

THE INDIAN PENAL CODE, 1860

ACT NO. 45 OF 1860 1*

[6th October, 1860.]

CHAPTER I

INTRODUCTION

CHAPTER I

INTRODUCTION

Preamble.—WHEREAS it is expedient to provide a general Penal Code for 2*[India];

It is enacted as follows:--

1.

Title and extent of operation of the Code.

1. Title and extent of operation of the Code.--This Act shall be called the Indian Penal Code, and shall 3*[extend to the whole of India 4*[except the State of Jammu and Kashmir]].

2.

Punishment of offences committed within India.

2. Punishment of offences committed within India.--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 5*[India] 6****.

3.

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

3. Punishment of offences committed beyond, but which by law may be tried within, India.--Any person liable, by any 7*[Indian law], to be tried for an offence committed beyond 5*[India] shall be dealt with according to the provisions of this Code for any act committed beyond 5*[India] in the same manner as if such act had been committed within 5*[India].

4.

Extension of Code to extra-territorial offences.

8*[4. Extension of Code to extra-territorial offences.--The provisions of this Code apply also to any offence committed by--

9*[(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.]

1. The Act has been amended in its application to Madras by Madras Act 25 of 1960, U. P. by U. P. Acts 31 of 1961, 29 of 1970 and 47 of 1975, Andhra Pradesh by Andhra Pradesh Act 16 of 1968, Maharashtra by Maharashtra Act 19 of 1971, Mysore by Mysore Act 8 of 1972, West Bengal by West Bengal Act 42 of 1973.

The Act has been extended to Goa, Daman and Diu with modifications by Reg. 12 of 1962, s. 3 and Sch., extended to and brought into force in Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. I (w.e.f. 1-7-1965) and to Laccadive, Minicoy and Amindivi Islands by Reg. 8 of 1965, s. 3 and Sch. (w.e.f. 1-10-1967).

The Act comes into force in Pondicherry vide Reg. 7 of 1963, s. 3 and Sch. I (w.e.f. 1-10-1963).

2. Subs. by Act 3 of 1951, s. 3 and Sch., for "the whole of India except Part B States".

3. Subs. by the A. O. 1948, for "take effect * * * throughout British India". The words and figures "on and from the first day of May, 1861" occurring between the words "effect" and "throughout" were rep. by Act 12 of 1891.

4. Subs. by Act 3 of 1951, s. 3 and Sch., for "except Part B States".

5. Subs. by s. 3 and Sch., *ibid.*, for "the States".

6. The words and figures "on or after the said first day of May, 1861" omitted by Act 12 of 1891.

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

8. Subs. by Act 4 of 1898, s. 2, for the original s. 4.

9. Subs. by the A. O. 1950, for the original cls. (1) to (4).

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Explanation.

Explanation.--In this section the word "offence" includes every act committed outside 1*[India] which, if committed in 1*[India] would be punishable under this Code.

2*[Illustration]

3***A, 4*[who is 5*[a citizen of India]], commits a murder in Uganda. He can be tried and convicted of murder in any place in 1*[India] in which he may be found.

6* * * * *

5.

Certain laws not to be affected by this Act.

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

CHAPTER II

GENERAL EXPLANATIONS

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GENERAL EXPLANATIONS

6.

Definitions in the Code to be understood subject to exceptions.

6. Definitions in the Code to be understood subject to exceptions.--Throughout this Code every definition of an offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to the exceptions

contained in the Chapter entitled "General Exceptions", though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations

(a) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which done by child under seven years of age.

(b) A, a police-officer, without warrant, apprehends Z who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it".

7.

Sense of expression once explained.

7. Sense of expression once explained.--Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

8.

Gender.

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

9.

Number.

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

10.

"Man". "Woman".

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

1. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".
2. Subs. by Act 36 of 1957, s.3 and Sch. II, for "Illustrations".
3. The brackets and letter `6(a)' omitted by s. 3 and Sch. II, *ibid.*
4. Subs. by the A. O. 1948, for "a coolie, who is a Native Indian subject".
5. Subs. by the A. O. 1950, for "a British subject of Indian domicile".
6. Illustrations (b), (c) and (d) were rep. by the A. O. 1950.
7. Subs., *ibid.*, for the former s. 5.

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11.

"Person".

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

12.

"Public".

12. "Public".--The word "public" includes any class of the public or any community.

13.

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

14.

"Servant of Government".

1*[14. "Servant of Government".--The words "servant of Government" denote any officer or servant continued, appointed or employed in India by or under the authority of Government.]

15.

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

16.

Definition of "Government of India".] Rep., ibid.

17.

"Government".

2*[17 "Government".--The word "Government" denotes the Central Government or the Government of a 3***State.]

18.

"India".

4*[18. "India".--"India" means the territory of India excluding the State of Jammu and Kashmir.]

19.

"Judge".

19. "Judge".--The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person.

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

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

Illustrations

(a) A collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.

