chand Shaha ILR(1896) Calc. 867 Kali Nath Gupta v. Gobinda Chandra Basu MANU/WB/0341/1900: 5. C. W. N. 293 seem to us clear authority for holding that the question of privilege must be decided by the terms of Section 499. The decisions of this Court that have been cited on behalf of the appellant are, in our opinion, distinguishable. The first case relied on is that of Baboo Gunnesh Dutt Singh v. Mugneeram Chowdhry (1872) 11 B. L. R. 321. There it was held that, on principles of public policy, a witness cannot be sued for damages in respect of defamatory evidence given by him in a judicial proceeding. But there their Lordships were dealing with a civil suit, and not with a criminal prosecution; and were not considering the effect of Section 499 of the Penal Code. This is a real distinction, because, while the law of crimes has been codified and offences have been defined by Statute, the codification, of the Law of Torts was abandoned, and actionable wrongs are not defined by Statute. It is likely enough that, if the Law of Torts had been codified, some provisions would have been introduced, such as exists in the Contract Act, by which suits opposed to public policy would have been barred. But this has not been done, and the question, what is or is not an actionable wrong, has to be gathered from case law, and considerations of justice, equity and good conscience, and not from a statutory definition. It is, therefore, possible in such cases to apply principles of the English law which are

consonant with justice, equity and good conscience, which would have no application if actionable wrongs had been defined by Statute. Secondly, it is clear that a voluntary statement by an accused is different from a statement made by a witness who is compelled to answer the questions put to him. The distinction may be fine, but it has been recognised and acted upon by this Court. We may refer again to the case of Kali Nath Gupta v. Gobinda Chandra Basu MANU/WB/0341/1900: 5 C. W. N. 293 quoted above. And in Haidar Ali v. Abru Mia ILR(1905)Calc. 756 the learned Judges refused to extend the privilege even to a witness when the statement was not made in answer to a question that the witness was bound to answer, but was volunteered.

6. In Bhikumber Singh v. Becharam Sircar ILR(1888) Calc. 264 it was held that a statement made by a witness was absolutely privileged. That was a suit for damages' and the case goes no further than Baboo Gunnesh Butt Singh v. Mugneeram Chowdhry (1872) 11 B. L. R. 321 already discussed. The same may be said of Woolfun Bibi v. Jesarat Sheikh ILR(1899) Calc. 262. In Golap Jan v. Bholanath Khettry ILR(1911)Calc. 880 the statement was made by a complainant and not by a witness, but the privilege was claimed not in a criminal prosecution but in a suit for damages. That also was a case within the original jurisdiction of this Court, where the application of English law might be supported by arguments that would be inapplicable to a case in the mofussil.

7. It seems to us, therefore, clear, both on principle and authority, that in Bengal there is no absolute privilege for a statement like that now Tinder consideration, when made in bad faith. It has been pressed upon us that, in the analogous case Kari Singh v. Emperor. Criminal Revision No. 1219 of 1912.

8. Cuitty and Richardson JJ. In this case the accused, Kari Singh, who is the petitioner before us, was put on his trial before Maulvi Najimuddin, an Honorary Magistrate, on a charge under Section 147 of the Indian Penal Code. In the course of that trial he presented a petition to the District Magistrate of Monghyr for a transfer of the case to another Court, on the ground that he would not get a fair and impartial trial before the Honorary Magistrate. Paragraph (5) of that petition was as follows:

That on the 17th June last, on the date fixed for hearing of this case, Mr. Macpherson and the manager of Majhoul Kothi, where some properties of the trying Honorary Magistrate have been leased out, came to the Court of the trying Magistrate and had some private talk with the Honorary Magistrate, and the petitioner apprehends that the manager of the Maghonl Kothi was brought to put additional pressure on the trying Magistrate to induce him to convict the petitioner, and that he cannot get a fair and impartial trial in that Court, or in any other Court in Bengal.

The accused was charged under Section 499 of the Indian Penal Code with defaming Mr. Macpherson and also the manager of Majhoul Kothi (Mr. Finch), and has been in each case convicted and sentenced to pay a fine, of Rs. 100, or in default to undergo 3 months'

simple imprisonment. The accused made two applications to this Court in revision, one in each case. For some reason a Rule was issued only in Mr. Finch's case, the question in Mr. Macpherson's case being left over for further consideration until after the disposal of the Rub so issued.

It has been found as a fact that the allegation above set out was untrue to the knowledge of the accused, inasmuch as neither of the gentlemen in fact came to Begusarai on the day alleged, or had any conversation with the trying Magistrate.

The only question before us is whether the statement of the petitioner must be judged only by the provisions of Section 499 of the Indian Penal Code, or whether it was absolutely privileged, of the trying Magistrate and had some private talk with the Honorary Magistrate, and the petitioner apprehends that the manager of the Maghonl Kothi was brought to put additional pressure on the trying Magistrate to induce him to convict the petitioner, and that he cannot get a fair and impartial trial in that Court, or in any other Court in Bengal.

The accused was charged under Section 499 of the Indian Penal Code with defaming Mr. Macpherson and also the manager of Majhoul Kothi (Mr. Finch), and has been in each case convicted and sentenced to pay a fine, of Rs. 100, or in default to undergo 3 months' simple imprisonment. The accused made two applications to this Court in revision, one in each case. For some reason a Rule was issued only in Mr. Finch's case, the question in Mr. Macpherson's case being left over for further consideration until after the disposal of the Rub so issued.

It has been found as a fact that the allegation above set out was untrue to the knowledge of the accused, inasmuch as neither of the gentlemen in fact came to Begusarai on the day alleged, or had any conversation with the trying Magistrate.

The only question before us is whether the statement of the petitioner must be judged only by the provisions of Section 499 of the Indian Penal Code, or whether it was absolutely privileged.

The question in its broadest aspect has been the subject of a largo number of judicial decisions in the High Courts of India, and in no one of the Courts have such decisions been entirely uniforn.

The statement here is not the statement of a person who is a mere witness, or who is a party to a civil suit. It is the statement made by an accused person in the course of his trial upon a criminal charge. In view of the decisions to which we have been referred, that fact may not be without its importance. It certainly makes it pertinent to observe that in the very recent case of Potaraju Venkata Reddy v. Emperor (1912) 13 Cri. L. J. 275 not yet reported in the Indian Law Reports, a Full Bench of the Madras High Court, after a careful

examination of the authorities, has held that the statement of an accused person in answer to a question by the trying Court is absolutely privileged. In another recent case in tin's Court, Golap Jan v. Bholanath Khettry ILR(1911)Calc. 880 where the defamatory statement was made in a complaint preferred under the Criminal Procedure Code, the Chief Justice remarked (p. 888), "but even if the complaint to the Magistrate was defamatory, still the complainant was entitled to protection from suit, and tin's protection is the absolute privilege accorded in the public interest to those who make statements to the Courts in the course of, and in relation to, judicial proceedings. "The remark would apply with as great, or even greater, force to a statement made by an accused person.

We have said that the statement here was made in the course of criminal proceedings, but it was not made in the Court of the trying Magistrate by way of answer to the charge. It was made in the Court of the District Magistrate to support an application for transfer. 'Die order we are about to make must not be understood as in any degree implying that we desire to weaken the sense of responsibility which such applications entail. Sometimes they may be justified. Sometimes they may be mere devices for delaying justice. Or again, they may be resorted to because it is thought that the trial Judge or Magistrate has, not improperly, from personal bias or from extraneous information, but on the bench and judicially, as the case proceeded before him, formed, or provisionally formed, an opinion on the merits, favourable or unfavourable, to one side or the other.

The authorities have been examined so often, and with such differing results, that we do not think that it would serve any useful purpose to traverse the same ground again upon this Rule. The controversy is of a character which can only be finally settled by an authoritative ruling of the Privy Council or by the Legislature. We refrain, therefore, from expressing unqualified opinion upon the question of principle involved, and we content ourselves with saying that, in view of the two cases which we have specifically cited, the propriety of the conviction is at least open to serious doubt. In that view of the matter, we make the Rule absolute, set aside the conviction and sentence, and direct that the fine, if paid, be refunded.

A Rule in the same terms must be issued in Mr. Macpherson's case. brought by the manager of the Majhoul Factory, a Bench of this Court set aside the conviction, and it has been suggested that we should refer the matter to a Full Bench. But we can only refer to a Full Bench a decision from which we dissent on a point of law, and we do not so dissent from any decision that has been laid before us. In the analogous case the learned Judges expressly declined to lay down any principle of law, and set aside the conviction, because, in view of the two cases cited by them Potaraju Venkata Redely v. Emperor (1912) 13 Cri. L. J. 275 and Golap Jan v. Bholanath Khettry ILR(1911) Calc. 880 the propriety of the conviction was open to serious doubt. But speaking with all respect we are unable to share the doubts of the learned Judges as to what is at present the law on this point in this province.
9. The Rule is discharged.

MANU/SC/0066/1954

Back to Section 4 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 90 of 1952

Decided On: 12.10.1954

Central Bank of India Vs. Ram Narain

Hon'ble Judges/Coram:
M.C. Mahajan, C.J., B.K. Mukherjea, Vivian Bose, B. Jagannadhadas and T.L. Venkatarama Aiyyar, JJ.

JUDGMENT
M.C. Mahajan, C.J.

1. This appeal, by leave of the High Court of Judicature at Simla, raises a novel and interesting question of law, viz., whether a person accused of an offence under the Indian Penal Code and committed in a district which after the partition of India became Pakistan, could be tried for that offence by a Criminal Court in India after his migration to that country, and thereafter acquiring the status of a citizen.

2. The material facts relevant to this enquiry are these:

3. The respondent, Ram Narain, acting on behalf of his firm Ram Narain Joginder Nath, carrying on business at Mailsi in Multan District, was allowed a cash credit limit of rupees three lakhs by the Mailsi branch of the Central Bank of India Ltd. (the appellant) on the 23rd December, 1946, shortly before the partition of British India. The account was secured against stocks which were to remain in possession of the borrowers as trustees on behalf of the bank. On 15th August, 1947, when British India was split into two Dominions, the amount due to the bank from Ram Narain was over Rs. 1,40,000, exclusive of interest, while the value of the goods pledged under the cash credit agreement was approximately in the sum of Rs. 1,90,000. On account of the disturbances that followed in the wake of the partition of the country, the bank's godown-keeper at Mailsi left Mailsi some time in September, 1947, and the cashier, who was left in charge, also was forced to leave that place in October, 1947, and thus no one was in Mailsi to safeguard the bank's godowns after that date. It is alleged that in January, 1948, when, Mr. D. P. Patel Agent of the Multan branch of the appellant bank visited Mailsi, he discovered that stocks pledged by Messrs. Ram Narain Joginder Nath, against the cash credit agreement had disappeared. On inquiry he found that 801 cotton bales pledged

with the bank had been stolen, and booked by, Ram Narain to Karachi on the 9th November, 1947, and that he had recovered a sum of Rs. 1,98,702-12-9 as price of these bales from one Durgadas D. Punjabi. The bank claimed this amount from Ram Narain but with no result. It then applied under section 188, Criminal Procedure Code, to the East Punjab Government for sanction for the prosecution of Ram Narain for the offences committed in Pakistan in November, 1947, when he was there, in respect of these bales. The East Punjab Government, by its order dated 23rd February, 1950, accorded sanction for the prosecution of Ram Narain, under sections 380 and 454, Indian Penal Code. Ram Narain, at this time, was residing in Hotel District Gurgaon, and was carrying on business under the name and style of Ram Narain Bhola Nath, Hodel. In pursuance of this sanction, on 18th April, 1950, the bank filed a complaint against Ram Narain under sections 380 and 454, Indian Penal Code, and also under section 412 of the code before the District Magistrate of Gurgaon.

4. Ram Narain, when he appeared in Court, raised a preliminary objection that at the time of the alleged occurrence he was a national of Pakistan and therefore the East Punjab Government was not competent to grant sanction for his prosecution under section 188, Criminal Procedure Code, read with section 4, Indian Penal Code. This objection was not decided at that moment, but after evidence in the case had been taken at the request of both sides the Court heard arguments on the preliminary point and overruled it on the finding that Ram Narain could not be said to have acquired Pakistan nationality by merely staying on there from 15th August, till 10th November 1947, and that all this time he had the desire and intention to revert to Indian nationality because he sent his family out to India in October, 1947, would up his business there and after his migration to Indian in November, 1947, he did not return to Pakistan. It was also said that in those days Hindus and Sikhs were not safe in Pakistan and they were bound to come to India under the inevitable pressure of circumstances over which they had no control. Ram Narain applied to the Sessions judge, Gurgaon, under sections 435 and 439, Criminal Procedure Code, for setting aside this order and for quashing the charges framed against him. The Additional Sessions Judge dismissed this petition and affirmed the decision of the trial magistrate. Ram Narain then preferred an application in revision to the High Court, Punjab, at Simla and with success. The High Court allowed the revision and quashed the charges and held that the trial of respondent, Ram Narain, by a magistrate in India was without jurisdiction. It was held that until Ram Narain actually left Pakistan and came to India he could not possibly be said to have become a citizen of India, though undoubtedly he never intended to remain in Pakistan for any length of time and wound up his business as quickly as he could and came to India November, 1947, and settled in Hodel. It was further held that the Punjab Government had no power in February, 1950, to sanction his prosecution under section 188, Criminal Procedure Code, for acts committed in Pakistan in November, 1947. The High Court also repelled the further contention of the appellant bank that in any case Ram Narain could be tried at Gurgaon for the possession or retention by him at Hodel of the sale proceeds of the stolen cotton

which themselves constitute stolen property. Leave to appeal to this Court was granted under article 134(1)(c) of the Constitution.

5. The sole question for determination in the appeal is whether on a true construction of section 188, Criminal Procedure Code, and section 4 of the Indian Penal Code, the East Punjab Government had power to grant sanction for the prosecution of Ram Narain for offences committed in Pakistan before his migration to India.

6. The relevant portion of section 4, Indian Penal Code, before its amendment read thus:

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

(1) any Native Indian subject of Her Majesty in any place without and beyond British India;....."
7. Since 1950 the wording is:

"Any citizen of India in any place without and beyond India...."

8. Section 188, Criminal Procedure Code, formerly read thus:

"When a Native Indian subject of Her Majesty commits an offence at any place without and beyond the limits of British India....he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found."
9. These wordings were subsequently adapted after the formation of two Dominions and read as follows:-

"When a British subject domiciled in India commits an offence at any place without and beyond all the limits of the provinces.... he may be dealt with in respect of such offence as if it had been committed at any place within the Provinces at which he may be found."
10. After 1950, the adapted section reads as follows:

"When an offence is committed by -

(a) any citizen of India in any place without and beyond 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."
11. The learned Attorney-General contended that Ram Narain was, at the time when sanction for his prosecution was given by the East Punjab Government, a citizen of India residing in Hodel and that being so, he could be tried in India being a citizen of India at that moment, and having committed offences outside India and that the provisions of section 4, Indian Penal Code, and section 188, Criminal Procedure Code, were fully attracted to the case. In our opinion, this contention is not well founded. The language of the sections plainly means that if at the time of the commission of the offence, the person

committing it is a citizen of India, then even if the offence is committed outside India he is subject to the jurisdiction of the Court in India. The rule enunciated in the section is based on the principle that qua citizen the jurisdiction of Courts is not lost by reason of the venue of the offence. If, however, at the time of the commission of the offence the accused person is not a citizen of India, then the provisions of these sections have no application whatsoever. A foreigner was not liable to be dealt with in British India for an offence committed and completed outside British India under the provisions of the sections as they stood before the adaptations made in them after the partition of India. Illustration (a) to section 4, Indian Penal Code, delimits the scope of the section. It indicates the extent and the ambit of this section. It runs as follows:-

"(a) A, a coolie, who is a Native Indian subject commits a murder in Uganda. He can be tried and convicted of murder in any place in British India in which he may be found."
12. In the illustration, if (A) was not a Native Indian subject at the time of the commission of the murder the provisions of section 4, Indian Penal Code, could not apply to his case. The circumstance that after the commission of the offence a person becomes domiciled in another country, or acquires citizenship of that State, cannot confer jurisdiction on the Courts of that territory retrospectively for trying offences committed and completed at a time when that person was neither the national of that country nor was he domiciled there.

13. The question of nationality of Ram Narain really does not arise in the case. The real question to be determined here is, whether Ram Narain had Indian domicile at the time of the commission of the offence. Persons domiciled in India at the time of coming into force of our Constitution were given the status of citizens and they thus acquired Indian nationality. If Ram Narain had Indian domicile at the time of the commission of the offence, he would certainly come within the ambit of section 4, Indian Penal Code, and section 188, Criminal Procedure Code. If, on the other hand, he was not domiciled in India at the relevant moment, those sections would have no application to his case. Writers on Private International Law are agreed that it is impossible to lay down an absolute definition of 'domicile.' The simplest definition of this expression has been given by Chitty J. in Craignish v. Craignish [1892] 3 Ch. 180, 192), wherein the learned Judge said:

"That place is properly the domicile of a person in which his habitation is fixed without any present intention of removing therefrom."
14. But even this definition is not an absolute one. The truth is that the term 'domicile' lends itself to illustrations but not to definition. Be that as it may, two constituent elements that are necessary by English Law for the existence of domicile are: (1) a residence of a particular kind, and (2) an intention of a particular kind. There must be the factum and there must be the animus. The residence need not be continuous but it must be indefinite, not purely fleeting. The intention must be a present intention to reside for ever in the country where the residence has been taken up. It is also a well established

proposition that a person may have no home but he cannot be without a domicile and the law may attribute to him a domicile in a country where in reality he has not. A person may be a vagrant as when he lives in a yacht or wanderer from one European hotel to another, but nevertheless the law will arbitrarily ascribe to him a domicile in one particular territory. In order to make the rule that nobody can be without a domicile effective, the law assigns what is called a domicile of origin to every person at his birth. This prevails until a new domicile has been acquired, so that if a person leaves the country of his origin with an undoubted intention of never returning to it again, nevertheless his domicile of origin adheres to him until he actually settles with the requisite intention in some other country.

15. It has been held by the High Court that Ram Narain remained in Multan District of the West Punjab, where he and his ancestors had lived till his migration to India. The contention that as no Hindu or Sikh could possibly remain in Pakistan and therefore every such person must have been bound upon making his way to India as quickly as possible and that merely by forming an intention to come to India he became an Indian subject and was never even for a moment a subject of Pakistan, was negatived, and it was said that "though there is no doubt that so far as Punjab is concerned the vast majority of Hindus and Sikhs came to India but even in the Punjab the exodus has not been complete and in the East Bengal there are a considerable number of non-Muslims who no doubt by now have become full citizens of Pakistan." In view of these findings it was concluded that the only possible way by which a resident of the territories which became Pakistan could become an Indian subject was by actually coming to India and unless and until any such person did come to India he retained Pakistan domicile, and was not covered by the words "Native Indian subject of Her Majesty" in the meaning which they automatically acquired as from the 15th August, 1947, and he certainly could not be described as a citizen of India in November, 1947. The learned Attorney-General combated this view of the learned Judge and laid considerable emphasis on his following observations:

"There does not seem to be any doubt in the evidence produced that Ram Narain never intended to remain in Pakistan for any length of time. In fact, he wound up his business as quickly as he could and came to India later in November 1947 and settled in Hotel."
16. and he further emphasized the circumstances relied upon by the trial magistrate and sessions Judge that Ram Narain had sent his family to India in October, 1947.

17. In our opinion, none of these circumstances conclusively indicate an intention in Ram Narain of permanently removing himself from Pakistan and taking up residence in India. It has to be remembered that in October or November, 1947, men's minds were in a state of flux. The partition of India and the events that followed in its wake in both Pakistan and India were unprecedented and it is difficult to cite any historical precedent for the situation that arose. Minds of people affected by this partition and who were living in those parts were completely unhinged and unbalanced and there was hardly any occasion to form intentions requisite for acquiring domicile in one place or another.

People vacillated and altered their programmes from day to day as events happened. They went backward and forward; families were sent from one place to another for the sake of safety. Most of those displaced from West Pakistan had no permanent homes in India where they could go and take up abode. They overnight became refugees, living in camps in Pakistan or in India. No one, as a matter of fact, at the moment through that when he was leaving Pakistan for India or vice versa that he was doing so for ever or that he was for ever abandoning the place of his ancestors.

Later policies of the Pakistan Government that prevented people from going back to their homes cannot be taken into consideration in determining the intention of the people who migrated at the relevant moment.

Ram Narain may well have sent his family to India for safety. As pointed out by the learned Judge below, he and his ancestors lived in the Multan District. He had considerable business there. The bank had given him a cash credit of rupees three lakhs on the security of goods. He had no doubt some business in Hodel also but that was comparatively small. There is no evidence that he had any home in India and there is no reason to go behind the finding of the learned Judge below that he and his ancestors had been living in Mailsi. In these circumstances, if one may use the expression, Ram Narain's domicile of origin was in the district of Multan and when the district of Multan fell by the partition of India in Pakistan, Ram Narain had to be assigned Pakistan domicile till the time he expressed his unequivocal intention of giving up that domicile and acquiring Indian domicile and also took up his residence in India. His domicile cannot be determined by his family coming to India and without any finding that he had established a home for himself. Even if the animus can be ascribed to him the factum of residence is wanting in his case; and in the absence of that fact, an Indian domicile cannot be ascribed to Ram Narain. The subsequent acquisition by Ram Narain of Indian domicile cannot affect the question of jurisdiction of Courts for trying him for crimes committed by him while he did not possess an Indian domicile. The question in this case can be posed thus: Can it be said that Ram Narain at the time of the commission of the offence was domiciled in India? That question can only be answered in one way, viz., that he was not domiciled in India. Admittedly, then he was not a citizen of India because that status was given by the Constitution that came into force in January, 1950. He had no residence or home in the Dominion of India. He may have had the animus to come to India but that animus was also indefinite, an uncertain. There is no evidence at all that at the moment he committed the offence he had finally made up his mind to take up his permanent residence in India, and a matter of this kind cannot be decided on conjectural grounds. It is impossible to read a man's mind but it is even more than impossible to say how the minds of people worked during the great upheaval of 1947.

18. The learned Attorney-General argued that Ram Narain was a native Indian subject of Her Majesty before the 15th August, 1947, and that description continued to apply to him after the 15th August, 1947, whether he was in India or in Pakistan, but we think that the description 'Native subject of Her Majesty' after the 15th of August, 1947, became applicable in the territory now constituted India only to residents of provinces within the

boundaries of India, and in Pakistan to residents of provinces within the boundaries of Pakistan and till the time that Ram Narain actually landed on the soil of India and took up permanent residence therein he cannot be described to be domiciled in India or even a Native Indian subject of His Majesty domiciled in India.

19. For the reasons given above we are of the opinion that the decision of the High Court that Ram Narain could not be tried in any Court in India for offences committed in Mailsi in November, 1947 is right and that the Provincial Government had no power under section 188, Criminal Procedure Code, to accord sanction to his prosecution.

