

# House-breaking

Housebreaking is also an aggravated form of house-trespass and implies forceful entry into one's house.

## **Ingredients :**

The entry of any part of the human body is sufficient to constitute housebreaking under **Section 445** of IPC if the following ingredients are present:

1. Trespass;
2. House-trespass;
3. The entrance by the trespasser must be done in any of the 6 ways prescribed above.

## **Ways of Housebreaking**

Section 445 of IPC lays down 6 ways in which housebreaking can occur, namely:

1. Through passage made by the house breaker himself;
2. Through any passage not used by any person other than the intruder;
3. Through any passage opened for committing an offence of housebreaking which was not intended by the house occupier to be open;
4. By opening any lock;
5. By using criminal force at either entrance or departure;
6. By entering or quitting any passage fastened against such entrance or exit. The word 'fasteners' implies something more than being closed, merely pushing of door shutters would not amount to house-breaking.

The **first three ways** are the one in which **entry is effected by using passage which is not the ordinary means of entry or exit**

and

the **last three ways** are the ones in which **entry is effected by use of force.**

**Punishment :** accused will be liable for imprisonment not exceeding 2 years and fine under Section 453 of IPC.

**Example :** Making a hole in the wall to enter a house, using a window to enter a house, assaulting the guard or doorkeeper to enter a house, all amount to housebreaking

# Grievous Hurt

The draftsman of IPC found it tough to draw a line among those physical hurts, which can be severe, and people who are moderate. However, they special certain types of hurts as grievous hurt.

The following kinds of hurt only are termed as "grievous":

1. Emasculation,
2. Permanent injury to eyesight or either of the eye,
3. Permanent deafness or injury to either of the eye,
4. Privation of any member or joint (loss of limb),
5. Impairing of Limb,
6. Permanent disfiguration of the head or face,
7. Fracture or dislocation of a bone or tooth,
8. Any hurt which risks life or which causes the victim to be during the time of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

# Unlawful Assembly

An assembly may turn unruly and which may cause *injury* to person, property or public order. Such an unruly assembly is termed as 'Unlawful Assembly.'

The term 'Unlawful Assembly' has been defined under **section 141** of the Indian Penal Code, 1860 as an assembly of *five or more persons* having a *common object* to perform an omission or offence.

## Essentials to constitute an unlawful assembly

To constitute an unlawful assembly the following **3 conditions** must co-exist:-

- There must be an assembly of five persons.
- The assembly must have a common object and
- The common object must be to commit one of the five illegal objects specified in the section.
  1. To overawe the Government by criminal force.
  2. To resist the execution of law or legal process.
  3. To commit an offence.
  4. forcible possession or dispossession of any property; or
  5. To compel any person to do illegal acts.

i) **To overawe government by criminal force:** 'Overawe' means to create fear in mind of another person. That is when a public procession tends to overawe government by the use of force.

ii) **To resist the execution of law or legal process:** Resistance by an assembly to a legal process or execution of law, i.e, executing a court's judgment or order comes under execution of law

iii) **To commit an offence:** Where an assembly of 5 or more persons having a common object of performing an act which is prohibited by law or forms an offence under Indian Penal Code

iv) **Forcible possession or dispossession of any property:** Where a criminal force is used by an assembly to stop a person of enjoyment of the rights Or to obtain possession of any property.

v) **To compel any person to do illegal acts:** if assembly by using criminal force on others compels them to perform an illegal act then that assembly would be an unlawful assembly.

**Punishment :**

i) whoever is **a member of an unlawful assembly** shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

ii) **whoever joins unlawful assembly armed with a deadly weapon** which is likely to cause death; shall be punished with imprisonment for two years, or fine or both.

iii) **whoever joins or continue to be in unlawful assembly, knowing it has been commanded to disperse**, shall be punished with imprisonment for 2 years, or fine, or both.

iv) where an assembly commits an offence then every member of that unlawful assembly, who **knew such offence is likely to be committed**, will be guilty of that offence. And be punished for the term same as for the offence.

**Importance**

Section 144 is only to be used in an emergency situation to prevent any riot or to maintain law and order

## **Bigamy IPC - Section 494**

- This Section states that any person who is already having a husband or wife and marries another person in existence of previous spouse, then the person shall be punished with imprisonment which shall extend to seven years and would be liable to fine.
- But a person can not be convicted under this section when the marriage has already been declared void by the court.
- When one of the spouses is missing for a period of seven years and there is no information about his existence then the other partner can contract another marriage. But the spouse needs to open the facts before the person whom they are getting married.