(b) A Magistrate exercising jurisdiction in respect of a charge

of persons. any adjudicatory functions;]

Fourth.--Every officer of a Court of Justice 6*[(including a liquidator, receiver or commissioner)] whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

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

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

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

Eighth.--Every officer of 7*[the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.--Every officer whose duty it is as such officer, to take, receive, keep or expend any property on behalf of 7*[the Government], or to make any survey, assessment or contract on behalf of 7*[the Government], or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of 7*[the Government], or to make. authenticate or keep any document relating to the pecuniary interests of 7*[the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of 7*[the Government] 8***;

Tenth.--Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

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1. Cl. First omitted by the A. O. 1950.
 2. Subs. by Act 10 of 1927, s. 2 and Sch. I, for "or Naval".
 3. Subs. by the A. O. 1948, for "of the Queen while serving under any Government in British India or the Crown Representative".
 4. The words "of the Dominion" omitted by the A. O. 1950.
 5. Subs. by Act 40 of 1964, s. 2, for cl. Third.
 6. Ins. by s. 2, *ibid.*

7. Subs. by the A. O. 1950, for "the Crown".
8. Certain words omitted by Act 40 of 1964, s. 2.

1*[Eleventh.--Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;]

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

Illustration

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

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

22.

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

"Wrongful gain".

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

"Wrongful loss".

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

Gaining wrongfully. Losing wrongfully.

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.

24.

"Dishonestly".

24. "Dishonestly".--Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

25.

"Fraudulently".

25. "Fraudulently".--A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

1. Ins. by Act 39 of 1920, s. 2.

2. Subs. by Act 40 of 1964, s. 2, for cl. Twelfth, ins. by Act 2 of 1958, s. 2.

3. Ins. by Act 39 of 1920, s. 2.

4. Explanation 4 ins. by Act 2 of 1958, s. 2, omitted by Act 40 of 1964, s. 2.

26.

"Reason to believe".

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

27.

Property in possession of wife, clerk or servant.

27. Property in possession of wife, clerk or servant.--When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.--A person employed temporarily or on a particular occasion in the capacity of a clerk, or servant, is a clerk or servant within the meaning of this section.

28.

"Counterfeit".

28. "Counterfeit".--A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

1*[Explanation 1.--It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.--When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.]

29.

"Document".

29. "Document".--The word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.--It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.--Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

30.

"Valuable security".

30. "Valuable security".--The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or who hereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

1. Subs. by Act 1 of 1889, s. 9, for the original Explanation.

Illustration

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security".

31.

"A will".

31. "A will".--The words "a will" denote any testamentary document.

32.

Words referring to acts include illegal omissions.

32. Words referring to acts include illegal omissions.--In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

33.

"Act". "Omission".

33. "Act". "Omission".--The word "act" denotes as well as series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.

34.

Acts done by several persons in furtherance of common intention.

1*[34. Acts done by several persons in furtherance of 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.]

35.

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

35. When such an act is criminal by reason of its being done with a criminal knowledge or intention.--Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

36.

Effect caused partly by act and partly by omission.

36. Effect caused partly by act and partly by omission.--Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration

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

37.

Co-operation by doing one of several acts constituting an offence.

37. Co-operation by doing one of several acts constituting an offence.--When an 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.

Illustrations

(a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(b) A and B are joint jailors, and as such have the charge of Z, a prisoner, alternatively for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish

Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

1. Subs. by Act 27 of 1870, s. 1, for the original section.

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(c) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B, A is guilty only of an attempt to commit murder.

38.

Persons concerned in criminal Act may be guilty of different offences.

38. Persons concerned in criminal Act may be guilty of different offences.--Where 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.

Illustration

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

39.

"Voluntarily".

39. "Voluntarily".--A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery and thus causes the death of a person. Here, A may not have intended to cause death; and may even be

sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

40.

"Offence".

1*[40. "Offence".--Except in the 2*[Chapters] and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, 3*[Chapter VA] and in the following sections, namely, sections 4*[64, 65, 66, 5*[67], 71], 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.]

41.

"Special law".

41. "Special law".--A "special law" is a law applicable to a particular subject.

42.

"Local law".

42. "Local law".--A "local law" is a law applicable only to a particular part of 6* [7**** 8*[India]].

1. Subs. by Act 27 of 1870, s. 2, for the original s. 40.

2. Subs. by Act 8 of 1930, s. 2 and Sch. I, for "chapter".

3. Ins. by Act 8 of 1913, s. 2.

4. Ins. by Act 8 of 1882, s. 1.

5. Ins. by Act 10 of 1886, s. 21 (1).

6. Subs. by the A.O. 1948, for "British India".
 7. The words "the territories comprised in" were rep. by Act 48 of 1952, s. 3 and Sch. II.
 8. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".
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43.

"Illegal".

"Legally bound to do".

43. "Illegal". "Legally bound to do".--The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

44.

"Injury".