20. The result is that the appeal fails and is dismissed.

21. Appeal dismissed.

MANU/SC/1140/2011

Back to Section 24 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 7241 of 2002

Decided On: 29.09.2011

Union of India (UOI) through its Secretary Ministry of Defence Vs. Rabinder Singh

Hon'ble Judges/Coram:
J.M. Panchal and H.L. Gokhale, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Parag P. Tripathi, ASG, R. Balasubramanian, Amey Nargolkar, Mahima Gupta and B.V. Balaram Das, Advs.
For Respondents/Defendant: Seeraj Bagga, Adv. for Sureshta Bagga, Adv.

JUDGMENT
H.L. Gokhale, J.

1. This appeal by Union of India through the Secretary to Government, Ministry of Defence seeks to challenge the judgment and order passed by a Division Bench of the Punjab and Haryana High Court in L.P.A. No. 996 of 1991 dated 2.7.2001 whereby the Division Bench has allowed the appeal filed by the first Respondent from the judgment and order rendered by a Single Judge of that Court dated 31.5.1991 in C.W.P. No. 995-A of 1989 which had dismissed the said Writ Petition filed by the first Respondent.

2. The Division Bench has allowed the said petition by its impugned order and set aside the proceedings, findings and sentence of the General Court Martial held during 24.6.1987 to 1.10.1987 against the first Respondent by which he was awarded the punishment of Rigorous Imprisonment (R.I.) for one year and cashiering.

The facts leading to this appeal are as follows:

3. The first Respondent was deployed between 1.2.1984 and 3.10.1986 as the Commanding Officer of the 6 Armoured Regiment which was a new raising at the relevant time in the Indian Army. The unit was authorized for one signal special vehicle. In case such a vehicle was not held by the unit it was authorized to modify one vehicle with ad-hoc special finances for which it was authorized to claim 75% of Rs. 950/- initially and claim the balance amount on completion of modification work.

4. It is the case of the Appellant that the unit had sent a claim for 75% of the amount (i.e. Rs. 450/- as per the old rates) for modification of one vehicle, but the same was returned for want of justifying documents by the audit authorities. Yet the Respondent proceeded to order modification of some 65 vehicles in two lots, first 43 and thereafter 22. There is no dispute that he countersigned those bills, and claimed and received an amount of Rs. 77,692/- by preferring four different claims. The case of the Appellant is that not a single vehicle came to be modified, the money was kept separately and the expenditure was personally controlled by the Respondent. No such items necessary for modification were purchased, but fictitious documents and pre-receipted bills were procured. Though, the counter-foils of the cheques showed the names of some vendors, the amount was withdrawn by the Respondent himself. When the annual stocktaking was done, the non-receipt of stores and false documentation having taken place was found entered in the records.

5. (i) This led to the conducting of the Court of Inquiry on 13.10.1986 to collect evidence and to make a report under Rule 177 of the Army Rules, 1954 framed under Section 191 of the Army Act, 1950. On conclusion of the inquiry a disciplinary action was directed against the Respondent.

(ii) Thereafter, the summary of evidence was recorded under Rule 23 of the Army Rules, wherein the Respondent duly participated. Some 15 witnesses were examined in support of the prosecution, and the Respondent crossexamined them. He was given the opportunity to make a statement in defence, but he declined to make it.

6. Thereafter, the case against the Respondent was remanded for trial by a General Court Martial which was convened in accordance with the provisions under Chapter X of the Army Act. The Respondent was tried for four charges. They were as follows:

The accused, IC16714K Major Deol Rabinder Singh, SM, 6 Armoured Regiment, attached Headquarters 6(1) Armoured Brigade, an officer holding a permanent commission in the Regular Army is charged with:

(1) such an offence as is mentioned in Clause (f) of Section 52 of the Army Act

(2) with intent to defraud, in that he, at field on 25 June 84, while commanding 6 Armoured Regiment, when authorized to claim modification grant in respect of only one truck one tonne 4 x 4 GS FFR, for Rs. 950/-, with intent to defraud, countersigned a contingent bill No. 1096/LP/6/TS dated 25 June 84 for Rs. 31692/- for claiming an advance of 75% entitlement of cost of modification of 43 vehicles, which was passed for Rs. 31650/-, well knowing that the Regiment was not authorized to claim such grant in respect of all types of vehicles.

Such an offence as is mentioned in Clause (f) of Section 52 of the Army Act with intent to defraud, in that he, had filed on 5 March 85, while commanding 6 Armoured Regiment, with intent to defraud, countersigned a contingent bill No. 1965/ULPG/85/TS dated 5 March 85 for Rs. 20962.50 for claiming an advance of 75% entitlement of cost of modification of 22 vehicles, well knowing that the Regiment was not authorized to claim such grant in respect of all types of vehicles.

Such an offence as is mentioned in Clause (f) of Section 52 of the Army Act with intent to defraud, in that he, had filed on 9 Feb 85, while commanding 6 Armoured Regiment, with intent to defraud, countersigned a final contingent bill No. 1965/LP/02/TS dated 9 Feb 85 for Rs. 18150/- for claiming the balance of the cost of modification of vehicles, which was passed for Rs. 18149.98 well knowing that the Regiment was not authorized to claim such grant in respect of all types of vehicles.

Such an offence as is mentioned in Clause (f) of Section 52 of the Army Act with intent to defraud, in that he, had filed on 9 Sep 85, while commanding 6 Armoured Regiment, with intent to defraud, countersigned a final contingent bill No. 1965/LP/04/TS dated 9 Sep 85 for Rs. 6987.50/- for claiming the balance of the cost of modification of vehicles, well knowing that the Regiment was not authorized to claim such grant in respect of all types of vehicles.

7. The General Court Martial found him guilty of all those four charges, and awarded punishment of R.I. for one year and cashiering. The proceedings were thoroughly reviewed by the Deputy Judge-Advocate General, Headquarter, Western Command who made the statutory report thereon. These proceedings were confirmed by the confirming authority on 20.6.1988 in terms of Sections 153 and 154 of the Army Act. The Respondent preferred a Post Confirmation Petition under Section 164 of the Army Act which was rejected by the Chief of the Army. This led the Respondent to file the Writ Petition as stated above which was dismissed but the Appeal there from was allowed leading to the present Civil Appeal by special leave.

8. We have heard Shri Parag P. Tripathi, learned Additional Solicitor General appearing on behalf of the Appellant and Shri Seeraj Bagga, learned Counsel appearing on behalf of the Respondent.

9. Before we deal with the submissions by the rival counsel, we may note that the Respondent was charged under Section 52(f) of the Army Act, 1950 and the Section was specifically referred in the charges leveled against him. Section 52 reads as follows:

52. Offences in respect of property - Any person subject to this Act who commits any of the following offences, that is to say,-

(a) commits theft of any property belonging to the Government, or to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law, or

(b) dishonestly misappropriates or converts to his own use any such property; or

(c) commits criminal breach of trust in respect of any such property; or

(d) dishonestly receives or retains any such property in respect of which any of the offences under Clauses (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence; or

(e) willfully destroys or injures any property of the Government entrusted to him; or

(f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

10. Shri Tripathi learned ASG appearing for the Appellant submitted that the Division Bench erred in holding that the particulars of the charges did not include the wrongful gain to the Respondent and corresponding loss to the army, nor was it proved, and therefore the charge of doing something with intent to defraud had not been conclusively proved. In his submission, Sub-section (f) is in two parts. In fact, the Division Bench of the High Court also accepted that there are two parts of this Section. The Respondent was charged with the first part which is 'doing something with intent to defraud'. Therefore, it was not necessary to mention in the charge the second part of the Sub-section which covers 'wrongful gain to one person or wrongful loss to another'.

11. The offence with which the Respondent was charged was doing something with intent to defraud. According to the Respondent, the act attributed to him was only to countersign the contingent bills. The fact is that the Army got defrauded by this countersigning of the contingent bills by the Respondent, inasmuch as no such purchases were authorized and in fact no modification of the vehicles was done. That being so, the charge had been established. The Respondent cannot escape from his responsibility. It was pointed out on behalf of the Appellant that assuming that the latter part of section 52(f) was not specifically mentioned in the charge, no prejudice was caused to the Respondent thereby. He fully understood the charges and participated in the proceedings.

12. Shri Seeraj Bagga, learned Counsel for the Respondent on the other hand, submitted that Rule 30(4) and Rule 42(b) of the Army Rules mandatorily require the Appellant to

make the charges specifically. His submission was that the charges were not specific and the Respondent did not get an idea with respect to them and, therefore, he suffered in the proceedings. We may quote these rules. They read as follows:

Rule 30(4). The particulars shall state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect or omission is intended to be proved against him as constituting the offence.

Rule 42 (b). That such charge disclose an offence under the Act and is framed in accordance with the rules, and is so explicit as to enable the accused readily to understand what he has to answer.

Shri Bagga submitted that no evidence was produced with respect to wrongful gain by the Respondent and, therefore, the Division Bench was right in interfering with the judgment rendered by the Single Judge as well as in the General Court-Martial.

Consideration of rival submissions -

13. We have noted the submissions of both the counsels. When we see the judgment rendered by the Single Judge of the High Court we find that he has held in paragraph 19 of his judgment that the findings of the General Court Martial were duly supported by the evidence on record, and the punishment had been awarded considering the gravity of the offence. In paragraph 18, he has also held that the Respondent was afforded opportunity to defend his case, and there was neither any illegality in the conduct of the trial nor any injustice caused to him.

14. The Division Bench, however, held that the only allegation leveled against the first Respondent was that he had countersigned the contingent bills for claiming the cost of modifications of the vehicles, but there was no charge of wrongful gain against him. The Division Bench, however, ignored the fact that this countersigning led to withdrawal of an amount of Rs. 77,692/- by the Respondent for certain purchases which were neither authorized nor effected. The fact that the Respondent had countersigned the contingent bills was never in dispute. The Appellant placed on record the necessary documentary and oral evidence in support of the charges during the course of the enquiry which was conducted as per the provisions of the Army Act. We have also been taken through the record of the enquiry. It showed that these amounts were supposed to have been paid to some shops but, in fact, no such purchases were effected. The Respondent could not give any explanation which could be accepted. The Division Bench has clearly erred in ignoring this material evidence on record which clearly shows that the Army did suffer wrongful loss.

15. The Division Bench also took the view that the allegation against the Respondent did not come within the purview of intent to defraud. This is because to establish the intent

to defraud, there must be a corresponding injury, actual or possible, resulting from such conduct. The Army Act lays down in Section 3(xxv) that the expressions which are not defined under this Act but are defined under the Indian Penal Code, 1860 (Code for short) shall be deemed to have the same meaning as in the code. The Division Bench, therefore, looked to the definition of 'dishonestly' in Section 24 and of 'Falsification of accounts' in Section 477A of the code. In that context, it has referred to a judgment of this Court in S. Harnam Singh v. State (Delhi Administration) reported in MANU/SC/0666/1976: AIR 1976 SC 2140. In that matter, the Appellant was working as a loading clerk in Northern Railways, New Delhi and he was tried under Section 477A and Section 120B of the Code read with Section 5(2) of the Prevention of Corruption Act. While dealing with Section 477A, this Court held in paragraph 13 of the judgment that in order to bring home an offence under this Section, one of the necessary ingredients was that the accused had willfully and with intent to defraud acted in a particular manner. The Code, however, does not contain a definition of the words 'intent to defraud'. This Court, therefore, observed in paragraph 18 as follows:

18... The Code does not contain any precise and specific definition of the words "intent to defraud". However, it has been settled by a catena of authorities that "intent to defraud" contains two elements viz. deceit and injury. A person is said to deceive another when by practising "suggestio falsi" or "suppressio veri" or both he intentionally induces another to believe a thing to be true, which he knows to be false or does not believe to be true. "Injury" has been defined in Section 44 of the Code as denoting "any harm whatever illegally caused to any person, in body, mind, reputation or property.
It was submitted on behalf of the Respondent that in the instant case, it was not shown that there was any wrongful gain on the part of the Respondent and, therefore, the Division Bench rightly interfered in the order passed by the learned Single Judge as well as by the General Court Martial.

16. If we see the text of the charges, they clearly mention that the Respondent claimed advance for 43 vehicles initially and then 22 vehicles subsequently by countersigning the contingent bills knowing fully well that his Regiment was not authorized to claim such grants. Thus, the charges are very clear, and the Respondent cannot take advantage of Rule 30(4) and Rule 42(b), in any manner whatsoever. The Army had led additional evidence to prove that the amount was supposed to have been passed on to certain shops but the necessary purchases were in fact not made. In Dr. Vimla v. Delhi Administration reported in MANU/SC/0163/1962: AIR 1963 SC 1572, a bench of four judges of this Court was concerned with the offence of making a false document as defined in Section 464 of the Code. In paragraph 5 of its judgment the Court noted that Section 464 uses two adverbs 'dishonestly' and 'fraudulently', and they have to be given their different meanings. It further noted that while the term 'dishonestly' as defined under Section 24 of Indian Penal Code, talks about wrongful pecuniary/economic gain to one and wrongful loss to another, the expression fraudulent is wider and includes any kind of injury/harm to body, mind, reputation inter-alia. The term injury would include non-

economic/non-pecuniary loss also. This explanation shows that the term 'fraudulent' is wider as against the term 'dishonesty'. The Court summarized the propositions in paragraph 14 of the judgment in the following words:

14. To summarize: the expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others In short, it is a non-economic or nonpecuniary loss...
17. In the instant case, there was an economic loss suffered by Army, since an amount was allegedly expended for certain purchases when the said purchases were not authorized. Besides, the expenditure which was supposed to have been incurred for purchasing the necessary items was, in fact found to have been not incurred for that purpose. There was a complete non-utilisation of amount for the purpose for which it was claimed to have been sought. The evidence brought on record is sufficient enough to come to the conclusion that there was deceit and injury. Therefore, it was clear that Section 52(f) of the Act would get attracted since the Respondent had acted with intent to defraud within the explanation of the concept as rendered by this Court in S. Harnam Singh (supra) which had specifically referred to and followed the law laid down earlier in Dr. Vimla (supra). We accept the submission of Shri Tripathi that the two parts of Section 52(f) are disjunctive, which can also be seen from the fact that there is a comma and the conjunction 'or' between the two parts of this Sub-section, viz (i) does any other thing with intend to defraud and (ii) to cause wrongful gain to one person or wrongful loss to another person. If the legislature wanted both these parts to be read together, it would have used the conjunction 'and'. As we have noted earlier in Dr. Vimla (supra) it was held that the term 'fraudulently' is wider than the term 'dishonestly' which however, requires a wrongful gain and a wrongful loss. The Appellants had charged the Respondents for acting with 'intent to defraud', and therefore it was not necessary for the Appellants to refer to the second part of Section 52(f) in the charge. The reliance by the Division Bench on the judgment in S. Harnam Singh (supra) to justify the conclusions drawn by it was clearly erroneous.

18. The Respondent had full opportunity to defend. All the procedures and steps at various levels, as required by the Army Act were followed and it is, thereafter only that the Respondent was cashiered and sentenced to R.I. for one year. There was no allegation of malafide intention. Assuming that the charge of wrongful gain to the Respondent was not specifically averred in the charges, the accused clearly understood the charge of 'intent to defraud' and he defended the same. He fully participated in the proceedings and there was no violation of any procedural provision causing him prejudice. The Courts are not expected to interfere in such situations (see Major G.S. Sodhi v. Union of India reported in MANU/SC/0562/1991: 1991 (2) SCC 382). The armed forces are known for their integrity and reputation. The senior officers of the Armed Forces are expected to be men of integrity and character. When any such charge is proved against a senior

officer, the reputation of the Army also gets affected. Therefore, any officer indulging into such acts could no longer be retained in the services of the Army, and the order passed by the General Court Martial could not be faulted.

19. In our view, the learned Single Judge was right in passing the order whereby he declined to interfere into the decision rendered by the General Court Martial. There was no reason for the Division Bench to interfere in that order in an intra-Court appeal. The order of the learned Single Judge in no way could be said to be contrary to law or perverse. On the other hand, we would say that the Division Bench has clearly erred in exercising its appellate power when there was no occasion or reason to exercise the same.

20. In the circumstances, we allow this appeal and set-aside the order passed by the Division Bench, and confirm the one passed by the learned Single Judge. Consequently, the Writ Petition filed by the Respondent stands dismissed, though we do not order any cost against the Respondent.

MANU/SC/0152/1962

Back to Section 25 of Indian Penal Code, 1860

Back to Section 379 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 2 of 1962

Decided On: 22.10.1962

Pyare Lal Bhargava Vs. State of Rajasthan

Hon'ble Judges/Coram:
J.R. Mudholkar, K. Subba Rao, N. Rajagopala Ayyangar and Syed Jaffer Imam, JJ..

JUDGMENT
K. Subba Rao, J.

1. This appeal by special leave is directed against the decision of the High Court of Rajasthan in Criminal Revision No. 237 of 1956 confirming that of the Sessions Judge, Alwar, convicting the appellant under s. 379 of the Indian Penal Code and sentencing him to a fine of Rs. 200/-.

2. To appreciate the questions raised in this appeal the following facts, either admitted or found by the High Court, may be stated. On November 24, 1945, one Ram Kumar Ram obtained permission, Ex. PB, from the Government of the former Alwar State to supply electricity at Rajgarh, Khertal and Kherli. Thereafter, he entered into partnership with 4 others with an understanding that the licence would be transferred to a company that would be floated by the said partnership. After the company was formed, it put in an application to the Government through its managing agents for the issue of a licence in its favour. Ex. P.W. 15/B is that application. On the advice given by the Government Advocate, the Government required Ram Kumar Ram to file a declaration attested by a Magistrate with regard to the transfer of his rights and the licence to the company. On April 8, 1948, Ram Kumar Ram filed a declaration to that effect. The case of the prosecution is that Ram Kumar Ram was a friend of the appellant. Pyarelal Bhargava, who was a Superintendent in the Chief Engineer's Office, Alwar. At the instance of Ram Kumar Ram, Pyarelal Bhargava got the file Ex. PA/1 from the Secretariat through Bishan Swarup, a clerk, before December 16, 1948, took the file to his house sometime between December 15 and 16, 1948, made it available to Ram Kumar Ram for removing the affidavit filed by him on April 9, 1948, and the application, Ex. P.W. 15/B from the file and substituting in their place another letter Ex. PC and another application Ex. PB. After replacing the said documents, Ram Kumar Ram made an application to the Chief Engineer on December 24, 1948, that the licence should not be issued in the name of the company. After the discovery of the tampering of the said documents, Pyarelal and Ram Kumar were prosecuted before the Sub-Divisional Magistrate, Alwar, - the former for an

offence under s. 379 and s. 465, read with s. 109, of the Indian Penal Code, and the latter for an offence under Sections 465 and 379, read with s. 109 of the Indian Penal Code. The Sub-Divisional Magistrate convicted both the accused under the said sections and sentenced them on both the counts. On appeal the Sessions Judge set aside the conviction under s. 465, but maintained the conviction and sentence of Pyarelal Bhargava under s. 379, and Ram Kumar Ram under s. 379, read with s. 109, of the Indian Penal Code. Ram Kumar Ram was sentenced to pay a fine of Rs. 500/- and Pyarelal Bhargava to pay a fine of Rs. 200/-. Against these convictions both the accused filed revisions to the High Court and the High Court set aside the conviction and sentence of Ram Kumar Ram but confirmed those of Pyarelal Bhargava. Pyarelal Bhargava has preferred the present appeal.

3. Learned counsel for the appellant raised before us three points, namely, (1) the High Court has wrongly relied upon the confession made by the accused before Shri P. N. Singhal, Officiating Chief Secretary to the Matsya Government at that time, as that confession was not made voluntarily and, therefore, irrelevant under s. 24 of the Evidence Act; (2) the said confession having been retracted by the appellant, the High Court should not have relied upon it as it was not corroborated in material particulars; and (3) on the facts found the offence of theft has not been made out within the meaning of s. 379 of the Indian Penal Code. Another argument, namely, that the statement made by Pyarelal Bhargava before the Chief Secretary was not a confession in law, was suggested but not pursued and, therefore, nothing need be said about it.

4. The first question turns upon the interpretation of the provisions of s. 24 of the Evidence Act and its application to the facts found in this case. Section 24 of the Evidence Act lays down that a confession caused by inducement, threat or promise is irrelevant in criminal proceedings under certain circumstances. Under that section a confession would be irrelevant if the following conditions were satisfied: (1) it should appear to the court to have been caused by any inducement, threat or promise; (2) the said threat, inducement or promise must have reference to the charge against the accused person; (3) it shall proceed from a persons authority; and (4) the court shall be of the opinion that the said inducement, threat or promise is sufficient to give the accused person grounds which would appear to him reasonable in supposing that he would gain an advantage or avoid any evil of a temporal nature in reference to the proceedings against him. The crucial word in the first ingredient is the expression "appears". The appropriate meaning of the word "appears" is "seems". It imports a lesser degree of probability than proof. Section 3 of the Evidence Act says:

"A fact is said to be 'proved' when after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.
5. Therefore, the test of proof is that there is such a high degree of probability that a prudent man would act on the assumption that the thing is true. But under s. 24 of the

Evidence Act such a stringent rule is waived but a lesser degree of assurance is laid down as the criterion. The standard of a prudent man is not completely displaced, but the stringent rule of proof is relaxed. Even so, the laxity of proof permitted does not warrant a court's opinion based on pure surmise. A prima facie opinion based on evidence and circumstances may be adopted as the standard laid down. To put it in other words, on the evidence and the circumstances in a particular case it may appear to the court that there was a threat, inducement or promise, though the said fact is not strictly proved. This deviation from the strict standards of proof has been designedly accepted by the Legislature with a view to exclude forced or induced confessions which sometimes are extorted and put in when there is a lack of direct evidence. It is not possible or advisable to lay down an inflexible standard for guidance of courts, for in the ultimate analysis it is the court which is called upon to exclude a confession by holding in the circumstances of a particular case that the confession was not made voluntarily.

6. The threat, inducement or promise must proceed from a person in authority and it is a question of fact in each case whether the person concerned is a man of authority or not. What is more important is that the mere existence of the threat, inducement or promise is not enough, but in the opinion of the court the said threat, inducement or promise shall be sufficient to cause a reasonable belief in the mind of accused that by confessing he would get an advantage or avoid any evil of a temporal nature in reference to the proceedings against him: while the opinion is that of the court, the criterion is the reasonable belief of the accused. The section, therefore, makes it clear that it is the duty of the court to place itself in the position of the accused and to form an opinion as to the state of his mind in the circumstances of a case.

