

CHAPTER - I

(Sections 1 to 5)

"INTRA-TERRITORIAL JURISDICTION" AND "EXTRA-TERRITORIAL JURISDICTION"

Introduction :

Preamble –
"Whereas it is expedient to provide a general Penal Code for India; It is enacted as follows" :-

S. 1 : Title and extent of operation of the Code

(Application of the Code) –

"This Act shall be called the Indian Penal Code, and shall extend to the whole of India except the State of Jammu and Kashmir".

General Principles of Criminal Jurisdiction :

According to International Law, a State ought to exercise its jurisdiction (power or authority to punish, etc.) over such persons and property as are within its territory.

So also, the Privy Council in Saradar Gurudayal Singh v/s. Raja of Faridkot, 1894 laid down that "all crime is local. The jurisdiction of crime belongs to the country where the crime is committed." therefore, generally speaking, a person is amenable to the criminal jurisdiction of the country where he commits the crime.

This territorial jurisdiction of the Court is divided into two parts under the Penal code, i.e., Intra-Territorial and Extra-territorial Jurisdiction under Ss. 1 to 5.

INTRA-TERRITORIAL JURISDICTION:

(S. 1 and S. 2)

S.1 : Title and extent of operation of the Code (Application of the Code) :

S.1 lays down that,

"This Act shall be called the Indian Penal Code, and shall extend to the whole of India except the State of Jammu and Kashmir".

The Indian Penal Code shall be made applicable to the whole of India except the State of Jammu & Kashmir. The Code does not apply to the State of Jammu & Kashmir, because, the power of the Parliament to legislate on the subject of the Code does not extend to the State i.e. Jammu & Kashmir by virtue of the Order issued under Article 370 of the Constitution.

S.2 deals with the Intra-Territorial Jurisdiction of the Code and makes it applicable to every person within India for any act or omission contrary to the provisions of the Code.

S. 2 : Punishment of offences committed within India :

S.2 of the Code enacts that, –

"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".

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

India, it would not be a criminal offence under Indian law. There are provisions such as Ss. 3, 4, & 108-A of the Penal Code which were introduced in 1973.

"Every person" -

Every person is made liable to punishment without distinction of nation, rank or status, caste or creed, provided the offence with which he is charged has been committed in some parts of India mentioned in the Constitution of India.

A foreigner who enters the Indian territories, and thus, accepts the protection of Indian laws, virtually gives an assurance of his fidelity and obedience to them and submits himself to their operation. Ignorance of law is no defence to him. Only a punishment can be mitigated. Thus, if a Frenchman commits adultery or engages himself in a duel fight (fighting with a naked sword) in India, he will be held liable under the Indian Penal Code. He cannot plead that, according to the laws of his country, this is not considered as an offence or that he was not aware of the Indian laws.

In *Crown v/s. Essop*, 1836, the Calcutta High Court held the citizen of Baghdad liable for unnatural offence (u/s. 377 of the IPC) committed on board of an East India ship, lying in St. Catherine's dock. It was argued that he was a native of Baghdad where his act would not have amounted to an offence, but the High Court held that it was not a legal defence.

"Company" -

Generally speaking, Company is a person created by law, i.e. under Companies Act, 1956, and therefore, whenever the word 'person' is used in a statute, a company would be included under the term. However, a company cannot be indictable for offences which can be committed by a human individual alone, like murder, dacoity, perjury, etc. or for offences which are compulsorily punishable with imprisonment or corporal punishments. This was held in *Syndicate Transport company's Case* (1963) 6 Bom. L.R. 197.

"Every person shall be liable to punishment under the Penal Code" is a general rule, but some persons are always exempted from the jurisdiction of criminal courts of every country. These persons are exempted by virtue of the Constitution or any statutory provisions or some well recognised principles of International Law.

According to the general principles of criminal law, the following persons are not amenable to the jurisdiction of criminal courts :-

1) **The President and Governors of the States:**

Article 361 of the Constitution of India gives personal immunity from legal action to the President and Governors for their official acts, including proceedings for contempt of Court. Under this Article neither criminal nor civil proceedings shall be instituted against the President or Governor in any Court during his term of office.

2) **Foreign Sovereigns:**

According to the English Constitutional Law, the principle is that, the "King can do no wrong" (*Re non potest per seire*). Hence, no action can be brought against a Sovereign. A foreign sovereign (e.g. King or Queen of England, King of Nepal, etc.) cannot be punished under the Indian Penal Code, according to the rules of International Law. The exercise of such jurisdiction of the Courts would be incompatible with his royal or regal dignity. Therefore, it would not be proper for the courts to exercise

their jurisdiction or authority over foreign sovereigns of the other country. They promote the mutual benefit of their country by mutual intercourse with each other. And thus, they deserve to be respected, protected by each other with dignity.

3) Foreign Ambassadors:

An Ambassador being the representative of an independent Sovereign, is also entitled to the same immunity and exemption. The foreign Ambassadors or Diplomats should be free to perform official business on behalf of his Sovereign or his country which sends him and therefore, they (Ambassadors or Diplomats) too enjoy the immunity from the jurisdiction of Courts.

4) Alien Enemies:

In respect of acts of war, an alien enemies cannot be tried by criminal courts. If a Pakistani soldier, while engaged in a war, kills an Indian soldier, he cannot be tried by ordinary Indian criminal courts. Because, he is fighting war for his nation as every soldier of every nation is supposed to do. But, if he (an alien soldier) commits a crime unconnected with war, for example, if he commits theft in the house of the civilian or commits rape on the woman, he can be tried and convicted by ordinary criminal courts in India.

5) Foreign Army:

When armies of one country are on the soil of another country by the consent of that another country, they are exempted from the jurisdiction of the country on whose soil they are. For example, Indian Peace Keeping Force during Rajiv Gandhi's Prime Ministership, had gone to Shri Lanka as a foreign army, or American and British soldiers were stationed at Pakistani Air-ports during their attack on Afghan to capture Osama Bin Laden.

6) Warships:

Men of war of a country in foreign waters are exempt from the jurisdiction of the country within whose territorial water limits they are. According to the principles of International Law, the domestic courts have to accord certain immunities to the ship and it's crew or men of war.