44. "Injury".--The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

45.

"Life".

45. "Life".--The word "life" denotes the life of a human being, unless the contrary appears from the context.

46.

"Death".

46. "Death".--The word "death" denotes the death of a human being unless the contrary appears from the context.

47.

"Animal".

47. "Animal".--The word "animal" denotes any living creature, other than a human being.

48.

"Vessel".

48. "Vessel".--The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

49.

"Year".

"Month".

49. "Year". "Month".--Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

50.

"Section".

50. "Section".--The word "section" denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.

51.

"Oath".

51. "Oath".--The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

52.

"Good faith".

52. "Good faith".--Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

52A.

"Harbour".

1*[52A. "Harbour".--Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.]

CHAPTER III

OF PUNISHMENTS

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53.

Punishments.

53. Punishments.--The punishments to which offenders are liable under the provisions of this Code are--

First.--Death;

2*[Secondly.--Imprisonment for life;]

3^* $*$ $*$ $*$ $*$

Fourthly.--Imprisonment, which is of two descriptions, namely:-

(1) Rigorous, that is with hard labour;

(2) Simple;

Fifthly.--Forfeiture of property;

Sixthly.--Fine.

1. Ins. by Act 8 of 1942. s. 2.
2. Subs. by Act 26 of 1955, s. 117 and Sch., for "Secondly.--Transportation;" (w.e.f. 1-1-1956).
3. "Thirdly,-Penal servitude;" was rep. by Act 17 of 1949, s. 2 (w.e.f. 6-4-1949).

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53A.

Construction of reference to transportation.

1*[53A. Construction of reference to transportation.--(1) Subject to the provisions of sub-section (2) and sub-section (3), any reference to "transportation for life" in any other law for the time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed shall be construed as a reference to "imprisonment for life".

(2) In every case in which a sentence of transportation for a term has been passed before the commencement of the Code of Criminal Procedure (Amendment) Act, 2*[1955], (26 of 1955), the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.

(3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.

(4) Any reference to "transportation" in any other law for the time being in force shall,-

(a) if the expression means transportation for life, be construed as a reference to imprisonment for life;

(b) if the expression means transportation for any shorter term, be deemed to have been omitted.]

54.

Commutation of sentence of death.

54. Commutation of sentence of death.--In every case in which sentence of death shall have been passed, 3*[the appropriate Government] may, without the consent of the offender, commute the

punishment for any other punishment provided by this Code.

55.

Commutation of sentence of imprisonment for life.

55. Commutation of sentence of imprisonment for life.--In every case in which sentence of 4*[imprisonment] for life shall have been passed, 5[the appropriate Government] may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

55A.

Definition of "appropriate Government".

6*[55A. Definition of "appropriate Government".--In sections fifty-four and fifty-five the expression "appropriate Government" means,-

(a) in cases where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government; and

(b) in cases where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, the Government of the State within which the offender is sentenced.]

56.

56. [Sentence of Europeans and Americans to penal servitude. Proviso as to sentence for term exceeding ten years but not for life.] Rep. by the Criminal Law (Removal of Racial Discriminations) Act, 1949 (17 of 1949) (w. e. f. 6-4-1949).

57.

Fractions of terms of punishment.

57. Fractions of terms of punishment.--In calculating fractions of terms of punishment, 4[imprisonment] for life shall be reckoned as equivalent to 4[imprisonment] for twenty years.

58.

58. [Offenders sentenced to transportation how dealt with until transported.] Rep. by the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955), s. 117 and Sch.

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1. Ins. by Act 26 of 1955, s. 117 and Sch. (w.e.f. 1-1-1956).
 2. Subs. by Act 36 of 1957, s. 3 and Sch. II, for "1954".
 3. Subs. by the A. O. 1950, for "the Central Government or the Provincial Government of the Province within which the offender shall have been sentenced".
 4. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation" (w.e.f. 1-1-1956).
 5. Subs. by the A. O. 1950, for "the provincial Government of the Province within which the offender shall have been sentenced".
 6. Subs., *ibid*, for s. 55A which had been ins. by the A. O. 1937.
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59.

59. [Transportation instead of imprisonment.] Rep. by the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955) s.117 and Sch., (w.e.f. 1-1-1956).

60.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

60. Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.--In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple or] that any part of such imprisonment shall be rigorous and the rest simple.

61.

61. [Sentence of forfeiture of property.] Rep. by the Indian Penal Code (Amendment) Act, 1921 (16 of 1921), s. 4.

62.

62. [Forfeiture of property, in respect of offenders punishable with death, transportation or imprisonment.] Rep., by s. 4 ibid.

63.

Amount of fine.

63. Amount of fine.--Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

64.

Sentence of imprisonment for non-payment of fine.

64. Sentence of imprisonment for non-payment of fine.--1*[In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable 2*[with imprisonment or fine, or] with fine only, in which the offender is sentenced to a fine.]

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

65.

Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.