7. In the present case it was found that certain documents in the Chief Engineer's Office were tampered with and certain papers were substituted. The appellant was the Superintendent in the Chief Engineer's Office. On April 11, 1949, Shri P. N. Singhal, Officiating Chief Secretary to the Matsya Government, was making a departmental inquiry in respect of the missing documents. The appellant, among others, was questioned about the said documents. The appellant first made a statement, Ex. PL, in which he stated that he neither asked Bishan Swarup to bring file No. 127, not did he recollect any cause for calling for that file on or about that date. As Shri Singhal was not able to find out the culprit, he expressed his opinion that if the whole truth did not come out, he would hand over the inquiry to the police. Thereafter, the appellant made a statement, Ex. P.L. 1, wherein, in clear terms, he admitted that about the middle of December 1948 Ram Kumar Ram took file No. 127-P.W./48 regarding issue of licence to the Bharat Electrical and Industrial Corporation Ltd., Alwar, from his residence to show it to his lawyers, and that he took the file more than once for that purpose. He also added that this was a voluntary statement. Learned counsel for the appellant argued that the Chief Secretary gave the threat that, if the appellant did not disclose the truth he would place the matter in the hands of the police and that the threat induced the appellant to make the disclosure in the hope that he would be excused by the authority concerned.

There is no doubt that the Chief Secretary is an authority within the meaning of s. 24 of the Evidence Act, but the simple question is whether the alleged statement by the said authority "appears" to the court to be a threat with reference to the charge against the accused. As we have said, under particular circumstances whether a statement appears to the court to be a threat or not is a question of fact. In this case the three lower courts concurrently held that in the circumstances of the case the statement did not appear to be a threat within the meaning of s. 24 of the Evidence Act, but that was only a general statement which any person who lost his property and was not able to find out the culprit would make. It may be that such a statement under different circumstances may amount to a threat or it may also be that another court may take a different view even in the present circumstances of the case, but in exercising the powers under Art. 136 of the Constitution we are not prepared to differ from the concurrent finding given by the three courts that in the circumstances of the present case that the said statement did not appear to them to be a threat.

8. The second argument also has no merits. A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but is may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars.

The High Court having regard to the said principles looked for corroboration and found it in the evidence of Bishan Swaroop. P.W.-7, and the entry in the Dak Book, Ex. PA. 4, and accepted the confession in view of the said pieces of corroboration. The finding is one of fact and there is no permissible ground for disturbing it in this appeal.
9. The last point is that on the facts found no case of theft has been made out. The facts found were that the appellant got the file between December 15 and 16, 1948, to his house, made it available to Ram Kumar Ram and on December 16, 1948, returned it to the office. On these facts it is contended that the prosecution has not made out that the appellant dishonestly took any movable property within the meaning of s. 378 of the Indian Penal Code. The said section reads:

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

The section may be dissected into its component parts thus: a person will be guilty of the offence of theft, (1) if he intends to cause a wrongful gain or a wrongful loss by unlawful means of property to which the person gaining is not legally entitled or to which the person losing is legally entitled, as the case may be: see Sections 23 and 24 of the Indian Penal Code; (2) the said intention to act dishonestly is in respect of movable property; (3) the said property shall be taken out of the possession of another person without his consent; and (4) he shall move that property in order to such taking. In the present case the record was in the possession of the Engineering Department under the control of the Chief Engineer. The appellant was the Superintendent in that office; he took the file out of the possession of the said engineer, removed the file from the office and handed it over to Ram Kumar Ram. But it is contended that the said facts do not constitute the offence of theft for three reasons, namely, (i) the Superintendent was in possession of the file and therefore he could not have taken the file from himself; (ii) there was no intention to take it dishonestly as he had taken it only for the purpose of showing the documents to Ram Kumar Ram and returned it the next day to the office and therefore he had not taken the said file out of the possession of any person; and (iii) he did not intend to take it dishonestly, as he did not receive any wrongful gain or cause any wrongful loss to any other person. We cannot agree that the appellant was in possession of the file. The file was in the Secretariat of the Department concerned, which was in charge of the Chief Engineer. The appellant was only one of the officers working in that department and it cannot, therefore, be said that he was in legal possession of the file. Nor can we accept the argument that on the assumption that the Chief Engineer was in possession of the said file, the accused had not taken it out of his possession. To commit theft one need not take movable property permanently out of the possession of another with the intention not to return it to him. It would satisfy the definition if he took any movable property out of the possession of another person though he intended to return it later on. We cannot also agree with learned counsel that there is no wrongful loss in the present case. Wrongful loss is loss by unlawful means of property to which the person losing it is legally entitled. It cannot be disputed that the appellant unauthorisedly took the file from the office and handed it over to Ram Kumar Ram. He had, therefore, unlawfully taken the file from the department, and for a short time he deprived the Engineering Department of the possession of the said file. The loss need not be caused by a permanent deprivation of property but may be caused even by temporary dispossession, though the person taking it intended to restore it sooner or later. A temporary period of deprivation or dispossession of the property of another causes loss to the other.

That a person will act dishonestly if he temporarily dispossesses another of his property is made clear by illustrations (b) and (1) of s. 378 of the Indian Penal Code. They are:
(b). A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

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

10. It will be seen from the said illustrations that a temporary removal of a dog which might ultimately be returned to the owner or the temporary taking of an article with a view to return it after receiving some reward constitutes theft, indicating thereby that temporary deprivation of another person of his property causes wrongful loss to him. We, therefore, hold that the facts found in this case clearly bring them within the four corners of s. 378 of the Indian Penal Code and, therefore, the courts have rightly held that the appellant had committed the offence of theft.

11. No other point was pressed before us. In the result the appeal fails and is dismissed.

12. Appeal dismissed.

MANU/DE/1347/2014

Back to Section 33 of Indian Penal Code, 1860

Neutral Citation: 2014/DHC/2885-DB

IN THE HIGH COURT OF DELHI

Criminal Appeal Nos. 768, 839 and 993/2011

Decided On: 28.05.2014

Shishpal and Ors. Vs. The State (NCT of Delhi)

Hon'ble Judges/Coram:
Sanjiv Khanna and G.P. Mittal, JJ.

JUDGMENT
Sanjiv Khanna, J.

1. Shishpal @ Shishu, Amit and Roshan by the impugned judgment dated 23rd May, 2011 stand convicted for murder of Ram Chandran @ Ramu. The aforesaid conviction arises out of FIR No. 8/2010, Police Station Mayur Vihar. By order on sentence dated 25th May, 2011, the appellants have been sentenced to undergo life imprisonment and pay fine of Rs. 2,000/- each, in default of which, they have to suffer Simple Imprisonment for two months. Benefit of Section 428 of the Code of Criminal Procedure, 1973 (Cr.P.C. for short) has been granted.

2. The factum that the deceased Ramu had died a homicidal or unnatural death as a result of stab wound was not questioned and challenged before us. The same is duly established and is not within the realm of any debate in view of the MLC (Exhibit PW-14/A) and the postmortem report (Exhibit PW-19/A). Dr. K. Tyagi (PW-14) had proved the MLC (Exhibit PW-14/A) and deposed that on 10th January, 2010 at 9 P.M. Ramu was brought by ASI Lalji Tiwari of PCR with history of assault. He examined the patient and opined that he had died. The patient had an incised wound on left side of abdomen approximately 4 cm x 2 cm (length into width). The post-mortem report (Exhibit PW-19/A) was proved by Dr. Vinay Kumar Singh (PW-19) and it refers to incised wound, 5.5 x 2.5 cm, obliquely present over the left side of lower abdomen. On internal examination, about 1 to 1 1/2 litre blood was present in the cavity and there was descending colon incised wound, 3 x 0.5 cm, and spleen incised wound, 2.5 cm x 0.5 cm, lower border. Cause of death was shock and haemorrhage consequent upon the incised wound No. 1. The said injury was sufficient in ordinary course of nature to cause homicidal death. The time since death was 36 to 44 hours. The post-mortem examination was conducted on

12th January, 2010 at L.B.S. Hospital. The clothes worn by the deceased and blood sample in gauze piece were seized.

3. The primary issue and question raised before us relates to the involvement of the three appellants in the crime, resulting in the death of Ramu. On the said aspect, the prosecution has relied upon the testimonies of Swami Nath Pandey (PW-3), the informant, who, as is the prosecution's case was an eye witness and Nitin (PW-4), who was present at the place of occurrence but once the fight started, had left the place to call Laxmi (PW-1) stated to be wife of the deceased. We shall begin with the testimony of Swami Nath Pandey (PW-3).

4. Swami Nath Pandey (PW-3) has deposed that he was running a paan-bidi stall in front of Police Station Mayur Vihar near English Wine Shop and was present at his stall on 10th January, 2010 when at about 8.20 P.M. he saw the appellants-Amit and Roshan quarrelling with the deceased Ramu. He identified the appellants-Amit and Roshan, who were produced through video-conferencing, but refused to identify Shishpal @ Shishu, the third appellant. PW-3 in his court deposition recorded on 1st June, 2010 stated that Amit and Roshan dragged the deceased Ramu from the wine shop towards his rehri/stall and Amit then stabbed Ramu. Crowd of about 150 persons had gathered but no one intervened even after stabbing. The appellant Amit had challengingly raised the knife in the air and Amit and Roshan slipped on his western side. After about 5-7 minutes, wife of Ramu reached the spot and started crying. She went towards the police station and at about 8.30 P.M., PCR vehicle reached the spot, as someone had made a call at No. 100. ASI Kali Charan (PW11) and the local police reached the spot and inquired from him. He had then narrated the facts. Subsequently, Pandit Subodh Kumar Sahai (PW20), SHO Police Station Mayur Vihar reached.

5. PW-3 was cross-examined by the Additional Public Prosecutor and confronted with portions of his statement made under Section 161 Cr.P.C. marked Exhibit PW-3/A, wherein it was recorded that three boys were present and two of them had caught hold of deceased Ramu, while the third had taken out a knife from his pocket and stabbed Ramu and also that the three slipped away in a car which was parked at the corner of the road. He refused to identify Shishpal @ Shishu, who was shown to him through video-conferencing as the third person along with Amit and Roshan. In cross-examination, PW-3 has stated that the deceased had tried to pick pocket on either Amit or Roshan. When wife of Ramu reached the spot, she was weeping. PW-3 accepted as correct that the deceased Ramu was a pick pocketer and a person of bad character (pakka badmash of the area). We shall be referring to his testimony subsequently as well when we deal with the evidentiary value and credibility of his deposition. However, we reject the contention that PW-3 was a planted witness and not an eye witness. Mohd. Murtuja Khan (PW-10), ASI Kali Charan (PW-11), Sonu Kaushik (PW-17) and Inspector Subodh Kumar (PW-20) have all deposed as to the paan biri shop outside the police station and adjacent to the wine shop. Location of the paan biri shop is clearly indicated in the unscaled site plan

(Ex. PW3/B) and scaled site plan (Ex. PW17/A). Thus, the presence of PW-3 at the place of occurrence was normal and natural and he was not a chance witness, who was accidentally at the spot at the time of the occurrence.

6. Learned counsel for the appellant has highlighted a small discrepancy or contradiction between the statement made by ASI Kali Charan (PW-11) and HC Soran Singh (PW-15). The latter has deposed that when he reached the spot of occurrence, ASI Kali Charan (PW-11) and Constable Kheta Ram (PW-21) were already present, but in the cross-examination, he voluntarily stated that Swami Nath Pandey (PW-3) was not there, whereas ASI Kali Charan (PW-11) has stated that PW-3 was present but initially Swami Nath Pandey (PW-3) did not tell him that he was an eye witness to the occurrence and only subsequently upon return from the hospital, PW-11 recorded Swami Nath Pandey's statement and rukka (Ex. PW11/A) was written and FIR was registered.

7. To our mind this discrepancy in the two statements is immaterial as after the occurrence, it was expected that the persons present would have disbursed and moved away. No one wants to come forward and depose about a matter in which knife was used to inflict injuries and the person injured had fallen on the road with blood oozing. It was natural for PW-3 to take a backseat and avoid interrogation.

8. Nitin (PW-4)'s deposition was recorded partly on 1st June, 2010 and concluded on the next day, i.e., 2nd June, 2010. PW-4, aged about 10-12 years on the date of deposition, has stated that he had never been to school. On 10th January, 2010 at 8 P.M. he along with the deceased Ramu, who was like his brother went to the wine shop in Trilokpuri. He was asked to sit down on the foot path, while deceased Ramu stood in the queue to purchase liquor. He identified the three appellants when they were produced through video-conferencing stating that they had dragged deceased Ramu from the queue. Thereafter, appellant-Amit, whom he identified as the person present in the centre, took out a knife. On seeing this, he ran to his house and narrated the facts to the wife of Ramu (his bhabhi) and Rahul, his brother. He along with Rahul and wife of Ramu rushed to the spot and found that the deceased-Ramu was lying in a pool of blood. He along with wife of Ramu went to the Police Station but were not given due attention (no one heard them). Wife of Ramu made a call to the police after taking phone from a person present. After 10-15 minutes, a police vehicle reached the spot and took Ramu to the LBS Hospital, where he died. Thereafter, he, Rahul and wife of Ramu came to the police station and his statement was recorded. Thus, Nitin (PW-4) has identified the three appellants, who were present at the place of occurrence when the quarrel had started and Amit had taken out the knife. PW-4 had not seen the actual stabbing incident but was present when the occurrence had begun.

9. Laxmi (PW-1) admits and states that Nitin and deceased Ramu had gone out at 8 P.M. on 10th January, 2010. Nitin came back running and had stated that three persons were beating Ramu in front of Mayur Vihar Police Station. Accordingly, PW-1, Rahul and Nitin

had rushed to the spot and there they found Ramu lying on the road, smeared in blood. She made a call at No. 100 and PCR van reached there and took Ramu to the hospital. She had also gone to the hospital where Ramu was declared brought dead.

10. Laxmi (PW-1) had deposed that after Ramu had left the house at about 8 P.M., three boys had come to the jhuggi, i.e., the house and enquired about Ramu. One of them had angrily asked where was Ramu (Ramu Kahan Hai?) and she informed him that he had just gone out with Nitin (PW4). She deposed that the person who had asked about Ramu had given his name as Amit but identified the person who had spoken said words as Shishpal @ Shishu. She testified that only Shishpal had entered the house whereas the other two were standing outside the house and she had not seen their faces. However, she identified the three appellants in the court.

11. We are inclined to accept the argument of the appellants that Laxmi's (PW-1) deposition mentioned in the above paragraph is an exaggeration and her identification of the appellants in the court is questionable. The said identification cannot be relied upon as a circumstance incriminating the appellants. The reason being, that PW-1 has deposed that only one of the three boys had come inside, while the two others remained outside and she had not seen their faces. Thus, Laxmi's (PW1) identification of the two, who remained outside the house, remained a doubtful assertion. We further believe and accept the submission on behalf of the appellants that there was no reason and cause for any of the three appellants to go inside the house, i.e., jhuggi of the deceased. There is no evidence or material to indicate or show that the three appellants had quarrelled or knew the deceased Ramu from before or were aware of his address. Pre occurrence familiarity is not established and there is no ground to accept any previous acrimony. As noticed above, Swami Nath Pandey (PW-3) has deposed that there was a quarrel at the wine shop as the deceased had pick pocketed one of the appellants, which indicates and reinforces the factual position that the deceased was not already known to the appellants. Nitin (PW-4) has also not deposed that the appellants were known to him or were known to the deceased prior to the incident. His deposition is to the effect that when the deceased was standing in the queue to purchase liquor, they started quarrelling. Shivam (PW-5) whose mobile phone was used to make a call on number 100, has deposed that he had seen a man lying on the road in an injured condition and on enquiry was informed that the said person was trying to pick pocket and was beaten by the some person. The said deposition, though not a direct evidence, corroborates PW3's version.

12. However, this does not mean that we should disregard and not accept the identification of the three appellants Amit, Roshan and Shishpal by Nitin (PW-4) and identification of Amit and Roshan by Swami Nath Pandey (PW-3) or we should only accept identification of Amit and Roshan by Swami Nath Pandey (PW-3) and disbelieve identification of Amit, Roshan and Shishpal as deposed to by Nitin (PW-4).

13. It was highlighted that Nitin (PW-4) in his cross-examination had falsely asserted that he did not have an elder brother named Vipin and our attention was drawn to the cross-examination of PW-4 after lunch on 2nd June, 2010 by the counsel for Shishpal, wherein the said Vipin was produced and shown to the witness, but Nitin (PW-4) denied that he was his real brother. At that stage, one lady named Indra, who was sitting in the Court, was called by the counsel for the defence, Shishpal. She confronted PW-4 and stated that she was the mother of Nitin (PW-4) and Vipin was her eldest son, Rahul was her middle son and Nitin was the youngest. Our attention is also drawn to the fact that Indra has deposed as defence witness (DW-8) and reiterated the said factual position and had stated that she was residing in Jhuggi No. 22, Block Market Trilokpuri, Delhi with her sons. She knew deceased Ramu, who used to be treated like a son by her husband. Ramu had not married Laxmi and she claimed that they were not living in the Jhuggi as husband and wife, but Laxmi (PW-1) used to visit her Jhuggi for meeting deceased Ramu as a friend. On 10th January, 2010, no one came to the Jhuggi in the evening hours to meet Ramu and that on 10th January, 2010, Nitin (PW-4) and Rahul had remained in the Jhuggi and all of them had gone to sleep. Next day police came and took Rahul (PW-2) and Nitin (PW-4) with them. She even deposed that Nitin (PW-4) had made a complaint to DCP and the Commissioner of Police that PW-4 had deposed in the Court under pressure and threat from Raja and Adi, brothers of the deceased. She has accepted as correct that the deceased Ramu had pending criminal cases against him but could not give details. She accepted that she had not put thumb impression or signed on the complaint made to DCP, but she had accompanied Nitin (PW-4). She denied that deceased Ramu and Laxmi were residing as husband and wife in the Jhuggi permanently, but accepted as correct that she had no concern as to who used to come and meet Ramu. She, however, denied the suggestion that she was deposing falsely in order to save Shishpal.

14. Subsequent application by Nitin (PW-4) has been dealt with separately below, but at this stage, while dealing with the testimony of Indra (DW-8) as well as the observations of the Court made at the time of deposition of PW-4 on 2nd June, 2010, we would like to record the following observations. It is rather surprising that Indra (DW-8) deemed it appropriate and proper to come and sit in the Court on 2nd June, 2010 and at the instance of the counsel for the accused Shishpal get up and vociferously contradict Nitin (PW-4). It is, therefore, clear that when PW-4's deposition was being recorded on 2nd June, 2010, he was under tremendous pressure and was being compelled not to state the facts. PW-4 on 2nd June, 2010 accepted and admitted that Indra was his mother, but remained steady on his deposition that Vipin was not his eldest brother. We do not think that we can rely upon the testimony of DW-8 that she was present in the Jhuggi of Ramu on 10th January, 2010 and Nitin (PW-4) had not gone out with Ramu and has accordingly made false and untruthful statement as to the occurrence on 10th January, 2010 at 8 p.m. The exact and precise details given by PW-4 as to the occurrence and what had transpired clearly belies and negates the deposition of DW-8 to the said effect. Further, he had deposed that his mother had gone to the village about one and a half months back i.e. before the

occurrence. This assertion was made by Nitin (PW4) on being questioned by Ld. Defence Counsel of Shishpal, in his testimony recorded before lunch on 02.06.2010.

15. Laxmi (PW-1) has been candid in her deposition that she was residing and living with the deceased-Ramu as husband and wife, though she was married before and had two children, namely, Aman and Sania aged about 8 and 4 years. She got married to Ramu in a temple. She has given the name of the land lady as Indra (reference is apparently to DW-8).

16. We are inclined to accept the relationship between Laxmi (PW-1) and the deceased-Ramu, as deposed to by Laxmi (PW-1) and Nitin (PW-4). Presence of Nitin (PW4) has not only been deposed to by Laxmi (PW-1) but also as noticed below, even by the Police officers who had conducted the investigation. Nitin (PW4) repeatedly called Laxmi (PW1) as bhabhi, an indication of a close and affectionate relationship between them.

17. Rahul, the other son of Indra (PW-8), has appeared as PW-2 and did not support the prosecution version i.e. he along with his brother Nitin (PW-4) and Laxmi (PW-1) had gone to the place of occurrence stating that he did not know anything about the case and his statement was never recorded by the police, though at the instance of Raja, brother of the deceased, his thumb impressions were taken on blank papers by the police. Aforesaid deposition of Rahul (PW-2) is ex facie false and untruthful. It is apparent that he had scrummed and renegaded. Rahul (PW-2) in his cross-examination by the Ld. Additional Public Prosecutor accepted that Laxmi (PW1) was the wife of Ramu and they were living in the jhuggi, but not as tenants. However, in the cross-examination by the Ld. Defense Counsel for Shishpal, Rahul (PW-2) again vacillated and stated that Laxmi never used to come and sleep during the night with Ramu. Thus, PW2 is completely unreliable and has given different versions.

18. We have no reason to doubt and disbelieve the presence of Nitin (PW-4) at the wine shop and his deposition that after seeing the quarrel and the knife being flashed, he had rushed to call Laxmi (PW-1) and thereupon they had returned at the place of occurrence and the Police PCR came thereafter. Our affirmation on testimony of Nitin (PW4) is corroborated by contemporaneous Police Control Room form marked Exhibit PW-16/A, which records that at 2033 hours a call was made from mobile telephone No. 9910381966 stating that in front of Mayur Vihar Police Station one man had been stabbed with a knife. The call was attended to and a message was conveyed to the Police Control Room at 2102 hours that the information was correct. The form Ex PW16/A records that the injured was known as Ram Chandran, aged 26 years and was resident of 20/208, Trilokpuri. It was also recorded that his condition was serious. The MLC (Exhibit PW-14/A) was recorded at 9 P.M. on 10th January, 2010 and mentions the name of the injured/deceased as Ramu Chandran S/o Palani, aged 25 years, resident of 20/144, Trilokpuri, Delhi and that he was brought by ASI Lalji Tiwari of the PCR. The said details could have been given by a person known to the deceased. Thus, we accept the version of Laxmi (PW-1)

and Nitin (PW-4), who have stated that Nitin (PW-4) had rushed back home and then Laxmi along with Nitin and Rahul had gone to the spot. This version of PW-1 and PW-4 was accepted by Shivam (PW-5), the person whose mobile phone was used to make the call at number 100. He has deposed that two calls were made at No. 100 by a lady and after the second call the police arrived within 2-3 minutes. PW-5 further deposed that a woman was crying near the injured and on her request he had given the mobile phone to her. No doubt the PCR form (Exhibit PW-16/A) names the informer as Ravindra Singh but PW-5 has not deposed to the said effect. Categorical statements of PWs-1 and 5 were that information was given by PW-1 to the Police Control Room.

19. Another contention raised was that the address of the deceased Ramu mentioned in the MLC was "20/144, Timarpur, Delhi" and not "Jhuggi No. 22, Block Market Trilokpuri, Delhi" where Laxmi (PW-1) used to reside. As discussed above, it has come on record that Jhuggi No. 22, Block Market Trilokpuri, Delhi belonged to Indra (DW-8). The address 20/144, Trilokpuri in fact appears to be the address of Ramu's brothers as per the trial court record.