## **Why is bigamy illegal**

- When bigamy is performed in the existence of the second marriage and the facts are not disclosed before the partners, then it is considered to be illegal.
- When a person hides the fact of his previous marriage, and gets married again, then it constitutes fraudulent action. Thus it is illegal.

## **Who can file bigamy charges**

- The person who has been cheated by their spouse in the contract of second marriage can only file a case against the person under this Section.
- **The first spouse does not have the right to file a complaint under this section.**

## **In the case of women**

- She can herself file the complaint.
- In the case of a wife, her father, mother, brother, sister or any person related to her by blood with the leave of the court can file a complaint on her behalf.

## **In the case of a husband**

- No person on behalf of the husband can file the case i.e, he has to file the complaint himself
- But in the case of the person in Armed Forces, who is not able to take leave to file the complaint exception is provided

## **Rights of the second wife**

- There is no provision for the right of a second wife in the case of a second marriage. She can not claim the property right of her husband.

## **Child from the second marriage**

- When the second marriage is declared valid, the child born would have equal rights as per the child from the first marriage have.

**Case Law :** Sarla Mudgal v. Union of India

# Abetment

**Definition** - Abetment basically means the action of instigating, encouraging or **promoting** a person into committing an offence. It can also mean aiding the offender while he is committing a crime.

Sometimes, indirectly participating in committing an offence itself may also become a punishable offence. In such **crimes**, the offenders do not directly involve themselves in the offence. However, their abetment can become punishable in itself.

**Section** : Abetment under Section 107, IPC

**Example** : For example, one person may procure a gun and hand it over to another who may shoot somebody with it. The former person is guilty of abetment, while the latter commits murder.

## Methods of Abetment

This abetment may occur in any of the three methods given below -

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

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

When any of these requirements exists, the offence of abetment is complete.

### (1) Abetment by Instigation

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

It says that instigation may generally happen even by:

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

### (2) Abetment by Conspiracy

Conspiracy basically means an agreement between two or more persons to commit an unlawful act.

The conspirators must actively agree and prepare themselves to commit that offence, it becomes a conspiracy.

Furthermore, the act which the conspirators conspire to commit itself must be illegal or punishable.

### **(3) Abetment by Aiding**

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

### **Punishment for Abetment (S.109-120)**

Abetment of certain offences is punishable under specific Sections of IPC or under other laws. For example, abetment of suicide is punishable under Section 306. However, when no specific provision exists, the abettor will be punished with the punishment prescribed for that particular offence he has abetted.

### **General rules regarding liability of Abettor**

1. Abettor can be liable even when he abets an illegal omission
2. Abettor can be held liable although the act abetted is not committed.
3. Abettor can be held liable for the offence abetted through the effect necessary to constitute that offence is not caused.
4. Abettor can be held liable even when the person abetted is incapable by law of committing an offence.
5. Abettor can be held liable through the person abetted does not have
  - i. same guilty intention
  - ii. knowledge as that of abettor.
6. Abettor can be held liable for abetment of chain abetment
7. Abettor can be held liable for offence through he does not plan or make an arrangement with the person who actually commits the offence
8. Abettor can be held liable for abetment of an offence in India though the offence is committed outside India.

<b>Wrongful Restraint</b>	<b>Wrongful Confinement</b>
It prevents a person from proceeding in a direction in which that person has a right to proceed.	It keeps a person within certain circumscribing limits.
A person is free to move in any other direction except a particular direction. I.e <b>Obstruction in One Direction</b>	A person is not free to go beyond certain area within which he is confined. I.e. <b>Obstruction is on all sides.</b>
There is only a partial suspension of one's liberty.	There is total suspension of liberty beyond certain circumscribing limits.
Intention is important in this offence.	Intention is not important in this offence.
It is not a very serious offence and is punishable with lesser punishment.	It is a more serious offence and is punishable with a more severe punishment than wrongful restraint.
Punishment: Sec. 341. Imprisonment to one month, or fine Rs. 500/-, or with both.	Punishment: Sec. 342. Imprisonment to one year, or fine Rs. 1000/-, or with both.