65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.--The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

66.

Description of imprisonment for non-payment of fine.

66. Description of imprisonment for non-payment of fine.--The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

67.

Imprisonment for non-payment of fine, when offence punishable with fine only.

67. Imprisonment for non-payment of fine, when offence punishable with fine only.--If the offence be punishable with fine only, 3*[the imprisonment which the Court imposes in default of payment of the fine shall be simple, and] the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

68.

Imprisonment to terminate on payment of fine.

68. Imprisonment to terminate on payment of fine.--The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

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1. Subs. by Act 8 of 1882, s. 2, for "in every case in which an offender is sentenced to a fine".
 2. Ins, by Act 10 of 1886, s. 21(2).
 3. Ins by Act 8 of 1882, s. 3.

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69.

Termination of imprisonment on payment of proportional part of fine.

69. Termination of imprisonment on payment of proportional part

of fine.--If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment. A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment. A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment. A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

70.

Fine leviable within six years, or during imprisonment. Death not to discharge property from liability.

70. Fine leviable within six years, or during imprisonment. Death not to discharge property from liability.--The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

71.

Limit of punishment of offence made up of several offences.

71. Limit of punishment of offence made up of several offences.--Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

1*[Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself

or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences].

Illustrations

(a) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But, if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

72.

Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

72. Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.--In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

1. Ins by Act 8 of 1882, s, 4.

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73.

Solitary confinement.

73. Solitary confinement.--Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say--

a time not exceeding one month if the term of imprisonment shall not exceed six months:

a time not exceeding two months if the term of imprisonment shall exceed six months and 1*[shall not exceed one] year:

a time not exceeding three months if the term of imprisonment shall exceed one year.

74.

Limit of solitary confinement.

74. Limit of solitary confinement.--In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

75.

Enhanced punishment for certain offence under Chapter XII or Chapter XVII after previous conviction.

2*[75. Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction.--Whoever, having been convicted,-

(a) by a Court in 3*[India], of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, 4****

4* * * * *

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to 5*[imprisonment for life] or to imprisonment of either description for a term which may extend to ten years.]

CHAPTER IV

GENERAL EXCEPTIONS

CHAPTER IV

GENERAL EXCEPTIONS

76.

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

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

Illustrations

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

77.

Act of Judge when acting judicially.

77. Act of Judge when acting judicially.--Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

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1. Subs. by Act 8 of 1882, s. 5, for "be less than a".
 2. Subs. by Act 3 of 1910, s. 2, for the original section.
 3. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".
 4. The word "or" at the end of cl. (a) and cl. (b) were omitted by s. 3 and Sch., *ibid*.
 5. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life" (*w.e.f.* 1-1-1956).
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78.

Act done pursuant to the judgment or order of Court.

78. Act done pursuant to the judgment or order of Court.--Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

79.

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

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

Illustration

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

80.

Accident in doing a lawful act.

80. Accident in doing a lawful act.--Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

81.

Act likely to cause harm, but done without criminal intent, and to prevent other harm.

81. Act likely to cause harm, but done without criminal intent, and to prevent other harm.--Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

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

Illustrations

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

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82.

Act of a child under seven years of age.

82. Act of a child under seven years of age.--Nothing is an offence which is done by a child under seven years of age.

83.

Act of a child above seven and under twelve of immature understanding.

83. Act of a child above seven and under twelve of immature understanding.--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.

84.

Act of a person of unsound mind.

84. Act of a person of unsound mind.--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.

85.

Act of a person incapable of judgment by reason of intoxication caused against his will.

85. Act of a person incapable of judgment by reason of intoxication caused against his will.--Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

86.

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

86. Offence requiring a particular intent or knowledge committed by one who is intoxicated.--In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

87.

Act not intended and not known to be likely to cause death or grievous

hurt, done by consent.

87. Act not intended and not known to be likely to cause death or grievous hurt, done by consent.--Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

88.

Act not intended to cause death, done by consent in good faith for person's benefit.

88. Act not intended to cause death, done by consent in good faith for person's benefit.--Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied to suffer that harm, or to take the risk of that harm.

Illustration

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under the painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

89.

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

89. Act done in good faith for benefit of child or insane person, by or by consent of guardian.--Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of

any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person: Provided-

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Provisos.

Provisos.-First.-That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly.-That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.-That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly.-That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, in as much as his object was the cure of the child.

90.

Consent known to be given under fear or misconception.

90. Consent known to be given under fear or misconception.--A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person.

Consent of insane person.-if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his

consent; or

Consent of child.

Consent of child.--unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

91.

Exclusion of acts which are offences independently of harm cause.

91. Exclusion of acts which are offences independently of harm cause.--The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is offence inexpediently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

92.

Act done in good faith for benefit of a person without consent.

92. Act done in good faith for benefit of a person without consent.--Nothing is an offence by reason of any harm which it may causes to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided-

Provisos.