20. Nitin (PW-4), no doubt a young child aged about 10-12 years of age when his testimony was recorded on 1st June, 2010, has been authoritative and categorical on identification of the appellants as the perpetrators and killers of Ramu. He treated and regarded Ramu as his elder brother and was residing with him in jhuggi No 22. He has deposed that Laxmi (PW-1) was his bhabhi being the wife of the deceased Ramu. Before his cross-examination was recorded on 2nd June, 2010, Nitin (PW-4) had informed the court that brother of appellant-Shishpal came to his house 10-15 days back and offered him Rs. 5,000/- stating that he should not depose true facts in the court. PW-4 however, did not accept the money and refused to accept command of the brother of the appellant-Shishpal, who was accompanied by three-four boys. On 16th May, 2010, brother of Shishpal along with three-four boys had again caught hold of Nitin (PW-4) while he was coming from a public toilet but he managed to escape. PW-4 had also moved an application before the trial court, which resulted in order dated 17th May, 2010 passed by the Additional Sessions Judge. In the application, similar averments regarding the incident of 16th May, 2010 were made and it was stated that brother of the deceased had brought this information to the knowledge of the counsel. ACP/DCP East District was directed to look into the matter immediately and to take steps. Similar application was moved by Swami Nath Pandey (PW-3), which resulted in order dated 15th May, 2010. In the said application it was mentioned that PW-3 was threatened that he would be killed. Order dated 15th May, 2010 records that PW-3 was trembling when his application was taken up for consideration. It was stated that three-four days back, some boys with muffled faces had come to PW-3's shop and threatened and asked him not to depose. Application was marked to ACP Mayur Vihar with directions to look into the matter. Subsequently order dated 18th May, 2010 was passed.

21. It was brought to our notice that the appellants had filed applications for recall and re-examination of Swami Nath Pandey (PW3) and Nitin (PW4). Orders rejecting the applications have to be read along with earlier orders passed by the Trial Court on the threats being extended to the two witnesses and the order dated 18th May, 2010 that both of them were being threatened and, therefore, they had made a written complaint. By this order dated 18th May, 2010, it was directed that PWs-3 and 4 would be escorted to the court and back to their residence and division/beat staff should be briefed to keep vigil in that regard. Subsequently, on 29th September, 2010 an application was filed by PW-3 along with his affidavit. Similarly, Nitin had purportedly filed an application on 21st August, 2010. In our opinion, the Trial Court rightly vide orders dated 4th September, 2010 and 25th September, 2010, rejected the said submission/applications on the ground that the said witnesses cannot be allowed to change their stance after having made statements under oath in the court. At the time of recording occular evidence of PW3 and PW4, the presiding officer was aware of the threats and the earlier orders. He had the opportunity to notice demeanour and closely observe the conduct and behaviour of the witnesses.

22. It was submitted that Swami Nath Pandey (PW-3) was a stock witness of the police as he has accepted in the cross-examination that he had earlier deposed in one murder case in 1984 and five other cases of Police Station Patparganj and two cases of Police Station Mayur Vihar. He accepted that he had good relations with officers of Police Station Mayur Vihar and that he was deposing because SHO Pandit Subodh Kumar Sahai was a good man. It would be incorrect and wrong to hold that Swami Nath Pandey (PW-3) was a planted witness in the present case, who had not seen the occurrence. PW-3 had a paan-bidi stall in front of the Police Station Mayur Vihar near the English Wine Shop. Thus, his presence at the said spot on the date and time of occurrence is per se believable and should be accepted. He was not a chance witness but his presence was normal and natural. The rukka in the present case was made on the basis of information and details given by Swami Nath Pandey (PW-3) being Exhibit PW-3/A to ASI Kali Charan (PW-11). This was because of the fact that he had seen the occurrence. In Exhibit PW-3/A the rukka, PW-3 has not named any of the appellants but as stated has referred to the involvement of three persons. Personal grudge or animosity of PW3 towards Asif and Roshan was not there or alleged.

23. Contesting the testimonies of PWs-1 and 4, it was submitted that none of the police officers, i.e., ASI Kali Charan (PW-11), Head Constable Soran Singh (PW-15), Somi Kaushik (PW-17) or Inspector Subodh Kumar (PW-20) have deposed about the presence of Laxmi (PW-1) and Nitin (PW-4). At the outset, we observe that the witnesses PW-11, 17 and 20 have affirmed that they had seen PW-3, who had paan-bidi shop in front of the police station. It is clearly established that the deceased-Ramu was taken to the hospital in the PCR van. Details and particulars regarding identity of Ramu were given and furnished by PWs-1 and 4 and the same are reflected in Exhibit PW-16/A, i.e., PCR form and the MLC (Exhibit PW-14/A). It is apparent that during the said period and initially

when ASI Kali Charan (PW11) swung into action, he did not notice and get in touch with PWs-1 and 4. PW-11 has deposed that on reaching the spot, he learnt that the injured had been taken to LBS Hospital and accordingly asked Constable Prashant and Constable Soran to stay back and he went to the said hospital with Constable Khetram. He procured MLC of Ramu, who was declared as brought dead (Ex PW14/A). The dead body was kept in mortuary. He (PW11) returned to the spot where he met PW-3 and recorded his statement and rukka was prepared and sent to the police station for registration of the FIR. In the hospital, PW-11 did not meet any eye witness which shows that by that time PWs-1 and 4 had left the hospital. In cross-examination, PW-11 has stated that he had reached the hospital at 8.50 P.M. and left the hospital at 9.15 P.M. This according to us is not correct and is a proximate time. The MLC itself was recorded at 9 P.M. and it is apparent that PW-11 reached the hospital subsequently. The FIR (Exhibit PW-7/A) was registered at 2250 hours. However, PW-11 hardly remained in the hospital and came back to the site of occurrence within about 20/25 minutes.

24. We have also gone through the statements of defence witnesses DW-1 to DW-7, but do not find any reason to refer to their depositions in detail as the versions given by Bala (DW-1), Mahipal (DW-2), Anil Kumar Pandey (DW-3), Vijender (DW-4) and Anil Bhatia (DW-5) do not inspire confidence and further the case and defence of the appellants. DW-6 and DW-7 have only deposed with regard to the complaints received from Nitin (PW-4) etc., which aspect has been discussed above.

25. On the basis of the disclosure statement made by Shishpal marked Ex. PW9/C, the police vide seizure memo (Ex. PW9/G) recovered a knife stated to be the weapon of offence from the house of Shishpal at 28/271, Trilokpuri. Sketch of the knife (Ex. PW9/H) was prepared. As per the CFSL report (Ex. PW20/I), human blood was found on the said knife/dagger, but blood group could not be ascertained on account of no reaction. The said knife/dagger was examined by Dr. Vinay Kumar (PW-19), who has deposed that the injury and cuts on the deceased's clothing could have been caused by the weapon examined or by some similar weapon.

26. It is in these circumstances, we partly accept the statement of PW-3 to the extent that he identified appellants-Amit and Roshan but disbelieve and disregard PW3's testimony regarding non-identification of Shishpal and accept the version of Nitin (PW-4), who identified Amit, Shishpal and Roshan in the court. It is interesting to note that Amit and Shishpal refused to participate in the Test Identification Parade (TIP) as per report (Exhibit PW-18/A to 18/C). The submission that appellants-Amit and Shishpal were justified in refusing to participate in the TIP proceedings as they had already been shown to Swami Nath Pandey (PW-3) is an obscure plea, which is not acceptable. The plea taken by appellants-Amit and Shishpal while refusing to participate in the TIP proceedings was that the complainant, i.e., PW-3 resided in their locality and there was every possibility that they might have been shown to PW3 by the police. As per the police version, appellants-Amit and Shishpal were arrested vide arrest memos Exhibits PW-9/A and

9/B at 7.10 P.M. and 6.50 P.M. respectively on 11th January, 2010, which is less than a day after the occurrence. TIP proceedings Ex PW18/A to C were to be conducted on 12.1.2010. PW-3 in the TIP proceedings (Exhibit PW-13/B) when conducted on 18th March, 2010 had identified appellant-Roshan, who was arrested vide arrest memo Exhibit PW-10/B on 15th March, 2010 at 3.25 P.M.

27. In view of the aforesaid discussion, we have no hesitation in dismissing the present appeals and we uphold the conviction and sentence of the appellants. The appeals are accordingly dismissed.

MANU/PR/0013/1945

Back to Section 34 of Indian Penal Code, 1860

BEFORE THE PRIVY COUNCIL

Decided On: 31.01.1945

Mahbub Shah Vs. Emperor

Hon'ble Judges/Coram:
Thankerton, Madhavan Nair and John Beaumont, JJ.

JUDGMENT

Madhavan Nair, J.

1. This is an appeal by special leave against a judgment of the High Court of Judicature at Lahore dated 14th March 1944, confirming on appeal the conviction of the appellant of the murder of one Allah Dad and the sentence of death passed on him by the Sessions Judge, Mianwali, on 20th December 1943. The appellant Mahbub Shah is aged 19. He has been convicted of murder under Section 302, read with Section 34, Penal Code, He was also convicted of the attempted murder of one Hamidullah Khan and sentenced to seven years' rigorous imprisonment; but that conviction has not been brought before the Board. The main question raised in this appeal is whether the appellant has been rightly convicted of murder upon the true construction of Section 34, Penal Code. Section 34 runs as follows:

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

2. Along with the appellant, his cousin Ghulam Quasim Shah, aged 18, was also convicted under Section 302/34, Penal Code, and sentenced to transportation for life. Ghulam was convicted under Section 307/34 also, and was sentenced to five years' rigorous imprisonment by the Sessions Judge, but his convictions and sentences have been set aside by the High Court. The deceased Allah Dad died as the result of gunshot wounds inflicted on him. One Wali Shah, who is said to have fired the shot that killed the deceased, is a fugitive from justice and has not been so far arrested. His father Mohammad Hussain Shah, who was committed to the Sessions Court on a charge of abetment of murder, was acquitted by the Sessions Judge. The following table given in the judgment of the High Court shows the relationship between the appellant and the other persons who are alleged to have been concerned in this crime.

3. The prosecution case as accepted by the High Court may he briefly stated: On 25th August 1943, at sunrise, Allah Dad, deceased, with a few others left their village Khanda Kel by boat for cutting reeds growing on the banks of the Indus river. When they had travelled for about a mile downstream, they saw Mohammad Shah, father of Wali Shah (absconder) bathing on the bank of the river. On being told that they were going to collect reeds, he warned them against collecting reeds from land belonging to him. Ignoring his warning they collected about 16 bundles of reeds, and then started for the return journey. While the boat was being pulled upstream by means of a rope, Ghulam Quasim Shah,, nephew of Mohammad Huisain Shah-acquitted by the High Court-who was standing on the bank of the river asked Allah Dad to give him the reeds that had been collected from his uncle's land. He refused. What happened subsequently was spoken to by two boys Nur Hussain P.W. 10, and Nur Mohammad P.W. 11, whose version of the story has been accepted as true by the High Court and summarised as follows:

Quasim Shah then caught the rope and tried to snatch it away. He then pushed Allah Dad and gave a blow to Allah Dad with a small stick but it was warded off on the rope. Allah Dad then picked up the lari from the boat and struck Quasim Shah. Quasim Shah then shouted out for help and Wali Shah and Mahbub Shah came up. They had guns in their hands. When Allah Dad and Hamidullah tried to run away, Wali Shah and Mahbub Shah came in front of them and Wali Shah fired at Allah Dad who fell down dead and Mahbub Shah fired at Hamidullah, causing injuries to him." [Lari is a bamboo pole for propelling the boat, about ten feet long and six inches thick.]

4. On the above facts, the learned Judges of the High Court came to the conclusion that Ghulam Quasim was wrongly convicted of murder under Section 302/34, Penal Code., on the following reasoning. Bhandari J., with whom Teja Singh J. concurred, first held that Ghulam Quasim had no common intention of killing any member of the complainant party when he went to the bank of the river in order to demand the bundles of reeds which had been collected from his uncle's lands. Then the learned Judge addressed himself to the question "whether a common intention" to commit the crime which was eventually committed by Mahbub Shah and Wali Shah came into being when Ghulam Quasim Shah shouted to his companions to come to his rescue and both of them emerged from behind the bushes and fired their respective guns, and this he answered in the negative, holding that "so far as Quasim Shah was concerned he did no more than ask his companions to come to his assistance when he was knocked with a pole by the deceased" and that "he could not have been aware of the manner in which assistance was likely to be rendered to him or his friends were likely to shoot at and kill one man or injure another." In the result, he was acquitted of all offences. The learned Judge then proceeded to examine the case of the appellant and Wali Shah. He stated that the case of Mahbub Shah, who was armed with a single barrelled gun, and of Wali Shah, who had a double barrelled gun, however stood on a different footing. He distinguished their case on the following ground:

As soon as they ran to the assistance of Ghulam Quasim Shah, they fired simultaneously in the direction of the complainants killing Allah Dad on the spot and causing injuries on the person of Hamidullah Khan. It is difficult to believe that when they fired the shots they did not have the common intention of killing one or more of the complainant party. If so, both of them are guilty of murder notwithstanding the fact that the fatal shot was fired by only one of them, namely, Wali Shah, absconder.
It will be observed that according to the learned Judge a common intention to commit the crime came into being when appellant and Wali Shah fired the shots. Their Lordships will now proceed to consider whether the above reasoning is correct, and Section 34, Penal Code, has been rightly applied to the facts of the case. Attention has already been drawn to the words of the section. As it originally stood, the section was in the following terms:

When a criminal act is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone.
5. In 1870, it was amended by the insertion of the words "in furtherance of the common intention of all" after the word "persons" and before the word "each," so as to make the object of the section clear. Section 34 lays down a principle of joint liability in the doing of a criminal act. The section does not say "the common intentions of all" nor does it say "an intention common to all." Under the section,

the essence of that liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. To invoke the aid of Section 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone.
This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the prearranged plan.
As has been often observed, it is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case.
6. On careful consideration, it appears to their Lordships that in the present case there was no evidence and there were no circumstances from which it might be inferred that the appellant must have been acting in concert with Wali Shah in pursuance of a concerted plan when he along with him rushed to the rescue of Ghulam Quasim. The exaggerated circumstances alleged by the prosecution to invoke the aid of Section 34, Penal Code, have been found against by the High Court who have acted solely on the evidence of P.W. 10 and p.w. 11. There was no evidence to indicate that Ghulam Quasim was aware that the complainant party had been cutting reeds from his uncle's lands, or that the appellant and Wali Shah had been kept behind the bush to come and help him

when called upon to do so. The evidence shows that Wali Shah "happened to be out shooting game" and when he and the appellant heard Ghulam's shouts for help they came up with their guns; the former shot the deceased, killing him outright, and the appellant shot at Hamidullah Khan inflicting injuries on his person. Indeed, the High Court negatived the existence of a "common intention" at the commencement in the sense in which their Lordships have explained the term by stating-in considering the application of Section 34, Penal Code, to the case of Ghulam-what has been already quoted, viz.:

that the sole point which requires consideration now is whether a common intention to commit the crime came into being when Ghulam shouted to his companions to come to his rescue and both of them emerged from behind the bushes and fired their respective guns.

7. Having answered the above question in the negative as regards Ghulam Quasim, the learned Judges thought, as Bhandari J. has expressly stated, that with respect to the appellant and Wali Shah, it must be held that the common intention of killing one or more of the members of the complainant party came into being later, when they fired the shots. Their Lordships cannot agree with this view. Their Lordships are prepared to accept that the appellant and Wali Shah had the same intention, viz., the intention to rescue Quasim if need be by using the guns and that, in carrying out this intention, the appellant picked out Hamidullah for dealing with him and Wali Shah, the deceased, but where is the evidence of common intention to commit the criminal act complained against, in furtherance of such intention? Their Lordships find none. Evidence falls far short of showing that the appellant and Wali Shah ever entered into a premeditated concert to bring about the murder of Allah Dad in carrying out their intention of rescuing Quasim Shah. Care must be taken not to confuse same or similar intention with common intention; the partition which divides "their bounds" is often very thin; nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice. In their Lordships' view, the inference of common intention within the meaning of the term in Section 34 should never be reached unless it is a necessary inference deducible from the circumstances of the case. That cannot be said about the inference sought to be deduced from the facts relied on by the High Court in distinguishing the case of the appellant from that of Ghulam Quasim.

8. Mr. MacKenna, the learned Counsel for the Crown, besides supporting the judgment of the High Court on the grounds mentioned in it, called their Lordships' attention to the following additional circumstance in further support of it. Reference was made to the concluding portion of the evidence of p. Ws. 10 and 11, where it is stated that "when Allah Dad and Hamidullah tried to run away, Wali Shah and Mahbub Shah came in front of them..." and fired shots. This circumstance is stated more definitely in the evidence of P.W. 6. He stated "... we then tried to run away but Mahbub Shah and Wali Shah coming in front of us and prevented our escape" and fired shots. It was argued that the attempt of the appellant and Wali Shah to prevent the escape of the complainant party shows that they were actuated by a common intention to commit the crime, and from that moment

the Court is entitled to infer a common intention to commit the crime even though there was no pre-concerted plan to shoot till then. This additional circumstance does not, in their Lordships' view, advance the prosecution case any further, and, moreover, the learned Judges of the High Court do not rely on it. In the circumstances, their Lordships are not satisfied that the appellant was rightly convicted of the offence of murder under Section 302, Penal Code, read with Section 34. His conviction for murder and the sentence of death passed on him should, therefore, be quashed. In this view, the further question raised in the appeal whether, in the event of his conviction being confirmed, the sentence of death passed on him should not, having regard to the circumstances of the case and his age, be commuted to one of transportation for life does not arise for consideration. For the reasons indicated above, their Lordships have humbly advised His Majesty that the appellant having succeeded in his appeal, his appeal should be allowed and his conviction for murder and the sentence of death set aside.

MANU/PR/0064/1924

Back to Section 34 of Indian Penal Code, 1860

BEFORE THE PRIVY COUNCIL

Decided On: 23.10.1924

Barendra Kumar Ghosh Vs. Emperor

Hon'ble Judges/Coram:
Atkinson, Sumner and John Edge, JJ.

JUDGMENT
Sumner, J.

1. This was an appeal from the High Court of Calcutta brought in a criminal matter under Art. 41 of the Letters Patent. The trial Judge reserved no question of law and the case came to the High Court on the certificate of the Advocate-General of Bengal under Art. 26. Objection was taken at their Lordships' bar to the competence of this appeal on the ground that Art. 41 does not give an appeal to their Lordships from the determination of the High Court, unless the case came before that Court at the instance of the trial Judge. Thereupon the appellant applied in the alternative for special leave to appeal. The materials being the same in both proceedings, though the questions arising are not identical, their Lordships were able to decide the appeal and the application together and, in view of the gravity and urgency of the case, they dispensed with a formal petition for special leave to appeal. After hearing the arguments, they announced last July the substance of the advice, which they would humbly tender to His Majesty, namely, that the appeal should be dismissed. At the same time their Lordships intimated that they were unable to advise that the application for special leave to appeal should be granted. Their reasons are as follows:

2. On August 3rd, 1923, the Sub-Postmaster at Sankaritolla Post Office was counting money at his table in the back room, when several men appeared at the door which leads into the room from a courtyard, and, when just inside the door, called on him to give up the money. Almost immediately afterwards they fired pistols at him. He was hit in two places, in one hand and near the armpit, and died almost at once. Without taking any money the assailants fled, separating as they ran. One man, though he fired his pistol several times, was pursued by a post office assistant and others with commendable tenacity and courage, and eventually was secured just after he had thrown it away. This man was the appellant; the others escaped. The pistol was at once picked up and was produced at the trial.

3. There was evidence for the prosecution, such as the jury was entitled to act upon, that three men fired at the postmaster, of whom the appellant was one; that he wore

distinctive clothes by which he could be and was identified; and that, while these men were just inside the room, another was visible from the room through the door standing close to the others but just outside on the doorstep in the courtyard. This man was armed but did not fire.

4. Except for a doubt as to the total number of the men concerned in the attack, most of the witnesses concurring in the above statement while ultimately the prisoner said they were only three in number, the evidence of the eye witnesses was consistent and uniform. The pistol thrown away by the prisoner was a German automatic self-ejecting pistol. An ejected shell was found just inside the room near the door, and it fitted this pistol. The bullet which killed the postmaster was cut out of his back and was produced, and it also fitted the ejected shell and the pistol carried by the prisoner. This bullet was distinctly of German make. It was not however conclusively proved that no other assailant had a similar pistol to that which the prisoner had, or used a similar bullet to that found in the deceased.

5. The appellant was defended by five counsel. A few of the witnesses were cross-examined by them, but very sparingly, and only to test their adherence to their evidence given in chief. Most of them were not cross-examined at all. No affirmative defence was indicated in any part of this cross-examination and no witnesses were called on the part of the prisoner; but after the case for the prosecution was closed the prisoner made an oral statement, which of course was not on oath and was not cross-examined to. Here for the first time some foundation was laid, though vaguely, for what eventually became the case raised on this appeal.

6. According to the prisoner, he was the man outside the room. He said that he stood in the courtyard and was very much frightened. The prosecution had left his purpose to be inferred from his position and his action. Whether he was present as one of the firing party or as its commander or as its reserve or its sentinel was of no special importance on the case made for the Crown. What was singular was the prisoner's own reticence on these matters. He dealt with none of them. Why he was there at all and why he did not take himself off again he did not say, nor did he even indicate his precise position in the yard. Accordingly the evidence called by the prosecution, that the man outside was close to the men inside and, being visible by those within, would also see what went on within, was never challenged at all. The appellant's account was: "I took my stand on the portico"--this ran round two sides of the courtyard and according to the plan is consistent with a position on the steps of the doorway--

After a minute I heard two sounds--dum dum; when I heard the sounds I was confused. I perspired heavily and could not remember anything.

Afterwards I heard chor chor; not finding the others there, I ran away.

7. Finally he said (and it was to this that the only affirmative part of his counsel's cross-examination was directed)--

I have never assaulted anyone in my life. This is my first offence. I throw myself on the mercy of the Court. I was married hardly three months ago.

8. The charges preferred were murder under S. 302 of the Indian Penal Code, and voluntarily causing hurt under S. 394, while jointly concerned in an attempted robbery. To the first charge he pleaded not guilty. To the second he pleaded guilty of robbery. Their Lordships do not pause to remark on the inconsistency of this latter plea with the argument subsequently advanced in the High Court. There were further charges of attempted murder and attempt to commit culpable homicide, which were abandoned by the prosecution at the outset.

9. The learned trial Judge, Page, J., directed the jury, carefully, upon the footing, that the prisoner was one of the men inside the room, that he was one of those who fired, and might be the man who fired the fatal shot, and that in any event, if they were satisfied in terms of S. 34 of the Code, that the postmaster was killed in furtherance of the common intent of all then the prisoner was guilty of murder, whether he fired the fatal shot or no. He did not deal with the prisoner's statement until the prosecuting counsel reminded him of it, when he told the jury that its weight was for them, but it formed part of the evidence which they had to consider. He gave no express direction on the subject either of attempted murder or of abetting murder. It appears to their Lordships that, as the whole summing up was rested, in sentences more than once repeated, upon the prisoner being one of those inside the room and on his firing at the postmaster, the direction to the jury to take his statement into account might well be understood as impliedly instructing them to acquit, if they believed his whole statement as to his action and his connexion with the murder to be true, since in that case the conditions would not be fulfilled on which throughout the summing-up it was stated that the guilt of the accused must rest. This view, however, was not put forward in the Court below, and their Lordships are quite satisfied to deal with the matter as it was presented to the High Court upon the question of misdirection.