# Intra-territorial Jurisdiction

Section 2 of the Indian Penal Code states that every person who commits an act or omits to do an act which is contrary to the provisions of the code shall be liable for punishment. Here, every wrongdoer is made liable for punishment without any discrimination on the basis of his nationality, rank, caste or creed. The only requirement under this Section to incriminate a person is that he should commit the act or omission within the territory of India. Thus a foreigner who committed a wrong within the territory of the country cannot plead ignorance of Indian law. However, there are exceptions to the universal application of the code and so specific class of people are immune from criminal liability, the class of people include:

- Foreign sovereign;
- Diplomats;
- Enemy aliens;
- foreign army and warships;
- President and governors.

## Extra-territorial Jurisdiction

### Scope of Sections 3 and 4, Indian Penal Code 1860

According to Section 4, the jurisdiction of the Code is applicable to any person beyond the territory of India who commits a crime. The Section also covers the following category of people:

1. Any Indian citizen who is present beyond the territory of India and has committed a wrong,
2. Any person travelling through any ship or aircraft which is registered in India,
3. Any person present in any place which is not under the territorial limit of India and targets the computer resources present in India.

## Doctrine of Mens Rea

- Mens rea and Actus Reus are two components for constituting a crime.
- The literal meaning of Latin “guilty mind”. The plural of mens rea is mentes reae
- Mens Rea means guilty mind and Actus Reus means guilty Act.
- Mens Rea amounts to mental element of a crime.
- It's what goes on inside the defendants mind. Its direct intention, indirect intention or recklessness of person. (Example: the mens rea of a battery is is intention or recklessness).
- In the Indian Penal Code, 1860, every offence is defined very clearly. The definition not only states what accused might have done, that also states about the state of his mind, with regard to the act when he was doing it.
- Under the Indian Penal Code, all offences connected on the ground of intention, knowledge or reason to believe.
- A mens rea means mind set of criminal while performing crime.
- Its necessary to prove mens rea to punish the accused person.
- The prosecution typically must prove keeping aside the reasonable doubt that the defendant committed the offense with a culpable mind set.

### Exceptions to Mens Rea - Exceptions to the Doctrine Mens Rea are as follows

**a) Strict Liability** - Even though there is no guilty mind the person is held responsible for the act. Only some special statute creates those liabilities. Act passed by parliament. These offences are against Public Health for which such strict or absolute liability is imposed, for example-Essential Commodities Act, Food and Drug Act, Consumer Protection Act etc.

**b) When it is difficult to prove Mens Rea** - Another exception to the doctrine Mens rea is where it is difficult to prove mens rea and penalties are petty fines A statute may do away with the necessity of Mens rea on the basis of expediency. In such petty cases, speedy disposal of cases is necessary and the proving of mens rea is not easy. An accused or may be fined even without any proof of Mens Rea.

**c) Public Nuisance** - Another exception to the doctrine of ***mens rea*** is in case of public nuisance. In the interest of public safety, strict liability must be imposed. Whether a person causes public nuisance with guilty mind or without guilty mind, he must be punishable.

**d) Ignorance of Law no excuse** - Ignorance of law is no excuse. It is presumed that everybody knows the law of land. The principle of ignorantia juris non excusat is followed in almost all legal systems. This is an irrebuttable presumption that every person knows the law of the land.

# Persons Exempted from Indian Penal Code, 1860

The Indian Penal Code exempts certain officers and persons of rank from liability under the Code.

1. **Presidents and Governors** – The Presidents of countries and Governors of states are exempted from the jurisdiction of Criminal Courts as per Article 361 of the Constitution of India[ix].
2. **Foreign Sovereigns** – Foreign Sovereigns are exempted from this Code, as they are said to absolute independent authorities and an exercise of criminal jurisdiction on them would be incompatible with their dignity.
3. **Ambassadors and Diplomats** – An Ambassador of a country is the representative of a Foreign Sovereign and enjoys the same immunity as that of the Sovereign. Ambassadors and Diplomats are provided immunity under the United Nations (Privileges and Immunities) Act, 1947 and the Diplomatic Relations (Vienna Convention) Act, 1972.
4. **Alien Enemies** – For any act committed in respect of war, Alien Enemies would not be liable under the IPC and for them, Martial Law would be applicable. However, Alien Enemies would be liable for offences committed under the IPC that are not in relation to war, such as theft or robbery.
5. **Foreign Army** – Foreign Army personnel who have entered the territory of India with the permission of the Government of India would be exempted from the jurisdiction of criminal courts.
6. **Warships** – Warships of a State enjoy immunity from criminal liability on the territory of another country on the ground that it is the property of a Sovereign, and not subject to the legal process of another country.