117

Provisos.--First.--That this exception shall not extend to the intentional causing of death or the attempting to cause death;

Secondly.-That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.-That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.-That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations

(a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child, from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.-Mere pecuniary benefit is not benefit within the meaning of sections 88 89 and 92.

93.

Communication made in good faith.

93. Communication made in good faith.--No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration

A, a surgeon, in good faith, communicates to a patient his

opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

94.

Act to which a person is compelled by threats.

94. Act to which a person is compelled by threats.--Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.-A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

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Explanation 2.-A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

95.

Act causing slight harm.

95. Act causing slight harm.--Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Of the Right of Private Defence

96.

Things done in private defence.

96. Things done in private defence.--Nothing is an offence which is done in the exercise of the right of private defence.

97.

Right of private defence of the body and of property.

97. Right of private defence of the body and of property.--Every person has a right, subject to the restrictions contained in section 99, to defend--

First.--His own body, and the body of any other person, against any offence affecting the human body;

Secondly.--The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

98.

Right of private defence against the act of a person of unsound mind, etc.

98. Right of private defence against the act of a person of unsound mind, etc.--When an act which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations

(a) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But 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 is 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 have if Z were not acting under that misconception.

99.

Acts against which there is no right of private defence.

99. Acts against which there is no right of private defence.--There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to protection of the public authorities.

Extent to which the right may be exercised.

Extent to which the right may be exercised.--The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

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Explanation 1.-A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

Explanation 2.-A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

100.

When the right of private defence of the body extends to causing death.

100. When the right of private defence of the body extends to causing death.--The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:-

First.-Such an assault as may reasonably cause the

apprehension that death will otherwise be the consequence of such assault;

Secondly.-Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.-An assault with the intention of committing rape;

Fourthly.-An assault with the intention of gratifying unnatural lust;

Fifthly.-An assault with the intention of kidnapping or abducting;

Sixthly.-An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

101.

When such right extends to causing any harm other than death.

101. When such right extends to causing any harm other than death.--If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

102.

Commencement and continuance of the right of private defence of the body.

102. Commencement and continuance of the right of private defence of the body.--The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

103.

When the right of private defence of property extends to causing death.

103. When the right of private defence of property extends to causing death.--The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:-

First.-Robbery;

Secondly.-House-breaking by night;

Thirdly.-Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

Fourthly.-Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

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104.

When such right to causing any harm other than death.

104. When such right to causing any harm other than death.--If the offence, the committing of which, or the attempting to commit which occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

105.

Commencement and continuance of the right of private defence of property.

105. Commencement and continuance of the right of private defence of property.--The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery

continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

106.

Right of private defence against deadly assault when there is risk of harm to innocent person.

106. Right of private defence against deadly assault when there is risk of harm to innocent person.--If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

CHAPTER V

OF ABETMENT

CHAPTER V

OF ABETMENT

107.

Abetment of a thing.

107. Abetment of a thing.--A person abets the doing of a thing, who-

First.-Instigates any person to do that thing; or

Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.-A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily 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 authorized by a warrant from a Court of Justice to apprehend Z, 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.

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Explanation 2.-Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

108.

Abettor.

108. Abettor.--A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.-The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.-To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(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.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the

offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A concert with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

108A.

Abetment in India of offences outside India.

1*[108A. Abetment in India of offences outside India.--A person abets an offence within the meaning of this Code who, in 2*[India], abets the commission of any act without and beyond 2*[India] which would constitute an offence if committed in 2*[India].

Illustration

A, in 2*[India], instigates B, a foreigner in Goa, to commit a murder in Goa, A is guilty of abetting murder.]

109.

Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.--Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.--An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B

accepts the bribe. A has abetted the offence defined in section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

110.

Punishment of abetment if person abetted does act with different intention from that of abettor.

110. Punishment of abetment if person abetted does act with different intention from that of abettor.--Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

1. Added by Act 4 of 1898, s. 3.

2. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".

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111.

Liability of abettor when one act abetted and different act done.

111. Liability of abettor when one act abetted and different act done.--When an Act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Proviso.

Proviso.--Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustrations

(a) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

112.

Abettor when liable to cumulative punishment for act abetted and for act done.

112. Abettor when liable to cumulative punishment for act abetted and for act done.--If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitute a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration

A instigates B to resist by force a distress made by a public servant. B, in consequence resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress A will also be liable to punishment for each of the offences.

113.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

113. Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.--When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

114.

Abettor present when offence is committed.

114. Abettor present when offence is committed.--Whenever any person who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

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115.

Abetment of offence punishable with death or imprisonment for life-if offence is not committed.

115. Abetment of offence punishable with death or imprisonment for life--if offence not committed.--Whoever abets the commission of an offence punishable with death or 1*[imprisonment for life], shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine:

if act causing harm be done in consequence.

if act causing harm be done in consequence.--and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to

imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or 1*[imprisonment for life]. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and, if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116.

Abetment of offence punishable with imprisonment--if offence be not committed.