10. The note of the defence submitted, which was taken by the trial Judge is as follows: "No evidence of murder, because no evidence that prisoner killed him." This he overruled, by saying quite rightly "there is evidence that accused fired the fatal shot." If the defence subsequently raised before the High Court had been put before him intelligibly, it should have been a submission that the jury ought to acquit if they thought that the accused either fired and missed or did not fire at all, and that they must not find that he fired the fatal shot without weighing the fact that the prosecution had not actually proved that neither of the other men fired from a German automatic pistol like the prisoner's though there was evidence making it improbable that they were armed as he was.

11. As to the subsequent defence resting on abetment, it does not appear to have been thought of at all. It would be a circumstance proper to be considered on the application for special leave, that, neither in cross-examination nor in argument before the verdict was found, was any point about abetment taken, nor was even any point as to an attempt clearly urged.

12. It was not too late to have amended the charge and to have given further directions to the jury (Criminal Procedure Code, S. 227) and points not properly raised at the trial are not points which, in ordinary circumstances, deserve much consideration as grounds for special leave. In the present case, however their Lordships think it unnecessary to dwell further on this matter.

13. In the period of over sixty years which have elapsed since the Indian Penal Code came into force, a very large number of cases have of course been reported, in which joint commission of crime, attempts to commit crime, and abetments of crime, in many and very various forms, have been the subject of judicial rulings. With insignificant exceptions the Code has been interpreted in all the Indian Courts down to a few years ago in conformity with the English law existing in 1860.

14. The learned Judges, in the High Court examined the authorities so fully and exhaustively that it would serve no good purpose if their Lordships were to discuss them again seriatim.

15. The chief authority for the appellant is a decision of Stephen, J., in 1914, in Emperor v. Nirmal Kanta Roy (1914) 41 Cal. 1072 = 10 C.W.N. 723= 24 I.C. 340 = 15 Cr. L.J. 460., a case in which two men, obviously acting in concert, having both fired at a policeman, one hitting and killing him and the other failing to hit him at all, that learned Judge directed the acquittal of the latter, who was charged under Ss. 302/34 with murder. He held that, applying S. 34 to the case, the criminal act was the killing of the policeman: that only one man killed him, not both: that all the prisoner did was to try to kill him, and that the criminal act charged was not done by several persons at all. that is to say was not under the circumstances a joint act and he added "the only act he can be liable for under the section is one done by several persons, of whom he was one, that is by the man who escaped and himself. In order to make the accused liable for murder under S. 34 it would be necessary to say that an offence and an attempt to commit it are the same act, which seems to me not to be the case."

16. This view of the meaning of S. 34 was adopted in Emperor v. Protulla Kumar Mazumdar MANU/WB/0393/1922: A.I.R. 1923 Cal. 453=50 Cal. 41, the High Court observing that "S. 34 does not create an offence, the provisions thereof merely lay down a rule of law." Reference may also be made to Chandan Singh v. Emperor (1918) 40 All. 103=43 I.C. 438=16 A.L.J. 11 Harnam Singh v. Emperor (1919) 21 P.R. 1919 Cr.=52 I.C.

395=20 Cr. L.J. 635 and Bahal Singh v. Emperor (1919) 24 P.R. 1919 Cr.=52 I.C. 791= 20 Cr. L.J. 711.

17. Before 1914 there seems to have been no case in Bengal in which the view of S. 34 formulated by Stephen, J., in Nirmal's case (1) was adopted by any Judge while the cases to the con-trary are numerous. It is evident that till then the view now contended for had a very small place in the voluminous body of criminal decisions, and it has since been as often criticised as followed, and more often than not has been disregarded altogether. This is so in all the Courts in India.

18. The doing to death of one person at the hands of several by blows or stabs, under circumstances in which it can never be known which blow or blade actually extinguished life, if indeed one only produced that result is common in criminal experience and the impossibility of doing justice, if the crime in such cases is the crime of attempted murder only, has been generally felt. Id is not often that a case is found where several shots can be proved and yet there is only one wound, but even in such circumstances it is obvious that the rule ought to be the same as in the wider class, unless the words of the Code clearly negative it. Of course questions arise in such cases as to the extent to which the common intention and the common contemplation of the gravest consequences may have gone, and participation in a joint crime, as distinguished from mere presence at the scene of its commission, is often a matter not easy to decide in complex states of fact, but the rule is one that has never left the Indian Courts in much doubt.

19. As illustrations of the course of decision, reference may be made to the cases of Queen Empress v. Jan Mahmed 1. W.R. Cr. R. 49, Queen Empress v. Mahabir (1898) 21 All. 263=(1899) A.W.N. 76, Keshwar Lal Shaha v. Queen Empress (1902) 29 Cal. 496, Gauridas Namasundra, v. Emperor MANU/WB/0199/1908: (1909) 36 Cal. 659=13 C.W.N. 680 = 2 I.C. 841=10 Cr. L.J. 186, Kanhai v. Emperor (1913) 35 All. 329=11 A.L.J. 752=21 I.C. 657=14 Cr. L.J. 609 and Manindra Chandra Ghose v. Emperor MANU/WB/0086/1914: (1914) 41 Cal. 754=18 C.W.N. 580=28 I.C. 1002=15 Cr. L.J. 402.

20. The appellant's argument is, in brief, that in S. 34, "a criminal act," in so far as murder is concerned, means an act which takes life criminally within S. 302, because the section concludes by saying "is liable for that act in the same manner as if the act were done by himself alone," and there is no act done by himself alone, which could make a man liable to be punished as a murderer, except an act done by himself and fatal to his victim.

21. Thus the effect is that, where each of several persons does something criminal, all acting in furtherance of a common intention, each is punishable for what he has done as if he had done it by himself. Such a proposition was not worth enacting, for, if a man has done something criminal in itself, he must be punishable for it, and none the less so that others were doing other criminal acts of their own at the same time and in furtherance of an intention common to all.

22. It follows from the appellant's argument that the section only applies to cases where several persons (acting in furtherance of a common intention) do some fatal act, which one could do by himself. Criminal action, which takes the form of acts by several persons, in their united effect producing one result, must then be caught under some other section and, except in the case of unlawful assembly, is caught under attempts or abetment.

23. By way of illustration it may be noted that, in effect, this means, that if three assailants simultaneously fire at their victim and lodge three bullets in his brain, all may be murderers, but, if one bullet only grazes his ear, one of them is not a murderer and, each being entitled to the benefit of the doubt, all must be acquitted of murder, unless the evidence inclines in favour of the marksmanship of two or of one.

24. This argument evidently fixes attention exclusively upon the accused person's own act. Intention to kill and resulting death accordingly are not enough; there must be proved an act which kills, done by several persons and corresponding to, if not identical with, the same fatal act done by one. The answer is that, if this construction is adopted, it defeats itself, for several persons cannot do the same act as one of them does. They may do acts identically similar, but the act of each is his own, and because it is his own and is relative to himself, it is not the act of another, or the same as that other's act. The result is that S. 34, construed thus, has no content and is useless. Before the High Court the appellant's counsel put an illustration of their own, which may be taken now, because, the whole range of feasible illustrations being extraordinarily small, this one is equally exact in theory and paradoxical in practice.

25. Suppose two men tie a rope round the neck of a third and pull opposite ends of the rope till he is strangled. This they said really is an instance of a case under S. 34. Really it is not.

26. Obviously each is pulling his own end of the rope, with his own strength, standing in the position that he chooses to take up, and exerting himself in the way that is natural to him, in a word in a way that is his. Let it be that in effect each pulls as hard as the other and at the same time and that both equally contribute to the result. Still the act, for which either would be liable, is done by himself alone, is precisely not the act done by the other person.

27. There are two acts, for which both actors ought to suffer death, separately done by two persons but identically similar. Let us add the element, that neither act without the other would have been fatal; so that the fatal effect was the cumulative result of the acts of both. Even this does not make either person do what the other person does: it merely makes the act, for which he would be liable if done by himself alone, an attempt to murder and not an act of murder, and accordingly the case is not an illustration of S. 34. To this the reply was made before the High Court, that, in a case where death results from the

cumulative effect of different acts, each actor must be deemed guilty of murder, though whether because it cannot be shown that it was not his act alone which took the victim's life, or because the absurdity of the argument had to be disclaimed somehow, it is not easy to determine. Yet absurd it is, and absurd it must remain. "Where two men have done a man to death," said the learned counsel (Record 127) "your Lordships will not inquire in the individual effect of each blow: but the point I am insisting on is that the doing to death must have been the joint acts of both." This concession, rational enough in itself, is another way of saying that the section really means "when a joint criminal act has been done by the acts of two persons in furtherance of a common intention each is liable for that joint criminal act if he had done it all by himself."

28. On the other hand, if it is read as the appellant reads it, then, returning to the illustration of the rope, if both men are charged together but each is to be made liable for his act only and as if he had done it by himself, each can say that the prosecution has not discharged the onus, for no more is proved against him than an attempt, which might not have succeeded in the absence of the other party charged. Thus both will be acquitted of murder, and will only be convicted of an attempt, although the victim is and remains a murdered man.

29. If, on the other band, each were tried separately by different juries, either jury or both, taking the view that the violence used by the men before they killed the man, whom they knew to be dead, might return unimpeachable verdicts of murder, and then both men would be justly hanged.

30. As soon, however, as the other sections of this part of the Code are looked at, it becomes plain that the words of S. 34 are not to be eviscerated by reading them in this exceedingly limited sense.

31. By S. 33 a criminal act in S. 34 includes a series of acts and, further "act" includes omission to act, for example, an omission to interfere in order to prevent a murder being done before one's very eyes. By S. 37, when any offence is committed by means of several acts whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. Even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things "they also serve who only stand and wait." By S. 38, when several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act. Read together, these sections are reasonably plain. S. 34 deals with the doing of separate acts, similar or diverse by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself,

for "that act" and "the act" in the latter part of the section must include the whole action covered by "a criminal act" in the first part, because they refer to it.

32. Section 37 provides that, when several acts are done so as to result together in the commission of an offence, the doing of any one of them, with an intention to co-operate in the offence (which may not be the same as an intention common to all), makes the actor liable to be punished for the commission of the offence.

33. Section 38 provides for different punishments for different offences as an alternative to one punishment for one offence, whether the persons engaged or concerned in the commission of a criminal act are set in motion by the one intention or by the other.

34. The other part of the appellant's argument rests on Ss. 114 and 149, and it is said that, if S. 34 bears the meaning adopted by the High Court, these sections are otiose. S. 149 however, is certainly not otiose, for in any case it creates a specific offence and deals with the punishment of that offence alone. It postulates an assembly of five or more persons having a common object, viz., one of those named in S. 141 (R. v. Sabed Ali) 11 Ben. L.R. 347 at page 359=20 W.R. Cr. 5, and then the doing of acts by members of it in prosecution of that object.

35. There is a difference between object land intention, for, though their object is common, the intentions of the several members may differ and indeed may be similar only in respect that they are all unlawful, while the element of participation in action which is the leading feature of S. 34, is replaced in S. 149, by membership of the assembly at the time of the committing of the offence. Both sections deal with combinations of persons, who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap, but S. 149, cannot at any rate relegate S. 34 to the position of dealing only with joint action by the commission of identically similar criminal acts, a kind of case which is not in itself deserving of separate treatment at all.

36. As to S. 114, it is a provision which is only brought into operation when circumstances amounting to abetment of a particular crime have first been proved, and then the presence of the accused at the commission of that crime is proved in addition: Abhi Misser v. Lachmi Narain MANU/WB/0027/1900: [1900] 27 Cal. 566=4 C.W.N. 546 Abetment does not itself involve the actual commission of the crime abetted. It is a crime apart.

37. Section 114, deals with the case where there has been the crime of abetment, but where also there has been actual commission of the crime abetted and the abettor has been present thereat, and the way in which it deals with such a case is this. Instead of the crime being still abetment with circumstances of aggravation, the crime becomes the very crime abetted. The section is evidentiary not punitory. Because participation de facto (as this case shows) may sometimes be obscure in detail, it is established by the presumption juris et de jure that actual presence plus prior abetment can mean nothing else but participation. The presumption raised by S. 114 brings the case within the ambit of S. 34.

38. The prosecution gave no evidence of any prior connection of the accused with the crime, but began the case at the time when the assailants appeared at the post office. The discovery of sundry pistols and daggers among the appellant's effects, some hours after the crime, was proved but not that they were those used in the commission of the murder.

39. There was nothing in the prosecution's case to show that he had instigated or aided the commission of the crime before the actual commission began. The evidence on this matter was wholly supplied by the prisoner himself. His statement was that earlier in the day, when he was reclining on his couch after a meal, "one, whom he knew to be a God-fearing man and a man of learning," came and took him to a house where he found two young men. Here he was solicited to go with them in order to commit a dacoity, and when he reluctantly consented and was shown how to use the pistol with which like the others he was then supplied he stipulated that he was not to be a party to any dacoity or murder and was told there was to be no murder and he was to be there merely for show.

40. It is plain from his statement that these persons had some hold over him, for when by way of excusing himself, he had said "My brother is in Government service and draws large pay. The money I earn is enough for me," he states that the other "looked at me for a time. I could not speak"; and when he had been told that he was to be there only for show, he adds, "I was not in a position to speak. I went with them."

41. Thus his statement goes at most to abetting a dacoity, the crime to the actual commission of which he pleaded guilty, but, as he had stipulated with success that there was to be no murder, it is not itself a statement showing an abetment of murder. Strictly, therefore, there was no evidence of any such abetment as has to be proved before S. 114 comes into operation. As to the appellant's presence at the post office, it has been already pointed out that he gave no explanation of it at all, but his story was much more consistent with participation in the actual commission of the crime than with mere bodily presence after previous abetment. Indeed, he says that when he ran away, the others had already disappeared; thus it would seem that he covered their retreat.

42. At any rate, his statement supports presence by way of actual participation in the criminal act or series of acts by which the post master was killed rather than such conduct as adds to previous abetment bodily presence at the commission of the crime abetted and nothing more, and S. 114 was never really made applicable for want of proof of abetment of the very crime, at the commission of which the appellant was actually present.

43. For these reasons their Lordships think that only the most unsubstantial foundation was laid for any discussion of S. 114 at all, but as it was fully considered by the High Court, they state their own concurrence in the conclusion of the learned Judges below. Even if it be the case that the accused could have been convicted as an abettor, present at the commission of the offence, this is not to say that, if to presence there is added proof of participation, he could not also be convicted under Ss. 34 and 302. Participation must

depend on the facts, but it is not negatived merely because actual presence and prior abetment are proved.

44. Their Lordships do not think it useful to go at length into the history of the preparation and enactment of the provisions of the Indian Penal Code, which played no inconsiderable part in the discussion of this subject in India.

45. That the criminal law of India is prescribed by and, so far as it goes, is contained in the Indian Penal Code, that accordingly (as the Code itself shows) the criminal law of India and that of England differ in sundry respects, and that the Code has first of all to be construed in accordance with its natural meaning and irrespective of any assumed intention on the part of its framers to leave unaltered the law as it existed before, are though common-places, considerations which it is important never to forget. It is, however, equally true that the Code must not be assumed to have sought to introduce differences from the prior law.

46. It continues to employ some of the older technical terms without even defining them as in the case of abetment. It abandons others, such as principal in the first or the second decree, but it must not be supposed that, because it ceases to use the terms, it does not intend to provide for the ideas which those terms however imperfectly, expressed. One object which those who framed the Code had in view, was to simplify the law; and to get rid of the terms "principal in the first degree" and principal in the second degree" and others was no doubt a step in that direction, but to introduce a general section, S. 34, which has little, if any, content, and to attach a wholly new importance to abetments and attempts, was to complicate not to simplify the administration of the law, for participation and joint action in the actual commission of crime are, in substance, matters which stand in antithesis to abetments or attempts. If S. 34 was deliberately reduced to the mere simultaneous doing in concert of identical criminal acts, for which separate convictions for the same offence could have been obtained, no small part of the cases which are brought by their circumstances within participation and joint commission would be omitted from the Code altogether.

47. If the appellant's argument were to be adopted, the Code, during its early years, before the words "in furtherance of the common intention of all" were added to S. 34, really enacted that each person is liable criminally for what he does himself, as if he had done it by himself, even though others did something at the same time as he did. This actually negatives participation altogether and the amendment was needless, for the original words expressed all that the appellant contends that the amended section expresses. One joint transaction by several is merely resolved into separate several actions, and the actor in each answers for himself, no less and no more than if the other actors had not been there.

48. This got rid of questions about principals in the first or the second degree by ignoring them, and the object of the framers of the Code was attained. In truth, however, the amending words introduced, as an essential part of the section, the element of a common intention prescribing the condition under which each might be criminally liable when there are several actors.

49. Instead of enacting in effect that participation as such might be ignored, which is what the argument amounts to, the amended section said that, if there was action in furtherance of a common intention, the individual came under a special liability thereby, a change altogether repugnant to the suggested view of the original section.

50. Really the amendment is an amendment, in any true sense of the word, only if the original object was to punish participants by making one man answerable for what another does, provided what is done is done in furtherance of a common intention, and if the amendment then defines more precisely the conditions under which this vicarious or collective liability arises. In other words, "a criminal act" means that unity of criminal behaviour, which results in something, for which an individual would be punishable, if it were all done by himself alone, that is, in a criminal offence.

51. Their Lordships are accordingly of opinion that the Full Bench of the High Court rightly construed S. 34 of the Indian Penal Code, and that the view taken of it in Nirmal Kantha Roy's case (1) is not correct. This disposes of the main question raised in the appeal and in the application for special leave. Assuming that Page, J., in taking the view of S. 34, which he did take, directed the jury correctly on the subject, there is admittedly little left in the general objections to his summing up.

52. It was very fully examined by the Full Bench of the High Court, and the learned Judges were unanimously of opinion that it did not call for any review. Their Lordships do not think it necessary to re-examine it sentence by sentence, or to reiterate the reasons which the learned Judges gave for their conclusion. It is enough to say that, having fully considered the summing-up themselves, they entirely concur in the conclusion of the Full Bench. The learned Judge's direction was not erroneous in point of law, and it sufficiently dealt with the material facts.

53. It therefore contained no misdirection; still less was it such a summing-up as affected the due course of justice and the right of the prisoner to be fairly tried, according to law within the strict and narrow limits, which have long been laid down by their Lordships' Board when special leave to appeal is asked for in criminal matters.

54. The argument against the competence of the appeal was substantially as follows: Subject to the satisfaction of the conditions which Art. 41 contains, the appeal is a limited appeal as of right, and must, therefore, be strictly construed. It is given in two cases only, and beyond those cases any appeal is incompetent. The two cases are these: first that the

High Court, in the exercise of its original criminal jurisdiction, has passed a judgment, order or sentence; and, second, that there has been a criminal case where the Court, exercising original jurisdiction in that case, has itself reserved a point or points of law for the opinion of the High Court. The present case does not fall within the words "from any judgment, order or sentence of the said High Court of Judicature.....made in the exercise of original criminal jurisdiction" but it must be brought within the second alternative. Now, the Advocate-General of Bengal, under Art. 26 of the Letters Patent, granted his certificate that in his judgment "whether the alleged direction or the alleged omission to direct the jury do not in law amount to a misdirection should be further considered by the said High Court."

55. After full consideration of the question so raised, the Full Bench of the High Court made its order in the following terms: "The order of the Court is that the application made by the prisoner under clause 26 of the Letters Patent do stand dismissed"; and this is the order by which the Appellant is really aggrieved. It is true that in his petition to the High Court for a declaration of the fitness of his case for further review he says: "that being aggrieved by the said dismissal of his application and by the judgment and sentence passed and pronounced upon him by the Hon'ble Mr. Justice Page, your petitioner prays for leave to appeal therefrom to the King's Most Excellent Majesty in Council": but this statement is doubly inexact.

56. The High Court does not and does not purport to grant leave to appeal: it grants or withholds a declaration of its opinion on the fitness of the case for appeal. Further, the appeal is from the order of the High Court itself refusing to exercise its power to interfere with the trial and sentence. If it had discharged the sentence and directed an acquittal to be entered, the appellant would not have been aggrieved by the judgment and sentence of Page, J., at all. If it had altered the sentence, his grievance would have been that the alteration did not go far enough. Accordingly his application is made in a case which does not fall within the words "in any criminal case where any points of law have been reserved for the opinion of the High Court in manner hereinbefore provided by any Court which has exercised original jurisdiction," for the points of law were reserved by the Court which exercised original jurisdiction, nor did the Court exercise its discretion in the matter in terms of Art. 25.

57. That article provides that but for the case therein excepted, "there shall be no appeal to the High Court from any sentence passed in any criminal trial before the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the High Court," and although Art. 26, which states what is to be done with these points reserved introduces a new reserving authority, determination of the High Court on the question reserved is final, except only for the express provision of Art. 41. It says:--

And we do further ordain that on such point or points of law being so reserved as aforesaid, or on its being certified by the said Advocate-General that in his

judgment.....a point or points of law which has or have been decided by the said Court should be further considered, the said High Court shall have full power and authority to review the case and finally determine such point or points of law.

58. Now Art. 41 names, as part of the defining limits of the right to appeal to His Majesty in Council, a reservation of points of law by a Court exercising original jurisdiction, which is not the reservation made in this case, and the fact that a reservation by the Advocate-General is mentioned and provided for in Section 26, and is omitted from Section 41, makes the intention clear.

59. When an authority outside the High Court is empowered to bring about a right of first appeal by a certificate of his own, that appeal is to the High Court and is finally concluded by its determination. There is no second appeal. When the reservation originates within the High Court itself, then, subject to the approval of the High Court to the fitness of the case in that regard, a second appeal is competent. With Art. 41 the Advocate-General has nothing to do. The proceedings of the two tribunals, the High Court exercising original criminal jurisdiction and the High Court determining by its judgment points reserved for its consideration, are strictly two proceedings, and, when the trial judge is functus officio and the whole matter has passed to the Court in review, the conditions under which the further decision in review can be brought before His Majesty in Council under Art. 41 are strictly limited to those which that section prescribes for that very case. Such was the submission on behalf of the respondent, and there can be no doubt that it was a weighty one.

60. Having arrived at the above-stated conclusion on the construction of the Code, which goes to the root both of the appeal and the application for special leave, their Lordships do not, however, think it necessary to proceed with the question whether in this case an appeal under Art. 41 of the Letters Patent is competent.

61. In 1901 an appeal Subrahmania Ayyar v. King Emperor (1902) 25 Mad. 61=28 I.A. 257=11 M.L.J. 233=3 Bom. L.R. 540=5 C.W.N. 866=10 M.L.J. 147 (P.C.) was heard and determined by their Lordships' Board, in which the decision under review was that of the High Court at Madras in a criminal matter, brought before it on the certificate of the Advocate-General under Art. 26. The terms of the Letters Patent of the High Courts of Calcutta and Madras are for the present purpose identical. No objection was taken by counsel that under these circumstances an appeal to their Lordships' Board under Art. 41 was incompetent, nor is any question raised on this point in the judgment of the Board, and the explanation of this circumstance probably lies in the fact, that in addition to the appeal under Art. 41, special leave to appeal had been applied for and had been granted by Her Majesty in Council on 29th June 1900.