Limits of the Intra-Territorial Jurisdiction:

The territorial waters of India extend into the sea to a distance of twelve nautical miles (i.e. 12060 feet) measured from the appropriate base-line of the coast. The territories of the State (country) include entire land belonging to such State, also air-space above it's land and above it's waters upto twelve nautical miles.

Case Law:

Emperor v/s. Katsya Rama (1871) :

This Case is decided by the Bombay High Court way back in the year 1871. In this Case, the accused persons who were inhabitants of one village, sailed into the sea within three nautical miles (i.e. 3015 feet) of the coast. They intentionally pulled up and removed number of fishing stakes lawfully fixed in the sea by the villagers of a neighbouring village. They were tried for the offence of mischief (intentionally causing damage to the property) as defined under S.425 of the Indian Penal Code, 1860. It was held that, the local criminal Court has jurisdiction over the accused and the offence committed by them amounted to mischief u/s.425 of the I.P.C.

".....and not otherwise" :

The words "and not otherwise" in S.2 seem to virtually repeal all former laws for the punishment for any offence which is made punishable by this Code. But, if there are acts or omissions made penal by the existing law and no provision of this Code is found to reach them, that law will continue in force. This S.2, must be interpreted subject to S. 5 of this Code.

EXTRA-TERRITORIAL JURISDICTION :

Sections 3 and 4 of the Code relate to the extra-territorial operation of the Code.

Section 3: Section 3 deals with punishment of offences committed beyond India, but which by law (i.e. by extradition law) may be tried within India.

Section 3 lays down that, –

"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 the Code for any act committed beyond India in the same manner as if such act had been committed within India".

It is quite clear from the words of this Section that, according to the existing laws in India, if an act constitutes an offence if committed in India, it shall also be an offence when committed outside India. Thus, if Mr. Shoshu Karnik commits forgery in New York city, he can be amenable to Indian criminal courts, and can be tried by Indian criminal courts when he is extradited by American Government as per The Extradition Act, 1962. Extradition means, surrender of an offender by one nation to another nation (i.e. home country) in which he is liable to be punished. It is a political treaty or an agreement which exists between the countries. The law of extradition is based upon the principle that it is in the interest of our country or each country that the crime though committed outside India, should not go unpunished. The operation of this Section is restricted in the cases specified in the Extradition Act, 1962 and Ss. 186 and 188 of the Criminal Procedure Code, 1973.

S. 4 : Extention of the Code to extra-territorial offences:

"The provisions of this Code apply to any offence committed by –

- 1) any citizen of India in any place without and beyond India;*
- 2) any person on any ship or air-craft 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".

Illustration –

'A', who is a citizen of India, commits a murder in Uganda. He can be tried and convicted of murder in any place in India in which he may be found.

Thus, there are two types of persons enumerated in this Section, who are liable to be tried by Indian Courts, even though they have committed offences outside India. They are:

1) any citizen of India, and

2) any person on any ship or air-craft registered in India.

If an offence is committed outside India, but the offender is found in India,

i) he can be handed over for trial to the country where the offence was committed (under Extradition Act, 1962); or

ii) he may be tried in India if he is found in India (under extra-territorial jurisdiction).

Thus, offences committed outside India may be –

A) on foreign land; or

B) on the high seas i.e. beyond twelve nautical miles (12,060 feet) from the coast; or

C) on ships or air-crafts outside India, if they are registered in India.

A) Offences committed on foreign land:

In this regard, S. 4 of the I.P.C. and S. 188 of the Criminal Procedure Code should be read together.

S. 188 of the Cr.P.C. provides that,

"When an offence is committed by –

i) any citizen of India in any place without and beyond India; or

ii) any person on any ship or air-craft registered in India, wherever it may be,

he may be dealt with in respect of such offence, as if it had been committed at any place within India, at which he may be found".

The word 'found' used in S.188 of the Cr.P.C., means not a place where a person is discovered, but the place where he is actually present. For instance, a man brought to a place in India against his will, can be said to be found at that place in India. Therefore, even if a person is brought illegally from a foreign country and put before the Magistrate in India for trial, the person accused cannot say that he is not found within India, and that, the Magistrate has no jurisdiction to try his case.

Case Law:

Vinayak Damodar Savarkar's Case, (1910) 13, Bombay Law Reporter page 296 : In this case, the accused Savarkar, the great freedom fighter, the great son of the Mother India, was being brought by British police officers from London to Bombay in a ship. On 1st July, 1910 Savarkar was boarded in a ship "*Morlya*". On 7th July it reached near the coast of Marseilles. He measured the port hole above the commode with his sacred thread. It was 12 inches diameter. The next day, on 8th July, while on the way, on the board the ship, Savarkar seized the opportunity to escape from the custody of the British police. And under the pretext of answering nature's call, the great son of the Mother India, brave fighter Savarkar jumped in to the sea and swam towards the coast of Marseilles. Thus, the accused Savarkar had escaped at Marseilles, a coast of France, from the custody of British police officers charged with the duty of bringing him from London to Bombay. He requested the French police over there "Take me into your custody. Assist me. Take me before a Magistrate !" Thereupon, French police arrested Savarkar and took him into his custody. But the British officers/soldiers prevailed upon the French policemen and Savarkar was re-arrested there at France and brought to Bombay on 22. July, 1910, and committed for trial by the special Magistrate at Nashik (Maharashtra).

Mr. Savarkar, who himself was the Barrister, pleaded that, he was not found in India (neither at Bombay nor at Nashik), and therefore, as per S. 4 of the I.P.C., the Indian Court has no extra-territorial jurisdiction over him for alleged offence of supplying arms or ammunition from London to freedom fighters in India, i.e. the offence of waging a war against the Government u/s.121 of the I.P.C. But the High Court with its British Judges interpreted the word 'found' as the place wherever the person accused (Mr. Savarkar) is actually present and not where he is actually discovered, and therefore, the trial and committal by the Special Court of Nashik were held to be valid. On 30, January, 1911 Savarkar was held guilty and sentenced to double life imprisonment.