116. Abetment of offence punishable with imprisonment--if offence be not committed.--Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

if abettor or person abetted be a public servant whose duty it is to prevent offence.

if abettor or person abetted be a public servant whose duty it is to prevent offence.--and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

117.

Abetting commission of offence by the public or by more than ten persons.

117. Abetting commission of offence by the public or by more than ten persons.--Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

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Illustration

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

118.

Concealing design to commit offence punishable with death or imprisonment for life.

118. Concealing design to commit offence punishable with death or imprisonment for life.--Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or 1*[imprisonment for life],

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such design,

if offence be committed-if offence be not committed.

if offence be committed-if offence be not committed.--shall, if

that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence of not committed, with imprisonment of either description, for a term which may extend to three years; and in either case shall also be liable to fine.

Illustration

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

119.

Public servant concealing design to commit offence which it is his duty to prevent.

119. Public servant concealing design to commit offence which it is his duty to prevent.--Whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design.

if offence be committed.

if offence be committed.--shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

if offence be punishable with death, etc.

if offence be punishable with death, etc.--or, if the offence be punishable with death or 1*[imprisonment for life], with imprisonment of either description for a term which may extend to ten years;

if offence be not committed.

if offence be not committed.--or, if the offence be not

committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

Illustration

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. here A has by an illegal omission concealed the existence of B's design and is liable to punishment according to the provision of this section.

120.

Concealing design to commit offence punishable with imprisonment.

120. Concealing design to commit offence punishable with imprisonment.--Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

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if offence be committed-if offence be not committed.

if offence be committed-if offence be not committed--shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

CHAPTER VA

CRIMINAL CONSPIRACY

CRIMINAL CONSPIRACY

120A.

Definition of criminal conspiracy.

120A. Definition of criminal conspiracy.--When two or more persons agree to do, or cause to be done,-

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

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

120B.

Punishment of criminal conspiracy.

120B. Punishment of criminal conspiracy.--(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2*[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

CHAPTER VI

OF OFFENCES AGAINST THE STATE

CHAPTER VI

OF OFFENCES AGAINST THE STATE

121.

Waging, or attempting to wage war, or abetting waging of war, against the Government of India.

121. Waging, or attempting to wage war, or abetting waging of war, against the Government of India.--Whoever wages war against the 3*[Government of India], or attempts to wage such war, or abets the waging of such war, shall be punished with death, or 4*[imprisonment for life] 5*[and shall also be liable to fine].

6*[Illustration.]

7***A joins an insurrection against the 3*[Government of India]. A has committed the offence defined in this section.

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|-------|--|---|---|---|
| 8* | * | * | * | * |
| ----- | | | | |
| 1. | Ins. by Act 8 of 1913, s. 3. | | | |
| 2. | Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation". | | | |
| 3. | Subs. by the A. O. 1950, for "Queen". | | | |
| 4. | Subs. by Act of 1955 s. 117 and Sch., for "transportation for life". | | | |
| 5. | Subs. by Act 16 of 1921, s. 2, for "and shall forfeit all his property". | | | |
| 6. | Subs. by Act 36 of 1957, s. 3 and Sch. II, for "Illustrations". | | | |
| 7. | The brackets and letter "(a)" omitted by s. 3 and Sch. II, ibid. | | | |
| 8. | Illus tration (b) rep. by the A. O. 1950. | | | |

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121A.

Conspiracy to commit offences punishable by section 121.

1*[121A. Conspiracy to commit offences punishable by section 121.--Whoever within or without 2*[India] conspires to commit any of the offences punishable by section 121, 3*** or conspires to overawe, by means of criminal force or the show of criminal force, 4*[the Central Government or any State Government 5***], shall be punished with 6*[imprisonment for life], or with imprisonment of either description which may extend to ten years, 7*[and shall also be liable to fine].

Explanation.--To constitute a conspiracy under this section, it is

not necessary that any act or illegal omission shall take place in pursuance thereof.]

122.

Collecting arms, etc., with intention of waging war against the Government of India.

122. Collecting arms, etc., with intention of waging war against the Government of India.--Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the 8*[Government of India], shall be punished with 9*[imprisonment for life] or imprisonment of either description for a term not exceeding ten years, 10*[and shall also be liable to fine].

123.

Concealing with intent to facilitate design to wage war.

123. Concealing with intent to facilitate design to wage war.--Whoever, by any act, or by any illegal omission, conceals the existence of a design to wage war against the 8*[Government of India], intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

124.

Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power.

124. Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power.--Whoever, with the intention of inducing or compelling the 11*[President] of India, or 12*[Governor 13***] of any State, 14*** 15*** 16*** to exercise or refrain from exercising in any manner any of the lawful powers of such 17*[President or 12*[Governor 13*],

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such 17*[President or 12*** [Governor 13***],

1. S. 121A ins. by Act 27 of 1870, s. 4.

2. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".