62. The decision in that case does not therefore conclude this matter, but their Lordships think it inexpedient to deal with the objection now, since on the other grounds above

stated the appeal itself in their opinion must fail. They desire, however, to say that they must not be understood as giving any encouragement to appeals in criminal matters under Art. 41, where no point of law has been raised by the trial judge, nor are appellants, who have chosen this mode of bringing their case before the Board, to assume that an application for special leave to appeal as an alternative will be granted or even entertained by their Lordships.

63. For similar reasons they do not deal with other considerations relating to the grant of special leave to appeal to His Majesty such as the following.

64. Although in general hardly anything could more conspicuously violate natural justice than to convict and sentence a man for an offence of which he was not guilty, it may be that irregularity alone is the proper term to use, when, the facts being the same, the evidence the same, the guilt the same, and the punishment the same, error has occurred in indicting him under the section which charges the full offence instead of under the sections which charge an attempt at or an abetting of the full offence, especially when this error could have been corrected in time, if the accused had put his counsel in a position to raise his defence clearly and in due form at the trial. Upon this point also their Lordships express no opinion at present.

MANU/MH/0166/1952

Back to Section 79 of Indian Penal Code, 1860

IN THE HIGH COURT OF NAGPUR

Decided On: 19.02.1952

Chirangi Vs. State

Hon'ble Judges/Coram:
Hemeon and K.C. Sen, JJ.

JUDGMENT

1. Chirangi, Lohar, 45 years, a widower, his unmarried daughter, only son Ghudsai, 12 years, and nephew Khotla (P.W. 2) lived together at Idnar, Narayanpur tahsil, Bastar district. Their relations were cordial, and Ghudsai was attentive and considerate to his fattier who had an abscess in his leg for some time prior to he 3rd April 1951. During that afternoon, while Khotla was working in his field, Chirangi took an axe and went with Ghudsai to a nearby hillock, known as Budra Meta, in order to gather 'siadi' leaves. When Khotla returned to his house in the evening, Ghudsai was not there and he found Chirangi asleep with the blood-stained axe beside him. Chirangi woke up at midnight, and when Khotla questioned him concerning his son's whereabouts he replied:

I had become insane. I have killed my son in Budra Meta. It occurred to me that a tiger had come to me. I then dealt blows with the axe.
2. On the following morning, Chirangi repeated ' this version to the mukaddam Bandi (P.W. 3). Ghudsai's corpse was found on hillock, and Chirangi told the 'kotwar' Aitu (P.W. 1) that he had killed his son by mistake for a tiger, that two of his sons had died from insanity and that he himself was insane. The autopsy showed that Ghudsai had incised wounds on the right temple, neck and left humerus with a comminuted fracture of the right temporal bone. Chirangi had two superficial abrasions on the front of the shoulders and a superficial abrasion ½" × ½" on the outer part of the left eyebrow which could have been caused by a fall or r contact with a hard, and rough object.

3. Chirangi in examination explained that he had sustained these injuries by falling on a stone and that because of madness he did not know what had happened at the hillock, m defence, he added he had 'bona fide' mistaken his son for a magic tiger and was incapable of knowing the nature of his act. There was nothing to show that he was insane before or after the occurrence; and it was clear that he was devoted to his son. Dr. Palsodkar, when asked whether there could have been in the circumstances a fit of temporary insanity stated:

I assume that there was no symptom of epilepsy in this case. Without excitement, such temporary insanity should not ordinarily come.
4. The four assessors were of the unanimous opinion that Chirangi had actually mistaken his son for a tiger and that his fall may have resulted in temporary insanity. The trial Judge was however of the view that there was no mistake of fact, that even if there were it was not in good faith and that Chirangi was my insane at the relevant time. He convicted and sentenced him to transportation for life under Section 302 of the Indian Penal Code for Ghudsai's murder.

5. There was, as we have pointed out, nothing to show that the appellant was insane before or after the occurrence; and it was not even suggested that he was eccentric or queer. There was also no allegation that his forbears were mentally afflicted; and in this unusual case we are confronted with the position that he suddenly killed his son to whom lie was devoted and who was devoted to him, because he thought that he was a tiger. The 4 gentlemen, who sat as assessors at the trial, belong to the somewhat primitive tract in question; and they were of the unanimous opinion that he was not liable for the murder of his son and that he was entitled to the benefit of the provisions of both Section 79 and Section 84 of the Indian Penal code. They considered that he had acted under a 'bona fide' mistake of fact in a fit of temporary insanity which had been occasioned by his fall.

6. We invited Dr. K.C. Dube, M.B.B.S. (Bombay) and D.P.M. (London), who is Superintendent of Mental Hospital, Nagpur, and has specialized in psychiatry for 11 years, to read the record and to examine him. After he had done so, we examined Dr. Dube; and his testimony showed that it was possible for Chirangi, who was suffering from bilateral cataract prior to the relevant date, to have because of this disability mistaken 'bona fide' his son for a tiger. Dr. Dube also opined that the abscess in his leg would have produced a temperature which might well have been responsible after the fall for a temporary delirium which might have created a secondary delusion to magnify the image created by the defect in vision. Chirangi in all probability, he added, suffered from cardio-vascular disease which would have resulted in temporary confusion; and the injury to his eyebrow could have caused a state of concussion during which he might have inflicted the injuries on his son without being conscious of his actions. No symptoms of psychosis or insanity were present when Dr. Dube examined him on the 11th February 1952, i.e., about 10 months after the occurrence.

7. The evidence of Dr. Dube showed clearly enough that Chirangi's fall combined with his existing physical ailments could have produced a state of mind in which he in good faith thought that the object of his attack was a tiger and was not his son. The appellant's conduct after the occurrence was in consonance with that estimate, and it was manifest that he had had no intention of doing wrong or of committing any offence. In Waryam Singh v. Emperor AIR 1926 Lah 554, a Division Bench, acting under Section 79 of the Indian Penal Code, held that an accused who killed a man with several blows from a stick was not liable under Section 302, Section 304 or Section 304A 'ibid' because he believed

in good faith at the time of the attack that the object of his assault was not a living human being but a ghost or some object other than a living human being. The Division Bench made it clear that the ground for their opinion was that 'mens rea' or an intention to do wrong or to commit an offence did not exist in the case and that the object of culpable homicide could only be a living human being.

8. This view was followed in Bonda Kui v. Emperor MANU/BH/0066/1942: AIR1943Pat64 a case in Which a woman, in the middle of the night, saw a form, apparently human, dancing in a state of complete nudity with a broomstick tied on one side and a torn mat around the waist. The woman, taking the form to be that of an evil spirit or a thing which consumes human beings, removed her own clothes and with repeated blows by a hatchet felled the thing to the ground. Examination showed, however, that she had killed a human being who was the wife of her husband's brother. The conviction and sentence of the accused woman under Section 304 of the Indian Penal Code were set aside, on the ground that she was fully protected by the provisions of Section 79 'ibid', inasmuch as the statements made by her from time to time, which constituted the only evidence in the case, demonstrated conclusively that she thought that she was, by a mistake of fact, justified In killing the deceased whom she did not consider to be a human being, but a thing which devoured human beings.

9. We are in respectful agreement with these two rulings the facts in which are largely 'in part materia' with those in the poignant case before us. It is abundantly clear that if Chirangi had for a single moment thought that the object of his attack was his son, he would have desisted forthwith. There was no reason of any kind why he should have attacked him and, as shown, they were mutually devoted. In short, all that happened was that the appellant in a moment of delusion had considered that his target was a tiger and he accordingly assailed it with his axe. He thought that by reason of a mistake of fact he was justified in destroying the deceased whom he did not regard to be a human being but who, as he thought, was a dangerous animal. He was in the circumstances protected by the provisions of Section 79 of the Indian Penal Code which lays it down that nothing is an offence which is done by any person who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it.

10. The conviction and sentence are accordingly set aside and the appellant Chirangi shall be set at liberty forthwith.

MANU/OR/0088/1978

Back to Section 80 of Indian Penal Code, 1860

IN THE HIGH COURT OF ORISSA

Decided On: 21.03.1978

State of Orissa Vs. Khora Ghasi

Hon'ble Judges/Coram:
Sachidananda Acharya and K.B. Panda, JJ.

JUDGMENT
Sachidananda Acharya, J.

1. This is an appeal against the order of acquittal passed by the court below in favour of the respondent who was charged and tried Under Section 302 I.P.C. in that court.

2. The prosecution case, in short, is that in the night of 16-8-75 the deceased stealthily had entered into the maize field of the accused for committing theft of maize therefrom. The accused who was watching his maize field at that time heard some sound inside his field, and thinking that a bear had entered into the maize field, he shot an arrow towards the place from which the said sound was heard. That arrow hit the deceased on the right side of his belly and caused a gaping and bleeding injury at that place. The deceased ran back to his house and informed his grandmother, P. W. 1, that the accused shot an arrow at him and caused that injury on his person. Soon thereafter the deceased became unconscious and he died after two hours.

The next day morning the father of the deceased convened a Panchayat in the village where the accused admitted that he shot the arrow thinking that it was a bear. The father of the deceased thereafter lodged the F. I. R. Ext. 2 at the police station; After investigation and commitment proceeding the accused stood his trial for an offence Under Section 302 I.P.C. of which he has been acquitted.

3. The accused in his statement Under Section 313 Cr. P.C. admitted that he shot the arrow thinking that he was shooting a bear which had strayed into his maize field and was destroying his maize crop. It must be noted that the accused made the same or similar statements before the Bhadraloks in the village and before a Magistrate who on 22-8-75 recorded his statement Under Section 164, Cr. P.C. (Ext. 12).

4. There is no doubt that the deceased died a homicidal death.

5. P. Ws. 1. 3 and 4, who attended the Panchayat on the next morning, state that the accused admitted in the Panchayat that he shot the arrow under the impression that he

was shooting at a bear which was damaging his maize crop in his maize field. P. Ws. 1, 3 and 4 state that the night of occurrence was a dark night, it was drizzling and the moon was not visible in the sky at the time of the occurrence. The place of occurrence, as admitted by the prosecution witnesses, is surrounded by forests on all sides, and bears and boars were in abundance in that locality. They further state that such and other animals very often damage the crops of the villagers. The maize plants in the field of the accused were about four feet high. The deceased admittedly had a black blanket on his body when he had gone inside the accused's maize field. The prosecution case itself is that the deceased had gone there after midnight to commit theft of maize therefrom. One ordinarily would not expect a man to get into a maize field surrounded by jungles and infested with wild animals in a dark drizzling night. The prosecution witnesses have admitted that there was no enmity or ill feeling between the accused and the deceased. Absolutely no reason for intentional shooting of an arrow at the deceased by the accused could ever be suggested by the prosecution.

6. On a perusal of the evidence on record and the discussion of the same in the impugned judgment we are satisfied that the finding of the court below, that the accused shot the arrow under the bona fide belief and impression that he was shooting that arrow at a bear which had entered into his field and was destroying his maize crop, is perfectly correct and justified. On that finding, the court below rightly holds that in the facts and circumstances of this case the accused is entitled to the protection Under Section 80 I.P.C.

In this connection I should refer to the decision reported in MANU/MH/0169/1951 State of M. P. v. Ranga-swami cited by Mr. Nanda, the learned Counsel for the respondent. An employee in an Ammunition Depot, during the forenoon on a particular day, went along with his co-employees towards the place of occurrence with the intention of shooting a hyena which was seen in that locality on the previous day and which they honestly believed had reappeared there. On that day visibility was poor due to drizzling of rain. On the bona fide belief that the moving object seen by them was a wild animal and not a human being, and not anticipating the presence of any human being at that place at that time the accused fired a gun shot at the moving object, and to their surprise the object aimed at was found to be a human being who died at the spot. On these facts their Lordships of that Court upheld the order of acquittal in respect of the charge Under Section 304-A, I.P.C. against the accused. Their Lordships in that decision have referred to the decision reported in AIR 1926 Lah 554: 28 Cri LJ 39 (Waryam Singh v. Emperor) and the decision of the Patna High Court reported in (1942) Cri LJ 787 (Bonda Kui v. Emperor). In the Patna decision the accused, who had been convicted Under Section 304 I.P.C. by the Lower Court, was acquitted on the ground that she believed in good faith at the time of her attack that the object of the attack was not a living human being but a ghost or some object other than a living human being, and the intention to do wrong or to commit an offence against a human being was not present in that case.

Their Lordships of the Lahore High Court in the decision reported in AIR 1926 Lah 554: 28 Cri LJ 39 on an examination of several cases cited at the bar held that:

...the better judicial opinion is that if the accused believed in good faith at the time of the assault that the object of his assault was not a living human being but a ghost or some object other than a living human being then he cannot be convicted of an offence under Section 302 or Section 304 of the I.P.C. The ground for such opinion is that mens rea or an intention to do wrong or to commit an offence does not exist in such a case and that the object of 'culpable homicide' can be a 'living human being' only.
Their Lordships held that on the aforesaid facts of that case the appellant's case would come Under Section 79 I.P.C. and he could not be convicted Under Section 302 or Under Section 304 I.P.C., and that Section 304-A of the I.P.C. would not apply to a case of that nature.

7. On the facts and circumstances of this case we are satisfied that the complained of act of the accused comes clearly Under Section 79 or 80 I.P.C., and so the order of acquittal passed in this case is perfectly correct and justified. There is no merit in this appeal. The appeal accordingly is dismissed. The respondent, if in custody, be released forthwith.

K.B. Panda, J.

8. I agree.

Back to Section 81 of Indian Penal Code, 1860

MANU/UKWQ/0002/1884

ENGLAND AND WALES HIGH COURT (QUEEN'S BENCH DIVISION)

Decided On: 09.12.1884

R. v. Dudley (Thomas)

Hon'ble Judges/Coram:
LORD COLERIDGE, C.J., GROVE AND DENMAN, JJ., POLLOCK AND HUDDLESTON, BB.

JUDGMENT
LORD COLERIDGE, C.J.

The two prisoners, Thomas Dudley and Edwin Stephens, were indicted for the murder of Richard Parker on the high seas on the 25th of July in the present year. They were tried before my Brother Huddleston at Exeter on the 6th of November, and, under the direction of my learned Brother, the jury returned a special verdict, the legal effect of which has been argued before us, and on which we are now to pronounce judgment.

The special verdict as, after certain objections by Mr. Collins to which the Attorney General yielded, it is finally settled before us is as follows. [His Lordship read the special verdict as above set out.] From these facts, stated with the cold precision of a special verdict, it appears sufficiently that the prisoners were subject to terrible temptation, to sufferings which might break down the bodily power of the strongest man, and try the conscience of the best. Other details yet more harrowing, facts still more loathsome and appalling, were presented to the jury, and are to be found recorded in my learned Brother's notes. But nevertheless this is clear, that the prisoners put to death a weak and unoffending boy upon the chance of preserving their own lives by feeding upon his flesh and blood after he was killed, and with the certainty of depriving him of any possible chance of survival. The verdict finds in terms that "the men had not fed upon the body of the boy they would probably not have survived, "and that "the boy being in a much weaker condition was likely to have died before them." They might possibly have been picked up next day by a passing ship; they might possibly not have been picked up at all; in either case it is obvious that the killing of the boy would have been an unnecessary and profitless act. It is found by the verdict that the boy was incapable of resistance, and, in fact, made none; and it is not even suggested that his death was due to any violence on his part attempted against, or even so much as feared by, those who killed him. Under these circumstances the jury say that they are ignorant whether those who killed him were guilty of murder, and have referred it to this Court to determine what is the legal consequence which follows from the facts which they have found.

Certain objections on points of form were taken by Mr. Collins before he came to argue the main point in the case. First it was contended that the conclusion of the special verdict

as entered on the record, to the effect that the jury find their verdict in accordance, either way, with the judgment of the Court, was not put to them by my learned Brother, and that its forming part of the verdict on the record invalidated the whole verdict. But the answer is twofold â€" (1) that it is really what the jury meant, and that it is but the clothing in legal phraseology of that which is already contained by necessary implication in their unquestioned finding, and (2) that it is a matter of the purest form, and that it appears from the precedents with which we have been furnished from the Crown Office, that this has been the form of special verdicts in Crown cases for upwards of a century at least.

Next it was objected that the record should have been brought into this Court by certiorari, and that in this case no writ of certiorari had issued. The fact is so; but the objection is groundless. Before the passing of the Judicature Act, 1873 (36 & 37 Vict.c. 66), as the courts of Oyer and Terminer and Gaol delivery were not parts of the Court of Queen's Bench, it was necessary that the Queen's Bench should issue its writ to bring before it a record not of its own, but of another Court. But by the 16th section of the Judicature Act, 1873, the courts of Oyer and Terminer and Gaol delivery are now made part of the High Court, and their jurisdiction is vested in it. An order of the Court has been made to bring the record from one part of the court into this chamber, which is another part of the same court; the record is here in obedience to that order; and we are all of opinion that the objection fails.

It was further objected that, according to the decision of the majority of the judges in the Franconia Case 2 Ex D 63, there was no jurisdiction in the Court at Exeter to try these prisoners. But (1) in that case the prisoner was a German, who had committed the alleged offence as captain of a German ship; these prisoners were English seamen, the crew of an English yacht, cast away in a storm on the high seas, and escaping from her in an open boat; (2) the opinion of the minority in the Franconia Case 2 Ex D 63 has been since not only enacted but declared by Parliament to have been always the law; and (3) 17 & 18 Vict. c. 104, s. 267, is absolutely fatal to this objection. By that section it is enacted as follows:â€" â€œAll offences against property or person committed in or at any place either ashore or afloat, out of her Majesty's dominions by any master seaman or apprentice who at the time when the offence is committed is or within three months previously has been employed in any British ship, shall be deemed to be offences of the same nature respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same courts and in the same places as if such offences had been committed within the jurisdiction of the Admiralty of England.â€ We are all therefore of opinion that this objection likewise must be overruled.

There remains to be considered the real question in the case â€" whether killing under the circumstances set forth in the verdict be or be not murder. The contention that it could be anything else was, to the minds of us all, both new and strange, and we stopped the Attorney General in his negative argument in order that we might hear what could be said in support of a proposition which appeared to us to be at once dangerous, immoral, and opposed to all legal principle and analogy. All, no doubt, that can be said has been urged before us, and we are now to consider and determine what it amounts to. First it is said that it follows from various definitions of murder in books of authority, which

definitions imply, if they do not state, the doctrine, that in order to save your own life you may lawfully take away the life of another, when that other is neither attempting nor threatening yours, nor is guilty of any illegal act whatever towards you or any one else. But if these definitions be looked at they will not be found to sustain this contention. The earliest in point of date is the passage cited to us from Bracton, who lived in the reign of Henry III. It was at one time the fashion to discredit Bracton, as Mr. Reeve tells us, because he was supposed to mingle too much of the canonist and civilian with the common lawyer. There is now no such feeling, but the passage upon homicide, on which reliance is placed, is a remarkable example of the kind of writing which may explain it. Sin and crime are spoken of as apparently equally illegal, and the crime of murder, it is expressly declared, may be committed â€œlinguÃ¢ vel factoâ€; so that a man, like Hero â€œdone to death by slanderous tongues,â€ would, it seems, in the opinion of Bracton, be a person in respect of whom might be grounded a legal indictment for murder. But in the very passage as to necessity, on which reliance has been placed, it is clear that Bracton is speaking of necessity in the ordinary sense â€" the repelling by violence, violence justified so far as it was necessary for the object, any illegal violence used towards oneself. If, says Bracton, the necessity be â€œevitabilis, et evadere posset absque occisione, tunc erit reus homicidiiâ€ â€" words which shew clearly that he is thinking of physical danger from which escape may be possible, and that the â€œinevitabilis necessitasâ€ of which he speaks as justifying homicide is a necessity of the same nature.

It is, if possible, yet clearer that the doctrine contended for receives no support from the great authority of Lord Hale. It is plain that in his view the necessity which justified homicide is that only which has always been and is now considered a justification. â€œIn all these cases of homicide by necessity,â€ says he, â€œas in pursuit of a felon, in killing him that assaults to rob, or comes to burn or break a house, or the like, which are in themselves no felonyâ€ (1 Hale's Pleas of the Crown , p. 491). Again, he says that â€œthe necessity which justifies homicide is of two kinds: (1) the necessity which is of a private nature; (2) the necessity which relates to the public justice and safety. The former is that necessity which obligeth a man to his own defence and safeguard, and this takes in these inquiries:â€" (1.) What may be done for the safeguard of a man's own life;â€ and then follow three other heads not necessary to pursue. Then Lord Hale proceeds:â€" â€œAs touching the first of these â€" viz., homicide in defence of a man's own life, which is usually styled se defendendo.â€ It is not possible to use words more clear to shew that Lord Hale regarded the private necessity which justified, and alone justified, the taking the life of another for the safeguard of one's own to be what is commonly called â€œself-defence.â€ (Hale's Pleas of the Crown, i. 478.)

But if this could be even doubtful upon Lord Hale's words, Lord Hale himself has made it clear. For in the chapter in which he deals with the exemption created by compulsion or necessity he thus expresses himself:â€" â€œIf a man be desperately assaulted and in peril of death, and cannot otherwise escape unless, to satisfy his assailant's fury, he will kill an innocent person then present, the fear and actual force will not acquit him of the crime and punishment of murder, if he commit the fact, for he ought rather to die himself than kill an innocent; but if he cannot otherwise save his own life

the law permits him in his own defence to kill the assailant, for by the violence of the assault, and the offence committed upon him by the assailant himself, the law of nature, and necessity, hath made him his own protector cum debito moderamine inculpatÃ¦ tutelÃ¦.â€ (Hale's Pleas of the Crown, vol. i. 51.)

But, further still, Lord Hale in the following chapter deals with the position asserted by the casuists, and sanctioned, as he says, by Grotius and Puffendorf, that in a case of extreme necessity, either of hunger or clothing; â€œtheft is no theft, or at least not punishable as theft, as some even of our own lawyers have asserted the same.â€ â€œBut,â€ says Lord Hale, â€œI take it that here in England, that rule, at least by the laws of England, is false; and therefore, if a person, being under necessity for want of victuals or clothes, shall upon that account clandestinely and animo furandi steal another man's goods, it is felony, and a crime by the laws of England punishable with death.â€ (Hale, Pleas of the Crown, i. 54.) If, therefore, Lord Hale is clear â€" as he is â€" that extreme necessity of hunger does not justify larceny, what would he have said to the doctrine that it justified murder?