B) Offences committed on the high seas:

The jurisdiction to try offences committed on the high seas is known as the Admiralty Jurisdiction. This Jurisdiction is founded and recognised on the principle that, a ship on the high seas is a floating island belonging to the nation whose flag she is flying.

Admiralty Jurisdiction extends over:

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

Stephen in his "*Digest of Criminal Law*" 9th Edn.p.101, says that, a person is guilty of *piracy jure gentium* who, being peaceably upon any such ship, **i)** seizes or attempts to seize her by violence or **ii)** takes and carries away, or attempts to carry away any of the goods thereon by violence or by putting those in possession of such ship, in fear. Thus, it is clear that, actual robbery is not an essential element of the crime of *piracy jure gentium*.

C) Offences committed on air-craft:

The provisions of the Code are made applicable to any offence committed by any person on any air-craft registered in India, wherever it may be.

17. "Movable property" (S. 22) :

"The words 'movable property' are intended to include corporal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth".

18. "Wrongful Gain", "Wrongful Loss", "Gaining Wrongfully" and "Losing Wrongfully" (S. 23) :

"Wrongful gain' is the gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss' is the loss by unlawful means of property to which the person losing it is legally entitled'.

'Gaining wrongfully'; 'Losing wrongfully': "A person is said to gain wrongfully when such person retains wrongfully, as well as, when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as, when such person is wrongfully deprived of property".

The word 'wrongful' means, prejudicially affecting a party in some legal right or infringement of some right. The word 'wrongful' means, no more otherwise than in due course of law. e.g. demolishing a building or structure not justified by law. The word gain means acquisition of the specific property in respect of which a person causes wrongful loss to another. There should be some pecuniary gain or loss and not gain or loss in honour, dignity etc.

The words by 'unlawful means' are intended to refer to act which would render the gain or loss liable either to a civil action or to criminal prosecution. 'Unlawful means' i.e. by illegal means as defined in S.43, IPC.

Wrongful gain or wrongful loss need not be permanent but might be temporary. If a true owner or the person who is legally entitled to the property, is kept out of the property i.e. the property is kept out of

dishonestly though she had deceived the Insurance Company as to identity of the real purchaser of the car. Because, the Insurance Company had not suffered any injury or damage in consequence of the deception practiced by the accused, nor had the accused derived any undue advantage or benefit from such deception, as the accused had paid full amount of the insurance premium and the accidents were genuine and real. The accused cannot be held guilty of cheating.

The word 'fraudulently' is used in the offences against public justice (Ss.206 to 210), offences relating to coin and Government stamps (Ss.239-240, 242-243, 246-247, 250-253, 261-263), offences relating to weights and measures (Ss.264-265).

Difference between 'Dishonestly' and 'Fraudulently' :

- 1) Deceit is not the element of the definition of 'dishonestly' under S.24, but the word 'defraud' in the definition of 'fraudulently' under S.25 includes the element of deceit.
- 2) For the purpose of 'dishonestly', there may not be any pecuniary or economic gain or loss, but 'fraudulently' involves pecuniary gain or loss.
- 3) Only when the act is done with the intention to cause wrongful loss (or wrongful gain), the act is said to be done 'dishonestly'; but even in the absence of such intention to cause wrongful loss, if the deceitful act wilfully exposes any one to the risk of loss, there is fraud – *Skhamoy Mitra v/s. Emperor* AIR. 1938, Patna at page 169.

Example:- If a person makes a false document (false certificate) with intention to procure employment in public department on the strength of such document, it amounts to a fraudulent act.

- 4) The word 'fraudulently' is wider than the word 'dishonestly'.

The word 'fraudulently' is used in S.464 and S.471 together with the word 'dishonestly' for the simple reason that, if the situation or case is not covered by the latter, then it may be covered by the former. Because, if there is an intention to defraud, it is not necessary that any person should be in a position to be defrauded.

- 5) Some pecuniary gain or loss is necessary for the purpose of 'dishonestly'; But for 'fraudulently', there may not be any such gain or loss caused, still the act be said to be done 'fraudulently' if there is intent to defraud.

Example:- A had no sufficient funds in the bank account, but B supposes that A had sufficient funds and on that supposition B forges A's name on the cheque with the intention to withdraw the money. Here, B has an intention to defraud, though, A might not or could not be defrauded. B's act of forging A's name is said to have done fraudulently. Here, the injury to A might be in the form of mental agony, anxiety, apprehended risk, etc. It may not be actual pecuniary injury or loss.

The expression 'intent to defraud' in S.25 means, an intention to deceive in such a manner as to expose any person to loss or risk of the loss; and loss means, not only deprivation of property but covers infringement of any right possessed by a person.

The general intention to defraud without the intention of causing wrongful gain to one person and wrongful loss to another is sufficient for the purpose of the definition of 'fraudulently'. Where, therefore, a person having otherwise a good title, forged a will to support his title, though there was no necessity for it, still he was held to be fraudulent – *Baijnath Bhagat's Case* AIR. 1940, Pat.486.

21. "Reason to believe" (S. 26) :

"A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise".

22. "Property in possession of wife, clerk or servant" (S. 27) :

door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception. [This explanation covers point No. *i*) & *ii*) above; and offences against State punishable with death (S.121)]

Murder as defined u/s.300 committed under a threat of instant death is not excused under this Section. Any other offence committed under a threat of instant death can be excused. The threat given must be a threat of instant death and not a threat of mere hurt, or even of grievous hurt will not excuse a person who commits the offence under such threat.

5) Consent as a defence (Ss.87 - 91):

When and how 'consent' can be pleaded as a valid defence ?

If the act is done in good faith, with the consent of the person capable of giving consent at that time, then such an act will not amount to an offence. The law relating to this rule is discussed under Ss.87 to 92, broadly under following heads:-

- A) Definition of 'consent' or what is not a legal consent i.e. negative definition of a consent – S.90;
- B) Act done with consent and without intention or knowledge to cause death or grievous hurt Ss. – 87 & 88;
- C) Act done for the benefit of a child or insane person with the consent of the guardian – S.89;
- D) These exceptions are not applicable in cases of certain offences – S.91.