3. The words "or to deprive the Queen of the sovereignty of the Provinces or of any part thereof" omitted by the A. O. 1950.
 4. Subs. by the A. O. 1937, for "the G. of I. or any L. G.".
 5. The words "or the Govt. of Burma" rep. by the A. O. 1948.
 6. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life or any shorter term".
 7. Ins. by Act 16 of 1921, s. 3.
 8. Subs. by the A. O. 1950, for "Queen".
 9. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".
 10. Subs. by Act 16 of 1921, s. 2, for "and shall forfeit all his property".
 11. Subs. by the A. O. 1950, for "Governor General".
 12. Subs. by Act 3 of 1951, s. 3 and Sch., for "Governor".
 13. The words "or Rajpramukh" omitted by the Adaptation of Laws (No. 2) Order, 1956.
 14. The words "or a Lieutenant-Governor" rep. by the A. O. 1937.
 15. The words "or a Member of the Council of the Governor General of India" rep. by the A. O. 1948.
 16. The words "or of the Council of any Presidency" rep. by the A. O. 1937.
 17. The original words "Governor General, Governor, Lieutenant-Governor or Member of Council" have successively been amended by the A.O. 1937, A. O. 1948 and A. O. 1950 to read as above.
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shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

124A.

Sedition.

1*[124A. Sedition.--Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to

excite disaffection towards, 2***the Government established by law in 3*[India], a 4***shall be punished with 5*[imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.-The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.-Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.-Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]

125.

Waging war against any Asiatic Power in alliance with the Government of India.

125. Waging war against any Asiatic Power in alliance with the Government of India.--Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the 6*[Government of India] or attempts to wage such war, or abets the waging of such war, shall be punished with 7*[imprisonment for life], to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

126.

Committing depredation on territories of Power at peace with the Government of India.

126. Committing depredation on territories of Power at peace with the Government of India.--Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the 6*[Government of India], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

127.

Receiving property taken by war or depredation mentioned in sections 125 and 126.

127. Receiving property taken by war or depredation mentioned in sections 125 and 126.--Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

128.

Public servant voluntarily allowing prisoner of state or war to escape.

128. Public servant voluntarily allowing prisoner of state or war to escape.--Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with 7*[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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1. Subs. by Act 4 of 1898, s. 4, for the original s. 124A which had been ins. by Act 27 of 1870, s. 5.
 2. The words "Her Majesty or" rep. by the A.O. 1950. The words "or the Crown Representative" ins. after the word "Majesty" by the A.O. 1937 were rep. by the A.O. 1948.
 3. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".
 4. The words "or British Burma" ins. by the A.O. 1937 rep. by the A.O. 1948.
 5. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life or any shorter term".
 6. Subs. by the A.O. 1950, for "Queen".
 7. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

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129.

Public servant negligently suffering such prisoner to escape.

129. Public servant negligently suffering such prisoner to escape.--Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

130.

Aiding escape of, rescuing or harbouring such prisoner.

130. Aiding escape of, rescuing or harbouring such prisoner.--Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner shall be punished with 1*[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.

Explanation.-A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in 2*[India], is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII

OF OFFENCES RELATING TO THE ARMY, [NAVY AND AIR FORCE]

CHAPTER VII

OF OFFENCES RELATING TO THE ARMY, 3*[NAVY AND AIR FORCE]

131.

Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty.

131. Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty.--Whoever abets the committing of mutiny by an officer, soldier, 4*[sailor or airman], in the Army, 5*[Navy or Air Force] of the 6*[Government of India] or attempts to seduce any such officer, soldier, 4*[sailor or airman] from his allegiance or his duty, shall be punished with 1*[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.

7*[Explanation.-In this section the words "officer", 8*["soldier", 9*["sailor"] and "airman"] include any person subject to the 10*[Army Act, 11*[the Army Act, 1950 (46 of 1950)], 9*[the Naval Discipline Act, 12***the Indian Navy (Discipline) Act, 1934 (34 of 1934)] 13*[the Air Force Act or 14*[the Air Force Act, 1950 (45 of 1950)]], as the case may be].]

1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for

- life".
2. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".
 3. Subs. by Act 10 of 1927, s. 2 and Sch. I, for "and Navy".
 4. Subs. by s. 2 and Sch. I, *ibid.*, for "or sailor".
 5. Subs. by s. 2 and sch. I, *ibid.*, for "or Navy".
 6. Subs. by the A.O. 1950 for "Queen".
 7. Ins. by Act 27 of 1870, s. 6.
 8. Subs. by Act 10 of 1927, s. 2 and Sch. I, for "and soldier".
 9. Ins. by Act 25 of 1934, s. 2 and Sch.
 10. Subs. by Act 10 of 1927, s. 2 and Sch. I, for "Articles of War for the better government of Her Majesty's Army, or to the Articles of War contained in Act No. 5 of 1869".
 11. Subs. by Act 3 of 1951, s. 3 and Sch., for "the Indian Army Act, 1911".
 12. The words "or that Act as modified by" were rep. by the A.O. 1950.
 13. Subs. by Act 14 of 1932, s. 130 and Sch., for "or the Air Force Act".
 14. Subs. by Act 3 of 1951, s.3 and Sch., for "the Indian Air Force Act, 1932".
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132.