It is satisfactory to find that another great authority, second, probably, only to Lord Hale, speaks with the same unhesitating clearness on this matter. Sir Michael Foster, in the 3rd chapter of his Discourse on Homicide, deals with the subject of â€œhomicide founded in necessityâ€; and the whole chapter implies, and is insensible unless it does imply, that in the view of Sir Michael Foster â€œnecessity and self-defenceâ€ (which he defines as â€œopposing force to force even to the deathâ€) are convertible terms. There is no hint, no trace, of the doctrine now contended for; the whole reasoning of the chapter is entirely inconsistent with it.

In East's Pleas of the Crown (i. 271) the whole chapter on homicide by necessity is taken up with an elaborate discussion of the limits within which necessity in Sir Michael Foster's sense (given above) of self-defence is a justification of or excuse for homicide. There is a short section at the end very generally and very doubtfully expressed, in which the only instance discussed is the well-known one of two shipwrecked men on a plank able to sustain only one of them, and the conclusion is left by Sir Edward East entirely undetermined.

What is true of Sir Edward East is true also of Mr. Serjeant Hawkins. The whole of his chapter on justifiable homicide assumes that the only justifiable homicide of a private nature is the defence against force of a man's person, house, or goods. In the 26th section we find again the case of the two shipwrecked men and the single plank, with the significant expression from a careful writer, â€œIt is said to be justifiable.â€ So, too, Dalton c. 150, clearly considers necessity and self-defence in Sir Michael Foster's sense of that expression, to be convertible terms, though he prints without comment Lord Bacon's instance of the two men on one plank as a quotation from Lord Bacon, adding nothing whatever to it of his own. And there is a remarkable passage at page 339, in which he says that even in the case of a murderous assault upon a man, yet before he may take the life of the man who assaults him even in self-defence, â€œcuncta prius tentanda.â€

The passage in Staundforde, on which almost the whole of the dicta we have been considering are built, when it comes to be examined, does not warrant the conclusion

which has been derived from it. The necessity to justify homicide must be, he says, inevitable, and the example which he gives to illustrate his meaning is the very same which has just been cited from Dalton, shewing that the necessity he was speaking of was a physical necessity, and the self-defence a defence against physical violence. Russell merely repeats the language of the old text-books, and adds no new authority, nor any fresh considerations.

Is there, then, any authority for the proposition which has been presented to us? Decided cases there are none. The case of the seven English sailors referred to by the commentator on Grotius and by Puffendorf has been discovered by a gentleman of the Bar, who communicated with my Brother Huddleston, to convey the authority (if it conveys so much) of a single judge of the island of St. Kitts, when that island was possessed partly by France and partly by this country, somewhere about the year 1641. It is mentioned in a medical treatise published at Amsterdam, and is altogether, as authority in an English court, as unsatisfactory as possible. The American case cited by my Brother Stephen in his Digest, from Wharton on Homicide, in which it was decided, correctly indeed, that sailors had no right to throw passengers overboard to save themselves, but on the somewhat strange ground that the proper mode of determining who was to be sacrificed was to vote upon the subject by ballot, can hardly, as my Brother Stephen says, be an authority satisfactory to a court in this country. The observations of Lord Mansfield in the case of Rex v. Stratton and Others 21 How St Tr at p 1223, striking and excellent as they are, were delivered in a political trial, where the question was whether a political necessity had arisen for deposing a Governor of Madras. But they have little application to the case before us, which must be decided on very different considerations.

The one real authority of former time is Lord Bacon, who, in his commentary on the maxim, â€œnecessitas inducit privilegium quoad jura privata,â€ lays down the law as follows:â€" â€œNecessity carrieth a privilege in itself. Necessity is of three sorts â€" necessity of conservation of life, necessity of obedience, and necessity of the act of God or of a stranger. First of conservation of life; if a man steal viands to satisfy his present hunger, this is no felony nor larceny. So if divers be in danger of drowning by the casting away of some boat or barge, and one of them get to some plank, or on the boat's side to keep himself above water, and another to save his life thrust him from it, whereby he is drowned, this is neither se defendendo nor by misadventure, but justifiable.â€ On this it is to be observed that Lord Bacon's proposition that stealing to satisfy hunger is no larceny is hardly supported by Staundforde, whom he cites for it, and is expressly contradicted by Lord Hale in the passage already cited. And for the proposition as to the plank or boat, it is said to be derived from the canonists. At any rate he cites no authority for it, and it must stand upon his own. Lord Bacon was great even as a lawyer; but it is permissible to much smaller men, relying upon principle and on the authority of others, the equals and even the superiors of Lord Bacon as lawyers, to question the soundness of his dictum. There are many conceivable states of things in which it might possibly be true, but if Lord Bacon meant to lay down the broad proposition that a man may save his

life by killing, if necessary, an innocent and unoffending neighbour, it certainly is not law at the present day.

There remains the authority of my Brother Stephen, who, both in his Digest and in his History of the Criminal Law, uses language perhaps wide enough to cover this case. The language is somewhat vague in both places, but it does not in either place cover this case of necessity, and we have the best authority for saying that it was not meant to cover it. If it had been necessary, we must with true deference have differed from him, but it is satisfactory to know that we have, probably at least, arrived at no conclusion in which if he had been a member of the Court he would have been unable to agree. Neither are we in conflict with any opinion expressed upon the subject by the learned persons who formed the commission for preparing the Criminal Code. They say on this subject:â€"

â€œWe are certainly not prepared to suggest that necessity should in every case be a justification. We are equally unprepared to suggest that necessity should in no case be a defence; we judge it better to leave such questions to be dealt with when, if ever, they arise in practice by applying the principles of law to the circumstances of the particular case.â€

It would have been satisfactory to us if these eminent persons could have told us whether the received definitions of legal necessity were in their judgment correct and exhaustive, and if not, in what way they should be amended, but as it is we have, as they say, â€œto apply the principles of law to the circumstances of this particular case.â€

Now, except for the purpose of testing how far the conservation of a man's own life is in all cases and under all circumstances, an absolute, unqualified, and paramount duty, we exclude from our consideration all the incidents of war. We are dealing with a case of private homicide, not one imposed upon men in the service of their Sovereign and in the defence of their country. Now it is admitted that the deliberate killing of this unoffending and unresisting boy was clearly murder, unless the killing can be justified by some well-recognised excuse admitted by the law. It is further admitted that there was in this case no such excuse, unless the killing was justified by what has been called â€œnecessity.â€ But the temptation to the act which existed here was not what the law has ever called necessity. Nor is this to be regretted. Though law and morality are not the same, and many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would be of fatal consequence; and such divorce would follow if the temptation to murder in this case were to be held by law an absolute defence of it. It is not so. To preserve one's life is generally speaking a duty, but it may be the plainest and the highest duty to sacrifice it. War is full of instances in which it is a man's duty not to live, but to die. The duty, in case of shipwreck, of a captain to his crew, of the crew to the passengers, of soldiers to women and children, as in the noble case of the Birkenhead; these duties impose on men the moral necessity, not of the preservation, but of the sacrifice of their lives for others, from which in no country, least of all, it is to be hoped, in England, will men ever shrink, as indeed, they have not shrunk. It is not correct, therefore, to say that there is any absolute or unqualified necessity to preserve one's life. â€œNecesse est at eam, non at vivam,â€ is a saying of a Roman officer quoted by Lord Bacon himself with high eulogy in the very chapter on necessity to which so much

reference has been made. It would be a very easy and cheap display of commonplace learning to quote from Greek and Latin authors, from Horace, from Juvenal, from Cicero, from Euripides, passage after passage, in which the duty of dying for others has been laid down in glowing and emphatic language as resulting from the principles of heathen ethics; it is enough in a Christian country to remind ourselves of the Great Example whom we profess to follow. It is not needful to point out the awful danger of admitting the principle which has been contended for. Who is to be the judge of this sort of necessity? By what measure is the comparative value of lives to be measured? Is it to be strength, or intellect, or what? It is plain that the principle leaves to him who is to profit by it to determine the necessity which will justify him in deliberately taking another's life to save his own. In this case the weakest, the youngest, the most unresisting, was chosen. Was it more necessary to kill him than one of the grown men? The answer must be â€œNoâ€â€"
â€œSo spake the Fiend, and with necessity, The tyrant's plea, excused his devilish deeds.â€

It is not suggested that in this particular case the deeds were â€œdevilish,â€ but it is quite plain that such a principle once admitted might be made the legal cloak for unbridled passion and atrocious crime. There is no safe path for judges to tread but to ascertain the law to the best of their ability and to declare it according to their judgment; and if in any case the law appears to be too severe on individuals, to leave it to the Sovereign to exercise that prerogative of mercy which the Constitution has intrusted to the hands fittest to dispense it.

It must not be supposed that in refusing to admit temptation to be an excuse for crime it is forgotten how terrible the temptation was; how awful the suffering; how hard in such trials to keep the judgment straight and the conduct pure. We are often compelled to set up standards we cannot reach ourselves, and to lay down rules which we could not ourselves satisfy. But a man has no right to declare temptation to be an excuse, though he might himself have yielded to it, nor allow compassion for the criminal to change or weaken in any manner the legal definition of the crime. It is therefore our duty to declare that the prisoners' act in this case was wilful murder, that the facts as stated in the verdict are no legal justification of the homicide; and to say that in our unanimous opinion the prisoners are upon this special verdict guilty of murder. My brother Grove has furnished me with the following suggestion, too late to be embodied in the judgment but well worth preserving: â€œIf the two accused men were justified in killing Parker, then if not rescued in time, two of the three survivors would be justified in killing the third, and of the two who remained the stronger would be justified in killing the weaker, so that three men might be justifiably killed to give the fourth a chance of survivingâ€ â€" C
THE COURT then proceeded to pass sentence of death upon the prisoners. This sentence was afterwards commuted by the Crown to six months' imprisonment
A. P. S.

MANU/SC/0093/1977

Back to Section 82 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 256 of 1977

Decided On: 16.08.1977

Hiralal Mallick Vs. The State of Bihar

Hon'ble Judges/Coram:
P.K. Goswami and V.R. Krishna Iyer, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: D. Goburdhan, Adv
For Respondents/Defendant: U.P. Singh and S.N. Jha, Advs.

JUDGMENT
Authored By: V.R. Krishna Iyer, P.K. Goswami
V.R. Krishna Iyer, J.

1. This appeal involves an issue of criminal culpability presenting mixed questions of fact and law and a theme of juvenile justice, a criminological Cinderella of the Indian law-in-action.

2. Hiralal Mallick, the sole appellant before us, was a 12-year old lad when he toddled into crime, conjointly with his two elder brothers. The three, together, were charged with the homicide of one Arjan Mallick which ended in a conviction of all under Section 302 read with Section 34 IPC. The trial judge impartially imposed on each one a punishment of imprisonment for life. On appeal by all the three, the High Court, taking note of some peculiarities, directed the conversion of the convictions from Section 302 (read with Section 34) (sic) 34) IPC and, consequently, pared down the punishment award-(sic) the co-accused into rigorous imprisonment for 8 years. The third (sic), the appellant before us, was shown consideration for his tender age of 12 years (at the time of commission of the crime) and the Court, in a mood of compassion, softened the sentence on the boy into rigorous imprisonment for 4 years.

3. A close-up of the participatory role of the youthful offender, as distinguished from that of his elder brothers, discloses a junior partnership for him. For, argued Shri Goburdhan, while accused 1 and 2 caused the fatal stabs, the appellant was found to have inflicted superficial cuts on the victim with a sharp weapon, probably angered by the episode of an earlier attack on their father, induced by the stress of the reprisal urge and spurred by his brothers' rush after the foe, but all the same definitely helping them in their

aggression. That he was too infantine to understand the deadly import of the sword blows he delivered is obvious; that he inflicted lesser injuries of a superficial nature is proved; that he, like the other two, chased and chopped and took to his heels, is evident. The immature age of the offender, the fraternal company which circumstanced his involvement, the degree of intent gauged by the depth of the wounds he caused and the other facts surrounding the occurrence, should persuade us to hold that this juvenile was guilty--not of death-dealing brutality--but of naughty criminality, in a violent spree. Measured by his intent and infancy, his sinister part in the macabre offence ran upto infliction of injury with a cutting weapon attracting Section 324 IPC, not more. Such was the mecaronic submission of counsel anxious to press for an extenuatory exoneration from incarceration.

4. This mix-up of degree of culpability and quantum of punishment is unscientific and so we have first to fix the appellant's guilt under the Penal Code and then turn to the punitory process. Criminality comes first, humanist sentence next.

5. Ordinarily, the vernier scale of a man's mens rea is the pragmatic one of the reasonable and probable consequences of his act. The weapon he has used, the situs of the anatomy on which he has inflicted the injury and the like, are inputs. If that be the mental standard of the turpitude, the offender's faculty of understanding becomes pertinent. Man is a rational being and law is a system of behavioral cybernetics where noetic niceties, if pressed too far, may defeat its societal efficacy. So, except in pronounced categories, which we will advert to presently, the intent is spelt out objectively by the rough-and-ready test of the prudent man and not with psychic sensitivity to retarded individuals. Viewed in this perspective, the materials present in the case, especially the medical evidence, shows that this young offender armed himself like his brothers with a cutting instrument and set upon the victim using the sword on his neck. The autopsy evidence discloses that the injuries caused by the appellant were not the lethal ones; but multiple sword cuts on the neck of a man, leave little room for doubt in the ordinary run of cases as to the intent of the assailant. When three persons, swords in hand, attack a single individual, fell him on the ground and strike on his neck and skull several times with a sharp weapon, it is not caressing but killing, in all conscience and (sic) sense. The turpitude cannot be attenuated, and the inference is (sic) table that the least the parties sought to execute was to endanger the life of the target person. In this light, the malefic contribution of the appellant to the crime is substantially the same as that of the other two.

6. When a crime is committed by the concerted action of a plurality of persons constructive liability implicates each participant, but the degree of criminality may vary depending not only on the injurious sequel but also on the part played and the circumstances present, making a personalised approach with reference to each. Merely because of the fatal outcome, even those whose intention, otherwise made out to be far

less than homicidal, cannot, by hindsight reading, be meant to have had a murderous or kindred mens rea.

We have, therefore, to consider in an individualised manner the circumstances of the involvement of the appellant, his nonage and expectation of consequences. When a teenager, tensed by his elders or provoked by the stone-hit on the head of his father, avenges with dangerous sticks or swords, copying his brothers, we cannot altogether ignore his impaired understanding, his tender age and blinding environs and motivations causatory of his crime.
7. It is common ground that the appellant was twelve years old at the time of the occurrence. At common law in England, as noticed by Archbold in Criminal Pleading, Evidence and Practice, a child under 14 years is presumed not to have reached the age of discretion and to be doli incapax; but this presumption may be rebutted by strong and pregnant evidence of a mischievous discretion... for the capacity to commit crime, do evil and contract guilt, is not so much measured by years and days as by the strength of the delinquent's understanding and judgment.

8. Cross & Jones in 'An Introduction to Criminal Law' state: "It is conclusively presumed that no child under the age of ten years can be guilty of any offence; a child of ten years or over, but under the age of fourteen, is presumed to be incapable of committing a crime, but this presumption may be rebutted by evidence of 'mischievous discretion' i.e., knowledge that what was done was morally wrong." R.V. Owen (1830) 4 C & P. 236. Cross & Jones further state: "The re-buttable presumption of innocence in the case of persons between the age of ten and fourteen is still wholly dependent on the common law. The Crown cannot, as in most other cases, rely on the actus reus as evidence of mens rea; other evidence that the child knew it was doing something morally wrong must be adduced.": R. v. Kershaw (1902) 18 T.L.R. 357.

9. In English Law, when an adolescent is charged with an offence, the prosecution has to prove more than the presence of a guilty mind but must go further to make out that when the boy did the act, he knew that he was doing what wrong--not merely what was wrong but what was gravely wrong, seriously wrong (emphasis added).

10. Adult intent, automatically attributed to infant mens, is itself an adult error. It is everyday experience that little boys as a class have (sic) appreciation of dangers to themselves or others by injurious acts and so it is that the new penology in many countries immunises crimes committed by children of and below ten years of age and those between the ages of 10 and 14 are 'in a twilight zone in which they are morally responsible not as a class, but as individuals when they know their act to be wrong'. The Indian Penal Code, which needs updating in many portions, extends total immunity upto the age of seven (Section 82) and partial absolution upto the age of twelve (Section 83). The latter provision reads:

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

The venal solicitude of the law for vernal offenders is essentially a modern sensitivity of penology although from the Code of Hammurabi, the days of the Hebrews and vintage English law, this clement disposition is a criminological heritage, marred, of course, by some periods and some countries. Dr. Siddique mentions that there have been instances in England where children of tender years were given death sentences like the case where two kids of eight or nine years were given capital punishment for stealing a pair of shoes (p. 127, Criminology: Problems and Perspectives, by Ahmad Siddique: Eastern Book Co.). At least as mankind is approaching the International Year of the Child (1979), the Indian legal system must be sensitized by juvenile justice. This conscientious consciousness prompted us to counsel counsel to examine the statutory position and criminological projects in the 'child' area. We had to make-do with what assistance we got but hope that when a near-pubescent accused is marched into a criminal court, the Bench and the Bar will be alerted about jus juvenalis, if we may so call it. The compassion of the penal law for juvenescents cannot be reduced to jejunity by forensic indifference since the rule of law lives by law-in-action, not law in the books. Unfortunately, at no stage, from the charge-sheet to the petition for special leave, has awareness of Section 83 of the Panel Code, the Probation of Offenders Act, 1958 or the Bihar Children Act, 1970, been shown in this case. May be, the offence charged being under Section 302 IPC and the guilt ultimately found being of an offence punishable with life imprisonment, account for this non-consideration. Even so, justice to juvenile justice desiderates more from a lively judicial process.

11. Back to Hiralal Mallick and his crime and punishment. Was he guilty under Section 326 IPC as the High Court has found, or was he liable only under Section 324 as Shri Goburdhun urges He was twelve; he wielded a sword; he struck on the neck of the deceased; he rushed to avenge; he ran away like the rest. No evidence as to whether he was under twelve, as conditioned by Section 83 IPC is adduced; no attention to feeble understanding or youthful frolic is addressed. And we are past the judicial decks where factual questions like this can be investigated. The prima facie inference of intent to endanger the life of the deceased with a sharp weapon stands unrebutted. Indeed, robust realism easily imputes doli capax to a twelver who cuts on the neck of another with a sword; for, if he does not know this to be wrong or likely to rip open a vital part he must be very abnormal and in greater need of judicial intervention for normalisation. The conviction under Section 326, IPC, therefore, must be reluctantly sustained. When such is the law, we cannot innovate to attenuate, submit to spasmodic sentiment, or ride an unregulated benevolence. We cannot forget Benjamin Cardozo's caveat that "the Judge, even when he is free, is still not wholly free'. Fettered by the law, we uphold the conviction.

12. Now to the issue of 'sentence'. Guidelines for sentencing are difficult to prescribe and more difficult to practice. Justice Henry Alfred-McCardie succinctly puts it:

Trying a man is easy, as easy as falling off a log, compared with deciding what to do with him when he has been found guilty.(All quotations from 'Sentencing and Probation'-Published by National College of the State Judiciary, Reno, Nevada, U.S.A.) (p. 362)
Speaking broadly, the ultimate desideratum of most sentences is 'to make an offender a non-offender. Only as judges impose effective sentences with a proper attitude and manner will they perform their expected function of decreasing the rising number of criminal and quasi-criminal activities in this nation', (p. 364) 0) Penal humanitarianism has come to assert itself, although Sir Winston Churchill put the point of the common man and of the judge with forceful clarity:

The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country, (p. 68) (All quotations from 'Sentencing and Probation'-Published by National College of the State Judiciary, Reno, Nevada, U.S.A.)

13. By that unfailing test we fail, if we betray brutality towards children and burke the human hope of tomorrow and the current trust in our hands and hearts. So it is that in the words of the Archbishop of York in the House of Lords' debate in 1965:

Society must say, through its officers of law, that it repudiates certain acts as utterly incompatible with civilized conduct and that it will exact retribution from those who violate its ordered code... (p. 18)(All quotations from 'Sentencing and Probation'-Published by National College of the State Judiciary, Reno, Nevada, U.S.A.)
It is a badge of our humanist culture that we hold fast to a national youth policy in criminology. The dignity and divinity, the self-worth and creative potential of every individual is a higher value of the Indian people; special protection for children is a constitutional guarantee writ into Article 15(3) and 39(f). Therefore, without more, our judicial processes and sentencing paradigms must lead kindly light along the correctional way. That is why Gandhiji emphasized the hospital setting, the patient's profile in dealing with 'criminals'. In-patient, out-patient and domiciliary treatment with curative orientation is the penological reverence to the Father of the Nation. A necessary blossom of this ideology is the legislative development of criminological pediatrics. And yet it is deeply regrettable that in Bihar, the land of the Buddha-the beacon-light whose compassion encompassed all living beings-the delinquent child is inhospitably treated. Why did this finer consciousness of juvenile justice not dawn on the Bihar legislators and government. Why did the State not pass a Children Act through its elected members? And one blushes to think that a belated Children Act, passed in 1970 during President's rule, was allowed to lapse. Today, may be, the barbarity of tender-age offenders being handcuffed like adult habituals, trooped into the crowded criminal court in hurtful humiliation and escorted by policemen, tried along with adults attended by court

formalities, survives in that hallowed State; for, counsel for Bihar surprised us with the statement that there now exists no Children Act in that State. With all our boasts and all our hopes, our nation can never really be decriminalized until the crime of punishment of the young deviants is purged legislatively, administratively and judicatively. This twelve-year old delinquent would have had a holistic career ahead, instead of being branded a murderer, had a Children Act refined the Statute Book and the State set up Children's Courts and provided for healing the psyche of the little human.

14. Conceptually, the establishment of a welfare-oriented jurisdiction over juveniles is predicated and over judicialisation and over-formalisation of court proceedings is contraindicated. Correctionally speaking, the perception of delinquency as indicative of the person's underlying difficulties, inner tensions and explosive stresses similar to those of mal-adjusted children, the belief that court atmosphere with forensic robes, gowns and uniforms and contentious disputes and frowning paraphernalia like docks and stands and crowds and other criminals marched in and out, are psychically traumatic and socially stigmatic, argues in favour of more informal treatment by a free mix of professional and social workers and experts operating within the framework of the law. There is a case to move away from the traditional punitive strategies in favour of the nourishing needs of juveniles being supplied by means of a treatment-oriented perspective. This radicalisation and humanisation of jus juvenalis has resulted in legislative projects which jettison procedural rigours and implant informal and flexible measures of freely negotiated non-judicial settlement of cases. These advances in juvenile criminology were reflected inter alia in the Children Act, 1960.

15. The rule of law in a Welfare State has to be operational and, if the State, after a make-believe legislative exercise, is too insouciant even to bring it into force by a simple notification, or renew it after its one year brevity, it amounts to a breach of faith with the humanism of our supreme lex, an abandonment of the material and moral well-being promised to the children of the country in Article 39(f) and a subtle discrimination between child and child depending on the State where it is tried. We hopefully speak for the neglected child and wish that Bihar-and, if there are other States placed in a similar dubiety or dilemma, they too-did make haste to legislate a Children Act, set up the curial and other infrastructure and give up retributivism in favour of restorative arts in the jurisdiction of young deviants. Often, the sinner is not the boy or girl but the broken or indigent family and the indifferent and elitist society. The law has a heart-or, at least, must have. Mr. Justice Fortas, speaking for the U.S. Supreme Court in Kent v. United States, said:

There may be grounds of concern that the child receives the worst of both worlds; that he gets neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children.
383, U.S. 541, quoted in Siddique, supra, p. 149]

The Indian child must have a new deal.