A) S.90: Definition of 'consent':

Section 90 does not define 'consent' but describes 'what is not a consent'. It is as follows:

"A consent is not such a consent as is intended by any Section of this Code, if,

- i) the consent is given:
 - a) by a person under fear of injury,
or
 - b) under a misconception of fact, } and the person obtaining the consent
has reason to believe that the consent is
given because of such fear or misconception;
or
- ii) the consent is given:
 - a) by a person of unsound mind, or
 - b) a person who is intoxicated, } and such persons giving the consent are
unable to understand nature and consequence of
the act to which they are giving their consent;
or
- iii) the consent is given:
by a person under 12 years of age.

Thus, S.90 lays down that, the consent is not a good consent for the purpose of this Code, if it is given by a person –

1. under fear of injury;
2. under misconception of fact;
3. who is of unsound mind;
4. who is intoxicated;
5. who is under 12 years of age.

Consent given under 'misconception of fact' –

Case Law:

- Illustrations:**
- a) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But the A has the same right of private defence which he would have if Z were sane.
 - b) A, enters by night a house which he legally entitled to enter. Z, in good faith, taking A for a house breaker, attacks A. Here, Z by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would, if Z were not acting under that misconception.

Important points for pleading Right of Private Defence :

- I) The accused who takes the defence of right of private defence, must plead it before the court. Though, it is not specifically pleaded, but, if the Court finds that the accused might have acted in the exercise of the right of private defence, then the Court must consider and grant the defence to the accused.
- II) Aggressor has no right of private defence – If, X attacks Y with a stick. Hence, Y has right to defend himself. X gives a stick blow to Y. In this case, Y is justified in kicking X. But X is not justified giving stick blow to Y. Y has right of Private defence but X has no right of private defence, because, he was the first aggressor.
- III) The right of private defence cannot be pleaded by a person who merely believes or imagines that he will be attacked. In other words, there should be reasonable or immediate apprehension of danger to the body or property, then only right of private defence can be exercised or pleaded.
- IV) If, two parties fight with each other according to their pre-plan and if both parties get injured, nobody can plead or claim right of private defence. Both parties can be held liable for the injuries caused.
- V) S.99, A person who is exercising a right of private defence, must not cause more harm (to the assailant or person doing unlawful act) than necessary for the purposes of his or her defence. For example, a weak old woman was committing theft at night. She was killed by a person exercising right of private defence. It was held that, he has exceeded the right of private defence, as it was necessary to kill the weak old woman:
Gokool Bowree's Case, (1866) 5n WR (Cr.) 73)

Restrictions on the Right of Private Defence (S.99)

And

Extent of the Right of Private Defence

(Ss. 100-101;103-104):

S.99: S.99 first lays that, there is no right of private defence against certain acts; secondly, it lays down limits or extents within which right of private defence can be exercised.

No right of private defence against certain acts:

- i) There is no right of private defence against the act which is done or attempted to be done by **a)** a public servant, **b)** who is acting in good faith, **c)** who is acting under the colour of his office, **d)** if his act does not reasonably cause the apprehension of death or of grievous hurt, **e)** though that act causing injury may not be strictly justifiable by law.

CHAPTER - V

"ABETMENT" (Ss. 107 to 120)

The act may be done by the hands of one person while another might have helped him, guided him or encouraged him either before, at the time or after doing of that act. That another person can also be held liable criminally as an abettor.

The law relating to abetment, abettor, the liability of persons for abetment and punishment for different kinds of abetments is discussed under sections 107 to 119.

Definition of Abetment:

S.107: Abetment of a thing -

"A person is said to abet the doing of the thing -

- 1) by instigating any person to commit an offence;
- 2) by engaging in a conspiracy to commit it; or
- 3) by intentionally aiding a person to commit it.

Thus, abetment is of three types or abetment is committed in three ways -

1) Abetment by instigation:

A person is said to instigate another to do an act by stimulating, encouraging, inciting, provoking to do an act – *Aprimal Chatterji's Case*, (1932) 60 Cal.327.

Example:-

A tells B “go and kill X, nothing will happen to you, or I will help you in case you come into difficulty”. These words of A amount to sufficient encouragement and instigation. Therefore, if B kills X, A can be held liable for the offence of abetment to commit murder.

Instigation can be given directly or indirectly, by words spoken or by written; or instigation may be by gestures if the gestures can have that much effect to instigate a person.

Explanation 1: A person who **i)** by wilful misrepresentation or **ii)** by wilful concealment of material fact which he is bound to disclose, voluntary causes or procures or attempts to cause or procure a thing to be done, is said to instigate the doing of that thing.

Illustration:

A, a public officer is authorised by a warrant from a Court of Justice to apprehend A. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here, B abets by instigation the apprehension of C.

Case Law :

Mohit Pandey's Case, (1871) 3 NWP 316 : In this case, a woman prepared herself to commit suicide after the death of her husband. The accused Mohit Pandey followed her upto the pyre. He told the woman “You close your eyes and say Ram Ram, you will become Sati!” Thereafter, woman committed suicide by jumping herself on pyre. It was held that, the accused Mohit Pandey had instigated the woman by telling her to say "Ram Ram "and become Sati. He was held liable for abetment to commit suicide.

2) Abetment by conspiracy :

if a person **i)** engages himself with another person or persons in a conspiracy to do the thing and **ii)** in pursuance to that conspiracy if some act or illegal omission (offence) takes place in order to do that thing.

Example: A & B engage themselves in a conspiracy (agreement) to kill X. B in pursuance to such conspiracy kills X. Here, A can be held liable for abetment of murder by conspiracy (see S.120 A).

3) Abetment by aid:

A person can intentionally aid the doing of a thing (offence) either i) by an act ii) by an illegal omission.

Explanation 2: A person who facilitates the commission of an act (offence) by doing anything either before, or at the time of the commission of an act, is said to aid that act.

Example :- If a person intentionally provided a food to a criminal who is on commission to commit a crime or intentionally helps the criminal to hide at a particular place in order to commit a crime, or intentionally provides a knife to the criminal to kill someone. In all these cases a person can be said to have intentionally aided the commission of an offence.

Case Law:

In **Umi's case** (1882) 6 Bom 126, A priest who performed a bigamous marriage, knowing it to be so, was held to have intentionally aided the offence of bigamous marriage.

In **Malans case** (1957) 60 Bom L.R. 428, The accused who held the *antarpad* (screen) during the performance of a marriage knowing it to be void marriage (under S.494 bigamous marriage), was held liable for abetment to commit bigamy by intentionally aiding.

Who is the abettor ? (S.108):

An abettor is a person who abets the commission of an offence.

The abettor may abet i) the commission of an offence, or ii) the commission of an act which would be an offence if committed by a person not suffering from any physical or mental incapacity.

i) who abets the commission of an offence:

It is necessary that the abettor should act in any one of the three ways given in S.107 the commission of an offence whether before, or at the time of the commission of an offence.

ii) who abets the commission of an act:

The word 'act' includes illegal omission also (See.32). Therefore, abetment can also be committed by an illegal omission also.

Explanation 1 to S.108:

"The abetment of the illegal omission of an act may amount to an offence though the abettor may not himself be bound to do that act".

Example:- If A, a private person, tells his jailer friend not to give food to Mr. X, the prisoner in the custody of the jailer. The jailer in pursuance to such abetment (instigation) fails to give food to Mr. X, and Mr. X dies of starvation. Here, though A being a private person, was not bound by law to give food to Mr. X, still he can be held liable as an abettor for illegal omission on the part of the jailer (illegal omission by the jailer because jailer was bound by law to give food to the prisoner).

General Rules regarding the liability of an abettor :

Following are the eight rules regarding the liability of an abettor –

1) Abettor can be liable even when he abets an illegal omission (Explanation 1 S. 108 above).

2) Abettor can be held liable although the act abetted is not committed.

Illustration a) to S.108 : A instigates B to murder C, B refuses to do so. A is guilty of abetting B to commit murder.

3) Abettor can be held liable for the offence abetted though the effect requisite (necessary) to constitute that offence is not caused. (Explanation 2 illustration (b) given below).

Illustration b) : A, instigates B to murder D, B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

4) Abettor can be held liable even when the person abetted is incapable by law of committing an offence. (Explanation 3, illustration (a) given below).

CHAPTER V – A

"CRIMINAL CONSPIRACY" (S.120-A & S.120-B)

This Chapter has introduced a new offence of 'Criminal Conspiracy' in the Indian Penal Code, by making the Criminal Law (Amendment) Act, 1913.
Criminal conspiracy means an agreement to commit an offence.

Definition of Criminal Conspiracy:

S.120-A defines Criminal Conspiracy as under:

"when

- i) two or more persons,
- ii) agree to do, or cause to be done -
- a) an illegal act, or
- b) an act which is not illegal by illegal means, such an agreement is designated a Criminal Conspiracy, provided that,
- iii) no agreement except an agreement to commit an offence shall amount to a Criminal Conspiracy, unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof".

Explanation –

"It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object".

Thus, the offence of Criminal Conspiracy has got following three ingredients:

- i) there must be two or more persons;
- ii) they must agree to do
- a) an illegal act, or
- b) a legal act (an act may not itself be illegal) by illegal means;
- iii) some overt act must be done in pursuance of such conspiracy.

Meaning of the words or terms used in the above definition:

"two or more persons" –

To constitute the offence of the offence of 'criminal conspiracy', there must be an agreement between two or more persons. Because, "one cannot conspire (hatch a plan) with oneself".

Thus, in *Topandas v/s. State of Bombay*, 1955, AIR1956 S.C.33 – the accused Topandas and three other persons were charged and prosecuted for the offence of cheating the Government under S.420 read with S.120-B (Punishment for criminal conspiracy). The High Court of Bombay acquitted three other persons, but convicted Topandas for 'criminal conspiracy'. In an appeal before the Supreme Court, the Court held that, Topandas, a single person could not be convicted, as at least two persons are required for the offence of criminal conspiracy.

"an act which is not illegal by illegal means" –

The act may be legal, but if it is agreed to be done by illegal means, it will amount to a criminal conspiracy. Thus, if a person conspires (agrees) with another to employ illegal means to get the legal act done, they may be convicted of conspiracy.

In one Case, the first accused went to a place to meet the second accused for the purpose of purchasing fire arms and ammunitions (i.e. legal act), but they conspired to purchase fire arms and ammunitions in contravention of the Arms Act (i.e. illegal means). The Court observed that, the accused can be held liable for the offence of criminal conspiracy to do the legal act (purchasing fire arms) by illegal means (not purchasing arms as per law or legal requirements). 31 C.W.N. 239 = 38, Cr.L.J. 241.

Example: The LL.B. student who had applied for the verification and ph Crimines', wanted to get his result at the earliest point of time (legal act). For this purpose, he induced the University clerk to give five hundred rupees to the University Controller of Examination, so as to induce the Controller to declare his result (illegal means). He can be held liable for criminal conspiracy.

"some act beside the agreement is done" –

It is necessary that some overt act must be done by any one of them in pursuance to their conspiracy. If their agreement is to commit an offence, then no overt act need be done by them. Mere proof of an agreement is enough to bring about conviction for criminal conspiracy.

Therefore, the gist of the offence is bare engagement and association to break the law, irrespective of whether any act be done in pursuance thereof by the conspirators or not – **Mohammed Ismail's Case**, (1936), Nagpur 152.

Difference between abetment by conspiracy and criminal conspiracy:

- 1) Abetment by conspiracy is defined by S.107 Clause 2; Criminal conspiracy is defined u/s. 120-A.
- 2) For constituting the offence of criminal conspiracy u/s. 120-A, mere agreement is enough if the agreement is to commit an offence. But for abetment by conspiracy u/s.107 Clause 2, an act or illegal omission must take place in pursuance of the conspiracy and mere agreement will not be enough – **Kehar Singh v/s. State (Delhi Admn.)**, 1988, AIR 1988, S.C. 1883.
- 3) Criminal conspiracy is a substantive offence by itself, a distinct offence, and a person can be separately charged in respect of such an offence and is punishable as such; but abetment by conspiracy is not *per se* (by itself) a substantive offence and it must be connected with other offence.