16. Now we move on to a realistic appraisal of the situation. The absence of a Children Act leads to a search for the probation provisions as alternative methods of prophylaxis and healing. In 1951, the UNESCO recommended a policy of probation as a major instrument of therapeutic forensics. Far more comprehensive than Section 562 of the CrPC, the Indian Act still leaves room for improvement in philosophy, application, education and periodical review through Treatment Tribunals, to mention but a few. We, as judges, are concerned with the law as it is. And one should have thought that counsel in the courts below would have pleaded, when the appellant was convicted, for probationary liberation. The decisive date for fixing the age under Section 6 is when the youth is found guilty. But here the offence charged is one punishable with death or life imprisonment and the crime proved at the High Court level is one punishable with life-term. The Act therefore does not apply. We venture to suggest that in marginal cases this age-punishability rigidity works hardship but making or modifying laws belongs to the Legislature. Even so, Chief Justice Sikri complained, inaugurating the Probation Year (1971):

...But is it enough to pass a law and say that probation is a good thing? Not only should the serious student and Probation Officers be convinced of its advantages but the Judiciary and the Bar must also become its votaries. Unfortunately at present, very little serious attention is paid to this aspect by the Judiciary and the Bar. As a matter of fact I was shocked to see that in a number of cases, which came to the Supreme Court recently, even the existence of the local Probation of Offenders Act was not known, or easily ascertainable. No reference to the relevant Probation Act was made in the court below but the point was for the first time taken in the grounds for special leave to appeal to the Supreme Court.
* * * *

It seems to me that if an accused person is likely to be covered by the Act and his age appears to be about 21, efforts should be made by the investigating agency or the prosecuting counsel to collect material regarding the age.

You are all aware that the exact age is known to very few persons in rural areas.

17. I also think that a Magistrate should himself try this question early, if there is any possibility of the applicability of the Probation of Offenders Act.

(Social Defence: Vol. VII, No. 25, July 1971-Quarterly review published by the Central Bureau of Correctional Services, Department of Social Welfare, Government of India).

We repeat that liberal use of the law is its life.

18. Anyway, now that probation also is out of the way, what incarceratory impost is just? 'Prison should serve the purposes of confining people, not of punishing them' (Justinian). As the 'Guidelines for Sentencing' published by the National Probation and Parole Association, New York, 1957 states:

Imprisonment is the appropriate sentence when the offender must be isolated from the community in order to protect society or if he can learn to readjust his attitudes and patterns of behavior only in a closely controlled environment.
19. So we come up to the harm of long shut-up behind the bars. Subjected to hard labour that rigorous imprisonment implies and exposed to the deleterious company of hardened adult criminals, a young person, even if now twenty one, returns a worse man, with more vices and vengeful attitude towards society. This is self-defeating from the correctional and deterrent angles.

20. How then shall we rehabilitate this youth who has stood nine years of criminal proceedings, suffered some prison life and has the prospect of hardening years ahead? This is not a legal problem for traditional methods. A vehement critic, in overzealous emphasis, once said what may be exaggerated but carries a point which needs the attention of the Bench and the Bar. H. Barnes wrote:

The diagnosis and treatment of the criminal is a highly technical medical and sociological problem for which the lawyer is rarely any better fitted than a real estate agent or a plumber. We shall ultimately come to admit that society has been unfortunate in handing over criminals to lawyers and judges in the past as it once was in entrusting medicine to shamans and astrologers and surgery to barbers. A hundred years ago we allowed lawyers and judges to have the same control of the insane classes as they still exert over the criminal groups, but we now recognize that insanity is a highly diversified and complex medical problem which we entrust to properly trained experts in the field of neurology and psychiatry. We may hope that in another hundred years the treatment of the criminal will be equally thoroughly and willingly submitted to medical and sociological experts.
(p. 74, Sentencing and Probation, supra)

21. We have to turn to correctional and rehabilitative directions while confirming the four-year term. We affirm the period of the sentence since there is no particular reason why a very short term should be awarded. When a young person is being processed correctionally, a sufficient restorative period to heal the psychic wounds is necessary. From that angle also a term which is neither too short nor too long will be the optimum to be adopted by the sentencing judge. However, the more sensitive question turns on how, behind the prison walls, behavioral techniques can be built in to repair the distortions of his mind. Stressologists tell us, by scientific and sociological research, that the cause of crime in most cases is inner stress, mental disharmony and unresolved tension. In this very case, the lad of twelve was tensed into irresponsible sword play as a

result of fraternal provocation and paternal injury. It is, therefore, essential that the therapeutic orientation of the prison system, vis a vis the appellant, must be calculated to release stresses, resolve tensions and restore inner balance.

22. This is too complicated a question and, in some measure, beyond the judicial expertise, so that we have to borrow tools and techniques from specialists, researchers and sociologists. The ancient admonition of the Rigveda,

('Let noble thoughts come to us from every side-Rigveda 1-89-i) is a good guideline here. From Lenin and Gandhi to leading sociologists, criminologists and prison-management officials, it is established that work designed constructively and curatively, with special reference to the needs of the person involved, may have a healing effect and change the personality of the quondam criminal. The mechanical chores and the soulless work performed in jail premises under the coercive presence of the prison warders and without reference to relaxation or relish may often be counter-productive. Even the apparel that the convict wears burns into him humiliatingly, being a distinguishing dress constantly reminding him that he is not an ordinary human but a criminal. We, therefore, take the view that within the limits of the prison rules obtaining in Bihar, reformatory type of work should be prescribed for the appellant in consultation with the medical officer of the jail. The visiting team of the Central Prison will pay attention to see that this directive is carried out. The appellant, quite a young man, who was but a boy when the offence was committed, shall not be forced to wear convict costume provided his guardians supply him normal dress. These harsh obscurantisms must gradually be eroded from our jails by the humanizing winds that blow these days. We mentioned about stressology. One method of reducing tension is by providing for vital links between the prisoner and his family. A prisoner insulated from the world becomes bestial and if his family ties are snapped for long, becomes de-humanised. Therefore we regard it as correctionally desirable that this appellant be "ranted parole and expect the authorities to give consideration to paroling out periodically prisoners, particularly of the present type for reasonable spells, subject to sufficient safeguards ensuring their prober behavior outside and prompt return inside.

23. More positive efforts are needed to make the man whole and this takes us to the domain of mind culture.

24. Modern scientific studies have validated ancient vedic insights bequeathing to mankind new meditational, yogic and other therapeutics, at once secular, empirically tested and trans-religious. The psychological, physiologic and sociological experiments conducted on the effects of Transcendental Meditation (TM, for short) have proved that this science of creative intelligence, in its meditational applications, transquillises the tense inside, helps meet stress without distress, overcome inactivations and instabilities and by holistic healing normalises the fevered and fatigued man. Rehabilitation of psychiatric patients, restoration of juvenile offenders, augmentation of moral tone and

temper and, more importantly, improvement of social behavior of prisoners are among the proven findings recorded by researchers. Extensive studies of TM in many prisons in the U.S.A. Canada, Germany and other countries are reported to have yielded results of improved creativity, higher responsibility and better behavior. Indeed, a few trial courts in the United States have actually prescribed(I. In the Superior Court of the State of Arizona-judgment d/5-3-76 in State of Arizona v. Jean Coston Presley-Case No, 6878; Criminal Action No. 4-81750 in the U.S. District Court for Eastern District of Michigan-United States of America v. Robert Charles Rusch Ir.) TM as a recipe for rehabilitation. As Dr. M. P. Pai, Principal of the Kasturba Medical College, Mangalore, has put down:

Meditation is a science and this should be learnt under guidance and cannot be just picked up from books. Objective studies on the effects of meditation on human body and mind is a modern observation and has been studied by various investigation at MERU-Maharishi European Research University. Its tranquillising effect on body and mind, ultimately leading to he greater goal of Cosmic Consciousness or universal awareness, has been studied by using over a hundred parameters. Transcendental Meditation practised for 15 minutes in the morning and evening every day brings about a host of beneficial effects. To name only a few:

1. Body and mind gets into a state of deep relaxation.

2. B. M. R. drops, less oxygen is consumed.

3. E.E.G. shows brain wave coherence with 'alpha' wave preponderance.

4. Automatic stability increases.

5. Normalisation of high blood pressure.

6. Reduced use of alcohol and tobacco.

7. Reduced stress, hence decreased plasma cortisol and blood lactate.

8. Slowing of the heart etc.

The self of every man has been found to be his consciousness and its full potential is found in the state of, least excitation of consciousness, which is the most simple of awareness.

To sum up, inadequacy of 'alpha' waves is disease and mental health could be restored by increasing 'alpha' wave production in the cerebral hemisphere instead of other type of waves, seen in disease. Five years' research has given encouraging results and more work in this field is being done and results are awaited.

25. Lecture on 'Ancient Insights and Modern Discoveries delivered under the auspices of Bharatiya Vidhya Bhavan sponsored two-day symposium-Published in Bhavan's journal d/July 17, 1977: P. 57 under the caption: The Mind of Man: Importance of Mental Health.

26. A recent Article on TM and the Criminal Justice System in the Kentucky Law Journal and another one in the Maryland Law Forum highlight the potency of TM in the field of criminal rehabilitation (Kentucky L. J. Vol. 60, 1971-72 No. 2; and University of Maryland Law Forum, Vol. III, No. 2, Winter 1973) There is no reason, prima facie, if TM physiologically produces a deep state of restful alertness which rejuvenates and normalises the functioning of the nervous system, to reject the conclusion of David E. Sykes which he has summarized thus:

Physiologically, T.M. produces a deep state of restful alertness which rejuvenates and normalizes the functioning of the nervous system.

Psychologically, T. M. eliminates mental stress, promotes clearer thinking and greater comprehension; it enriches perception, improves outlook and promotes efficiency and effectiveness in life.

Sociologically, T. M. eliminates tension and discordance and promotes more harmonious and fulfilling interpersonal relationships, thus making every individual more useful to himself and others and bringing fulfilment to the purpose of society.

The combined physiological, psychological and sociological changes produce an over all effect of fullness of life. The elimination of mental, physical and behavioral abnormalities through the release of deep stress produces a sense of fulfilment and internal harmony. It is interesting to note that this development of life in increasing values of contentment and fulfilment has long been understood in terms of spiritual development. With the tools of modern science, we can now systematically evaluate the objective causes and expressions of this inner, personal development produced by transcendental meditation.

27. It has been repeatedly pointed out in the literature bearing on the subject that TM is just not religion and is like physics appled to human consciousness. Even so, it is not for the court, at the present stage, to prescribe what the prison authorities should do win the appellant while he is in their charge. Nevertheless, we emphasize how important it is for the prison department to explore, experiment and organize gradually some of these reformative exercises in order to eliminate recidivism and induce rehabilitation. We make these observations in the expectation that, facilities being available and the prisoner's consent being forthcoming, he will be given, under proper initiation and medical authorisation, courses which will refine his behavior, develop his full potential and thereby justify the justice of his forced tenancy for four years.

28. An afterword on power. Within the limits of the Prison Act and rules, there is room for reform of the prisoner's progress. And the court, whose authority to sentence deprives the sentence of his constitutional freedoms to a degree, has the power-indeed, the duty-to invigorate the intra-mural man-management so that the citizen inside has spacious opportunity to unfold his potential without over such inhibition or sadistic overseeing. No traditional judicial hand off doctrine nor Prison department's Monroe doctrine can dissuade or disentitle this Court from issuing directives, consistently with law, for the purpose of compelling the institutional confinement to conform to the spirit and standards of the fundamental rights which belong to the man walled off. We cannot, in all conscience, order him to be shut up and forget about him. The brooding presence of judicial vigilance is the institutional price of prison justice.

29. We have sojourned in the sentencing chapter of this judgment for so long, our anxiety being to work out purposeful incarceration shot with just and effective prescription. Red-hot rhetoric or flaming recommendations can have no more than romantic value since statutory authority is the only sanction behind a court's directive. So we requested counsel to search for the sections and rules under the Prisons Act bearing on constructive correction-oriented orders the Court has power to pass. Counsel for the State drew our attention to the vintage measures lost in the statute book like the Reformatory Schools Act as well as the Borstal Schools Act, apart from the Probation of Offenders Act and the rules under these laws. This study has served only to convince us that, while statutory guidelines to fix the quantum of punishment are marked by uncanalised fuidity, the court's correctional role in meaningful sentencing is marginal, justifying Judge Marvin E. Frankel's cynical expression-Criminal Sentences: Law without Order. The Raj prisons continue gerent logically in their grimy grimness; the dress, diet, bed, drill, Organisation discipline-why, even the philosophy and fears-have hardly responded to rehabilitative penology or humane decency. Indeed, it is still an attitude of 'lock them up and throw away the key', save for some casual 'open Jail' experiments and radical phrases in academic literature. We omit the Chambal oasis where changes are being tried out. And this is a startling anti-climax when we remember that our Freedom Struggle had found nearly all post-Independence leaders in wrathful incarceration and most Indian Ministers, now and before. had been no strangers to prison torments. The time has come for reform of the sentencing process with flexibility, humanity, restoration and periodic review informing the system and involving the court in the healing directions and corrections affecting the sentence whom judicial power has cast into the 'cage'. For the nonce, however, we, as judges, have to work within the law as it now stands. And we cannot impose what is not sanctioned or is not accepted by the State. So we have couched what would have been binding mandates in terms of hopeful half-imperatives. Subject to the observations regarding in-prison and parole treatment of the appellant, we dismiss the appeal.

P.K. Goswami, J.

30. I agree that there is no merit in this appeal which is dismissed.

31. My learned Brother has dealt with both the lethargy in law-making and indifference and indolence in implementing laws in and attractive and trenchant manner.

32. So far as the post-sentencing aspects are concerned, my learned Brother has gone into depth on matters which he has studied extensively. These will appertain to law reforms as well as prison reforms which the legislature and the implementing executive can profitably undertake. I hope and trust that my learned Brother's earnest and anxious observations in this judgment will not be a cry in the wilderness.

MANU/SC/0087/1976

Back to Section 84 of Indian Penal Code, 1860

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 383 of 1976

Decided On: 29.11.1976

Amrit Bhushan Gupta Vs. Union of India (UOI) and Ors.

Hon'ble Judges/Coram:
A.N. Ray, C.J., Raja Jaswant Singh and M. Hameedullah Beg, JJ.

JUDGMENT
M. Hameedullah Beg, J.

1. A petition under Article 226 of the Constitution was filed in the High Court of Delhi, seeking a writ in the nature of Mandamus "or any other appropriate writ, direction or order", to restrain the respondents from carrying out the sentence of death passed against Amrit Bhushan Gupta, a person condemned to death for having committed culpable homicide amounting to murder. The petition was filed by Smt. Shanti Devi, purporting to act on behalf of her son Amrit Bhushan Gupta, who was alleged to be insane. A Division Bench of the Delhi High Court passed the following order on it:

We have no doubt, in our minds that if the petitioner is really insane, as stated in the petition, the appropriate authorities will take necessary action. This petition, at this stage, we feel, does not justify invocation of the powers of this Court under Article 226 of the Constitution. Criminal Writ is dismissed.
2. Before the grant of special leave to the petitioner on 27th August, 1976, an application for intervention in the matter had been filed by Tek Chand Chanana supported by an affidavit stating the following facts which have not been controverted:

Amrit Bhushan Gupta was sentenced to death for burning alive three innocent sleeping children aged 14, 8 and 5 years at Sriniwas Puri on the midnight of 21st June, 1968 by the learned Dist. & Sessions Judge Delhi under Section 302 and 7 years R.I. under Section 307 for attempting to murder Tek Chand Chanana (Petitioner) on 6th June, 1969 with the remarks 'even the extreme penalty of death may appear too mild for the gruesome murder of three children by burning them alive.' Delhi High Court confirmed the death sentence on 23rd September, 1969. Amrit Bhushan Gupta's relatives made the plea of insanity to the High Court but the Hon'ble High Court refused even to entertain this petition of the accused, some dates are given below: Writ petition dismissed on 20th July, 1971

...

...

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Petition dismissed...20th August, 1975.

Supreme Court had dismissed the various petitions of Amrit Bhushan Gupta noted below:

Special leave petition dismissed on 3rd April, 1970.

Petition dismissed on 12th Sept. 1970.

Petition dismissed on 30th April, 1971.

Writ Petition filed on 11th May, 1971 was withdrawn on 2nd August, 1976.

Petition dismissed on 8th January, 1976

Rashtrapati had also rejected several mercy petitions of the accused some dates are given below:

1. 10th August, 1970

2. 6th December, 1970

3. 8th November, 1971

4. February, 1972.

Government of India had fixed various dates for execution, details given below:

1. 18th December, 1970.

2. 25th August, 1975 and 19th December, 1975.

Amrit Bhushan Gupta and his relatives have been delaying the matter on one excuse or the other. Their latest plea is nothing new. It is repetition of their modus operandi. The petitioner and his wife have been under constant torment since the day their three innocent children were gruesomely murdered in 1968 and the punishment awarded to the accused in 1969 is being postponed on the making of the accused.

3. This Court when granting special leave in this case was obviously not aware of the facts stated above which were concealed. Learned Counsel for the appellant, when asked to state the question of law which called for the invocation of the jurisdiction of this Court under Article 136 of the Constitution, could only submit that the provisions of Section 30 of the Prisoners Act, 1900, should be applied to the petitioner. This section reads as follows:

30. Lunatic Prisoners how to be dealt with.- (1) Where it appears to the State Government that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, the State Government may, by a warrant setting forth the grounds of belief that the person is of unsound mind, order his removal to a lunatic asylum or other place of safe custody within the State there to be kept and treated as the State Government directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

(2) Where it appears to the State Government that the prisoner has become of sound mind, the State Government shall, by a warrant directed to the person having charge of the prisoner, if still liable to be kept in custody, remand him to the prison from which he was removed, or to another prison within the State, or if the prisoner is no longer liable to be kept in custody, order him to be discharged.

(3) The provisions of Section 9 of the Lunatic Asylums Act, 1858, shall apply to every person confined in a lunatic asylum under Sub-section (1) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Court to undergo.

(4) In any case in which the State Government is competent under Sub-section (1) to order the removal of a prisoner to a lunatic asylum or other place of safe custody within the State, the State Government may order his removal to any such asylum or place within any other State or within any part of India to which this Act does not extend by agreement with the State Government of such other State; and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed under Sub-section (1) shall, so far as they can be made applicable, apply to a prisoner removed under this sub-section.

4. Thus, at the very outset, the section invoked relates to the powers of the State Government. It has nothing to do with powers of Courts. It only regulates the place and manner of the confinement of a person, who appears to be a lunatic, when his detention

or imprisonment is either during the trial or during the period when, after the sentence, he is undergoing imprisonment. In the case of a person condemned to death no question of keeping him in prison would arise except for the period elapsing between the passing of the sentence of death and its execution. A special provision for a person sentenced to death is to be found in Section 30 of the Prisons Act, 1894, which lays down:

30. Prisoners under sentence of death-

(1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence be searched by, or by order of, the Jailor and all articles shall be taken from him which the Jailor deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.

5. The whole object of the proceedings in the High Court and now before us seems to be to delay execution of the sentence of death passed upon the appellant. In view of the number of times the appellant has unsuccessfully applied, there can be little doubt that the powers of the High Court and of this Court ought not to have been invoked again. The repeated applications constitute a gross abuse of the processes of Court of which we would have taken more serious notice if we were not disposed to make some allowance for the lapses of those who, possibly out of misguided zeal or for some other reason, may be labouring under the belief that they were helping an unfortunate individual desperately struggling for his life which deserves to be preserved. A bench of this Court too was persuaded to pass orders for observation of the convict and obtaining certificates of experts on the mental condition of the convict.

6. Dr. P.B. Buekshey, Medical Superintendent and Senior Psychiatrist, Hospital for Mental Diseases, Shahdara Delhi, certified as follows:

After careful consideration of the entire mental state of the accused, including his behavior, I am of opinion that, Shri Amrit Bhushan Gupta is a person of unsound mind suffering from Schizophrenia. Schizophrenia is a basically incurable type of insanity characterised by remissions and relapses at varying intervals.

Shri Gupta was also severely and overwhelmingly depressed and appeared to have lost interest in life.

7. Dr. S.C. Malik, Assistant Prof. of Psychiatry, G.B. Pant Hospital, New Delhi, gave a more detailed certificate as follows:

Amrit Bhushan Gupta remained mute throughout the ten days period of observation. He however started communicating to me through writing on 3rd day of encounter. He

exhibits gross disturbance in thinking and his emotional life appears to be disorganised. He is suffering from delusion that he is the incarnation of Christ and that I come to his kingdom or 'Palace'. He does not mutter to himself but at times keeps on staring vacantly in space. He is unable to write coherent meaningful sentences. He coins new words and when asked to explain he says it is 'Technologem of meself as CHRIST'. He also has hallucinations e.g. that Russian planes are shooting his Bunkers and that I should be helping him to drive them away. He exhibited depressive and suicidal tendencies towards later period of my observation period and broke off all communication as I did not give him potassium Cyanide 'Poison' so that he (Christ) may go back to his kingdom.

In my opinion he is suffering from 'SCHIZOPHRENIA, (Chronic) which is a serious mental derangement. He is thus considered to be of unsound mind under the Indian Lunacy Act, 1912.

8. We have not even got any appeal from a conviction and sentence before us. We assume that, at the time of the trial of the appellant, he was given proper legal aid and assistance and that he did not suffer from legal insanity either during his trial or at the time of the commission of the offence. Insanity, to be recognised as an exception to criminal liability, must be such as to disable an accused person from knowing the character of the act he was committing when he commits a criminal act. Section 84 of the Indian Penal Code contains a principle which was laid down in England in the form of Macnaughten Rules. The section provides:

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.
9. If at the time of Commission of the offence, the appellant knew the nature of the act he was committing, as we assume he did, he could not be absolved of responsibility for the grave offence of murder. A Constitution Bench of this Court has upheld the Constitutional validity of the death penalty in Jagmohan Singh v. State of U.P. MANU/SC/0139/1972: 1973CriLJ370. We have to assume that the appellant was rightly convicted because he knew the nature of his acts when he committed the offences with which he was charged. The legality or correctness of the sentence of death passed upon him cannot be questioned before us now. So far as the prerogative power of granting a pardon or of remitting the sentence is concerned, it lies elsewhere. We cannot even examine the facts of the case in the proceedings now before us and make any recommendation or reduce the sentence to one of life imprisonment.

10. The contention which has been pressed before us, with some vehemence, by learned Counsel for the appellant, is that a convicted person who becomes insane after his conviction and sentence cannot be executed at all at least until he regains sanity.