S.120-B: Punishment for 'criminal Conspiracy' –

- i) Whoever is a party to a criminal conspiracy to commit an offence punishable with –
a) death, or b) imprisonment for life, or c) rigorous imprisonment for a term of two years or upwards:- shall be punished in the same manner as if he had abetted such offence.
- ii) Whoever is a party to criminal conspiracy to commit offences other than the offences as aforesaid in Clause a), b) & c) :-
shall be punished with imprisonment for a term not exceeding 6 months, or with fine, or with both.

(University Examination Questions)

- 1) Explain in detail about 'Criminal Conspiracy'. (Apr.1996; Nov.1998; Nov.1999);
- 2) Write Short Notes on:
 - a) 'Criminal Conspiracy'.
 - b) Distinction between 'abetment' and 'criminal conspiracy' .

Answer in not more than two sentences :

57. State any two points of difference between abetment by conspiracy and criminal conspiracy.
58. State the punishment for criminal conspiracy.

CHAPTER - VII

"OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE" (Ss. 131 to 140)

[All the questions appeared in the past Exams on the above Chapters, are included in the Paper
Solutions given at the end of this Book].

CHAPTER - VIII

"OFFENCES AGAINST PUBLIC TRANQUILITY" (Ss. 141 to 160)

There are four offences which affect the public tranquillity or public peace. They are :-

- 1) Unlawful assembly;
- 2) Rioting;
- 3) Promoting enmity between different classes; and
- 4) Affray.

I) **Unlawful Assembly:**

S.141 defines unlawful assembly.

Following are the five ingredients of unlawful assembly:

An unlawful assembly is an assembly of five or more persons, if their common object is –

- 1) to overawe by criminal force
 - a) the Central Government, or
 - b) the State Government, or
 - c) the Legislature, or
 - d) any public servant in the exercise of lawful power;
- 2) to resist the execution of the law or legal process;
- 3) to commit offence of
 - a) mischief,
 - b) criminal trespass, or
 - c) any other offence;
- 4) by criminal force (or show of criminal force to any person)
 - a) to take or obtain possession of any property, or
 - b) to deprive any person of any incorporeal right, or
 - c) to enforce any right or supposed right;
- 5) by criminal force to compel any person
 - a) to do what he is not legally bound to do, or
 - b) to omit what he is legally entitled to do.

was held that, in free fight there cannot be common intention.

Therefore, each accused will be held liable for his individual act only.

'every member of such assembly is guilty of the offence of rioting'
In the Case of **Kartar Singh**, 1962, SCR 395, a mob went to take possession of property by force. One person from the mob was openly carrying a gun. He fired from his gun and killed a person of the other party. The Court held that, all were liable for causing death, although the gun was fired by one person only.

S.147: Punishment for rioting –

"Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to 2 years, or with fine or with both".

S.148: Punishment for Rioting armed with deadly weapon –

"Whoever is guilty of rioting, being armed with deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to 3 years, or with fine, or with both".

S.149: Liability of a member of an unlawful assembly –

"If an offence is committed by any member of an unlawful assembly –

- i) in prosecution of the common object of assembly, or
- ii) such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing that offence, is a member of the same assembly, is guilty of that offence".

Under this Section, a member of unlawful assembly can be liable for the offence committed by any member of that assembly if it is committed in prosecution of their common object.

Difference between :

'common intention' and 'common object' –

- 1) S.34 explains common intention 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. Thus S.34 deals with acts done in prosecution of the common object.
- 2) Common intention implies a prearranged plan or prior meeting of minds and acting in concert in pursuance to the plan. Common object does not require such pre arranged plan, or prior meeting of minds.
- 3) S.34 requires 2 or more persons whereas 149 requires 5 or more persons.
- 4) S.34 lays down the rule of evidence and does not create a substantive offence. Whereas, S.149 creates a specific offence.
- 5) There can be common intention in relation to any offence. There can be common object only in relation to offences specified under S.141.

Difference between 'unlawful assembly' and 'rioting':

	'Unlawful assembly'	'Rioting'
1)	Five or more persons with any of the common objects specified u/s.141 constitute offence of 'unlawful assembly'.	Force or violence used by the member or members of an unlawful assembly constitute offence of 'rioting'.
2)	Mere unlawful common object by five or more persons can constitute offence of 'unlawful assembly'.	Apart from unlawful common object by five or more persons, the force or violence must be used in prosecution of their common object.
3)	Punishment is for six months, or fine, or both (S.143).	Punishment is for two years, or fine, or both (S.147).

III) Promoting enmity between different groups on the grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony:

S.153-A - (1) : "Whoever,

- a) i) by words spoken or written, or by signs, or by visible representation, etc. ii) promotes or attempts to promote disharmony or feelings of enmity, hatred or ill-will, iii) on the grounds of religion, race, place of birth, residence, language, etc. to any community, or on any other ground whatsoever, or

IV) Affray :

S.159 defines the offence of 'affray' –

"When two or more persons, by fighting in the public place, disturb the public peace, they are said to commit an affray".

The word 'affray' is derived from the French word 'affraier' meaning to terrify. In the legal sense, it signifies terror to the public.

Ingredients:

- 1) There must be 2 or more persons;
- 2) They must fight with each other;
- 3) They must fight in the public place;
- 4) By fighting they must disturb public peace.

'fighting in the public place'

Mere quarrelling, shouting or abusing without use of blows will not amount to affray. Actual physical blows must be exchanged by them. 'Public place' is a place where many people have an occasion to go, e.g. Bus-stand, railway station, a public urinal, cinema theatre, are public places. But a railway platform without any public cannot be a public place – **Madan Mohan's Case**, 1883.

'disturb the public peace'

In **Podan's Case**, 1962 Cr. L.J. 339, it was held that, there must be a definite breach of public peace due to the fight in public place, and mere causing of inconvenience to the members of the public is not enough.

S.160 : Punishment for affray –

Imprisonment for one month, or fine, or both.

(University Examination Questions)

1) What is an 'unlawful assembly'? What are the distinctions between unlawful assembly, riot and affray ? (Oct.1995;Dec.1996;Apr.1999); or

What is Rioting? How does it differ from affray ?(May1995;Apr.1997); or

What are the various offences against public tranquility? (Nov.2001).

2) Write Short Note on: Distinction between 'Common Intention' and 'Common Object' (Nov.2002).

Answer in not more than two sentences :

59. State any ingredients/objects of an unlawful assembly.
60. Who is said to be the member of an unlawful assembly ?
61. Define or state the ingredients of the offence of rioting.
62. State any two points of difference between 'common intention' and 'common object'.
63. State any two points of difference between 'unlawful assembly' and 'rioting'.
64. State the ingredients of the offence of 'affray'.

CHAPTER - IX

"OFFENCES BY OR RELATING TO PUBLIC SERVANTS"

(Ss. 161 to 171)

Sections 161 to 165A (both inclusive) have been omitted by Section 31 of the Prevention of Corruption Act, 1988.

S. 166 : Public servant disobeying law, with intent to cause injury to any person –
 Whoever being a public servant, knowingly disobeys any direction of law as to the way in which he is to conduct himself as such public servant intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration

'A' being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in 'Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to 'Z'. 'A' has committed the offence defined in this Section.

S. 166A : Public servant disobeying direction under law –
 Whoever, being a public servant, –

- (a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or
- (b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or
- (c) fails to record any information given to him under sub-section (1) of Section 154 [i.e. First Information Report] of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under Sections 326A, 326B, 354, 354B, 370, 370A, 376A, 376B, 376C, 376D, 376E or Section 509,

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

[Criminal Law (Amendment) Act, 2013].

S. 166B : Punishment for non-treatment of victim –

Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of Section 357C of the Code of Criminal Procedure, 1973, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

[Criminal Law (Amendment) Act, 2013].

S. 167 : Public servant framing as incorrect document with intent to cause injury –

Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record in a manner which he knows or believes to be incorrect, intending thereby, to cause 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 three years, or with fine, or with both.

S. 168 : Public servant unlawfully engaging in trade –

Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

CHAPTER - X

"OFFENCES RELATING TO ELECTIONS" (Ss. 171-A to 171-I)

This Chapter has to be read along with the 'Representation of the People Act, 1951, as it provides additional penalties for offences under S.171-E, and S.171-F i.e. disqualification from contesting election (S.8 of 'Representation of the People Act, 1951').

This Chapter seeks to make punishable offences of bribery, undue influence and personation at election, and certain other malpractices at elections.

S. 171-A : Definition of 'Candidate' and 'Electoral Right' :

"candidate" : "For the purposes of this Chapter 'candidate' means, a person who has been nominated as candidate at election".

"electoral right" : "For the purposes of this Chapter 'electoral right' means, the right of a person to stand or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election".

"election" : S.21, Explanation 3 of the Code defines the word 'election' as follows –

"The word 'election' denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under any law prescribed as by election".

S. 171-B : Definition of 'Bribery at an election' :

1) "Whoever –

i) gives gratification to any person with the object of a) inducing him or any other person to exercise an electoral right, or b) of rewarding any person so having exercised any such right; or

ii) accepts either for himself or for any other person any gratification a) as a reward for exercising an such right, or b) for inducing or attempt to induce any other person to exercise any such right, commits the offence of bribery".

2) A person who a) offers or agrees to give, or b) offer or attempts to procure, a gratification shall be deemed to give gratification.

3) A person who a) obtains, or agrees to accept, or b) attempts to obtain a gratification, or c) accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to accept gratification, as a reward".

The word 'gratification' does not mean only pecuniary gratification, but it includes any gratification, any favour, etc., whatever it may be.

Bribery, therefore, means :

- i) giving or accepting a gratification,
- ii) either as a motive or reward to any person,
- iii) either to induce him to stand or not to stand as a candidate, or
- iv) to withdraw from being a candidate, or
- v) to vote or refrain from voting at an election.

It also includes offers or agreements to give, or offer or attempts to procure a gratification for any person.

S. 171-C : Undue influence at elections :

1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at election.

2) Without prejudice to the generality of the provisions of sub-section (1), whoever –

CHAPTER - XI

"GIVING FALSE EVIDENCE AND FABRICATING FALSE EVIDENCE"

(Ss.191 to 194)

Sections 191 to 229 in this Chapter deal with offences against Public Justice. Giving false evidence and fabricating false evidence are the main offences discussed in this Chapter.

"Whoever" or "Perjury" (S. 191):

- i) being legally bound by an oath, or by an express provision of law to state the truth, or
- ii) being bound by law to make a declaration upon any subject,
- iii) makes any statement
 - a) which is false, and
 - b) which he either knows or believes to be false or
 - c) does not believe to be true,
is said to give false evidence".

Explanation-1: A statement which is made verbally or in writing or otherwise, will amount to a statement for the purpose of this Section.

Explanation-2: A person may make a false statement and may be guilty of giving false evidence, i) by stating that he believes a thing which, in fact, he does not believe or ii) by stating that he knows a thing which in fact he does not know.

Illustrations:

- a) A in support of a just claim which B has against Z for one hundred rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.
- b) A being bound by an oath to state the truth, states that he believes a certain signature to be handwriting of Z, when he does not believe it to be the handwriting of Z. Here, A states that which he knows to be false, and therefore, gives false evidence.

Ingredients of an offence of giving false evidence:

- 1) A person must be legally bound – a) by an oath, or by any express provision of law, b) to state the truth, or to make a declaration upon any subject;
- 2) He must make a false statement;
- 3) He – a) must know or believe it to be false, or b) must not believe it to be true.

'legally bound by an oath or by express provision of law' –

Oath must be administered by a Court having authority to administer the oath. In **Rambharat's Case** (1923) 25, Bom. 907, it was held that, the Court must be an Indian court, otherwise no offence is committed for which the accused will be liable in India. An oath includes solemn affirmation also.

"Perjury": The offence of giving false evidence under this Section is also known as offence of 'perjury' under English law.

Fabricating false evidence (S.192):

"Whoever –

- a) causes i) any circumstance to exist or; ii) makes any false entry in any book or record, or
- iii) makes an

CHAPTER – XII

"OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCY, DECENCY AND MORALS"

(Ss. 268 to 294-A)

Following are the offences which affect public health, safety, convenience and morals:

- 1) Public nuisance (S.268).
- 2) Spreading infection of disease (Ss.269-271).
- 3) Adulteration of food or drink intended for sale and sale of noxious food or drink (Ss.272-273).
- 4) Adulteration of drugs, sale of adulterates drugs, sale of drug as different drug (Ss.274-276).
- 5) Fouling water and making atmosphere noxious to health (Ss.277-278).
- 6) Public morals & decency/Offence of obscenity (Sections 292 to 294).

(A) Public nuisance (S. 268):

"A person is guilty of Public Nuisance,

- i) who does any act, or is guilty of illegal omission,
 - ii) which causes any common injury, danger, or annoyance to
 - a) the public who dwell or occupy property in the vicinity, or
 - b) persons who may have occasion to use any public right.
- A common nuisance is not excused on the ground that it causes some convenience or advantage".

Ingredients of the offence of public nuisance:

- 1) Doing of any act or illegal omission;

- 2) This said act or omission:
 - i) must cause any common injury, danger or annoyance – **a)** to the public, or **b)** to the people in general who dwell or occupy property in the vicinity, or
 - ii) must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

'Public nuisance' or 'common nuisance' is an offence against the public or people in general. It affects the public or section of the public in the vicinity or persons exercising a public right. Thus, blocking part of a public street, dangerously blasting stones near public road, slaughtering animals, spreading blood and dirt in a public place, keeping manhole open on the road or footpath or playing gramophone record loudly at the night time, etc. are all instances of public nuisance.

(B) Spreading infection of disease (269-271):

Sections 269 & 270 punish negligent act and malignant act likely to spread infection of any disease dangerous to life. The punishment for such negligent act is imprisonment for 6 months, or fine, or both. The punishment for such malignant act is imprisonment for 2 years, or fine, or both.

(C) Adulteration of food or drink intended for sale and sale of noxious food or drink – (S.272-273):

- S.272: "Whoever,
 - i) adulterates any article of food or drink and,
 - ii) thereby makes it noxious,
 - iii) with intention to sell such article as food or drink, shall be punished with imprisonment for 6 months, or with Rs. 1000 fine, or with both".

S. 273: "Whoever, knowingly sells or offers or exposes for sale, as food or drink, any article which become noxious or unfit for food or drink, shall be punished with imprisonment 6 months, or Rs.1000 fine, or with both".

(D) Adulteration of drugs, sale of adulterated drugs, sale of drug as different drug – (Ss.274-276):

S. 274: Adulteration of drugs:

"Whoever, adulterates any drug or medical preparation so as to lessen the efficacy, or change the operation of drug, or make it noxious intending or knowing that such adulterated drug will be sold as original one, shall be punished with imprisonment for 6 months, or with Rs.1000 fine, or with both".

S. 275: Sale of adulterated drugs:

"Whoever, knowing that the drug has been adulterated,

i) sells the same or

ii) offers or exposes it for sale, or

iii) issues it from any dispensary for medical purposes,

shall be punished with imprisonment for 6 months, or with Rs.1000 fine, or with both".

S.276: Sale of drug as different drug:

"Whoever, knowingly sells, or offers, or exposes for sale, or issues from a dispensary for medical purposes, any drug, as a different drug, shall be punished with imprisonment for 6 months, or with Rs.1000 fine, or with both".

(E) Fouling water and making atmosphere noxious to health –

(S.277- 278):

S.277: Fouling water of public spring or reservoir:

"Whoever,

i) voluntary corrupts or fouls water,

ii) of a public spring or reservoir, and

iii) renders it less fit for the purpose for which it is ordinarily used,

shall be punished with imprisonment for 3 months, or with Rs.500 fine, or with both".

S.278: Making atmosphere noxious to health:

"Whoever, voluntary vitiates the atmosphere in any place so as to make it noxious to public health shall be punished with Rs.500 fine".

(F) Public Morals and Decency (Ss. 292 to 294):

Offence of obscenity (S. 292) :

When any book, pamphlet, painting, figure or any object which tends to deprive (or makes morally bad) persons and corrupt their minds, it is said to be obscene book object, etc.

Therefore, sale, distribution, exhibition, etc. of such obscene book, object, painting etc. is made punishable u/s. 292.

Sale, etc. of such obscene objects to young persons is made punishable u/s. 293. Doing obscene acts in a public place or singing obscene songs in a public place which cause annoyance to others are made punishable u/s. 294.

1) Sale of obscene book or object – S.292:

"Whoever,

CHAPTER - XIII

"OFFENCES RELATING TO RELIGION"

(Ss. 295 to 298)

"The principle on which this chapter is framed is that, it would be desirable that all Governments should act.....is this that, every man should be suffered (allowed) to profess his own religion and that no man should be suffered to insult the religion of another" (Note-J,p.136).

There are five offences relating to religion. They are as follows:

- 1) Damaging or defiling place of worship with intent to insult the religion of any class (S.295);
- 2) Deliberately or maliciously insulting the religion or religious beliefs of any class (S.295-A);
- 3) Disturbing religious assembly engaged in the performance of religious worship (S.296);
- 4) Trespassing on the burial places, etc. with the intention of wounding the religious feelings or insulting the religion (S.297);
- 5) Uttering words or making gestures with deliberate intention of wounding the religious feelings of any person (S.298).

1) Damaging or defiling place of worship with intent to insult the religion of any class (S.295):

Definition:

"Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished, with imprisonment of either description for a term which may extend to 2 years, or with fine, or with both".

Ingredients:

- i) Destruction, damage or defilement of any place of worship, or any object held sacred by a class of persons;
- ii) Such destruction must have been done with the intention or knowledge of insulting the religion of any class of persons.

2) Deliberately or maliciously insulting the religion or religious beliefs of any class (S.295-A):

Definition:

"Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to 3 years, or with fine, or with both".

Ingredients:

- i) A person must have malicious intention to outrage the religious feelings of any class of citizens of India;
- ii) With such intention, he must by words or signs or by visible representations insult or attempt to insult the religion or religious beliefs of that class.

3) Disturbing religious assembly engaged in the performance of religious worship (S.296):

Definition:

"Whoever, voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to 1 year, or with fine, or with both".