Abetment of mutiny, if mutiny is committed in consequence thereof.

132. Abetment of mutiny, if mutiny is committed in consequence thereof.--Whoever abets the committing of mutiny by an officer, soldier, 1*[sailor or airman], in the Army, 2*[Navy or Air Force] of the 3*[Government of India], shall, if mutiny be committed in consequence of that abetment, be punished with death or with 4*[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

133.

Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office.

133. Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office.--Whoever abets an assault by an officer, soldier, 1*[sailor or airman], in the Army, 2*[Navy or Air Force] of the 3*[Government of India], on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

134.

Abetment of such assault, if the assault committed.

134. Abetment of such assault, if the assault committed.--Whoever abets an assault by an officer, soldier, 1*[sailor or airman], in the Army, 2*[Navy or Air Force] of the 3*[Government of India], on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

135.

Abetment of desertion of soldier, sailor or airman.

135. Abetment of desertion of soldier, sailor or airman.--Whoever, abets the desertion of any officer, soldier, 1*[sailor or airman], in the Army, 2*[Navy or Air Force] of the 3*[Government of India], shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

136.

Harbouring deserter.

136. Harbouring deserter.--Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, 1*[sailor or airman], in the Army, 2*[Navy or Air Force] of the 3*[Government of India], has deserted, harbours such officer, soldier, 1*[sailor or airman], shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Exception.--This provision does not extend to the case in which the harbour is given by a wife to her husband.

137.

Deserter concealed on board merchant vessel through negligence of master.

137. Deserter concealed on board merchant vessel through negligence of master.--The master or person in charge of a merchant vessel, on board of which any deserter from the Army, 2*[Navy or Air Force] of the 3*[Government of India] is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding

five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

138.

Abetment of act of insubordination by soldier, sailor or airman.

138. Abetment of act of insubordination by soldier, sailor or airman.—Whoever abets what he knows to be an act of insubordination by an officer, soldier, 1*[sailor or airman], in the Army, 2*[Navy or air Force], of the 3*[Government of India], shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

138A.

[Repealed.]

138A. [Application of foregoing sections to the Indian Marine Service.] Rep. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

1. Subs. by Act 10 of 1927, s. 2 and Sch. I, for "or sailor".
2. Subs. by s. 2 and Sch. I, *ibid.*, for "or Navy".
3. Subs. by the A.O. 1950, for "Queen".
4. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

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139.

Persons subject to certain Acts.

139. Persons subject to certain Acts.—No person subject to 1*[the Army Act, 2*[the Army Act, 1950 (46 of 1950)], the Naval Discipline Act, 3*[4***the Indian Navy (Discipline) Act, 1934 (34 of 1934)], 5*[the Air Force Act or 6*[the Air Force Act, 1950 (45 of 1950)]]], is subject to punishment under this Code for any of the offences defined in this Chapter.

140.

Wearing garb or carrying token used by soldier, sailor or airman.

140. Wearing garb or carrying token used by soldier, sailor or airman.--Whoever, not being a soldier, 7*[sailor or airman] in the Military, 8*[Naval or Air] service of the 9*[Government of India], wears any garb or carries any token resembling any garb or token used by such a soldier, 7*[sailor or airman] with the intention that it may be believed that he is such a soldier, 7*[sailor or airman], 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.

CHAPTER VIII

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

CHAPTER VIII

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY

141.

Unlawful assembly.

141. Unlawful assembly.--An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is--

First.--To overawe by criminal force, or show of criminal force, 10*[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

Second.--To resist the execution of any law, or of any legal process; or

Third.--To commit any mischief or criminal trespass, or other offence; or

Fourth.--By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.--By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.--An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

142.

Being member of unlawful assembly.

142. Being member of unlawful assembly.--Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

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1. Subs. by Act 10 of 1927, s. 2 and Sch. I, for "any Articles of War for the Army or Navy of the Queen, or for any part of such Army or Navy".
 2. Subs. by Act 3 of 1951, s. 3 and Sch., for "the Indian Army Act, 1911".
 3. Ins. by Act 35 of 1934, s. 2 and Sch.
 4. The words "or that Act as modified by" rep. by the A.O. 1950.
 5. Subs. by Act 14 of 1932, s. 130 and Sch., for "or the Air Force Act".
 6. Subs. by Act 3 of 1951, s. 3 and Sch., for "the Indian Air Force Act, 1932".
 7. Ins. by Act 10 of 1927, s. 2 and Sch. I.
 8. Subs. by s. 2 and Sch. I, *ibid.*, for "or Naval".
 9. Subs. by the A.O. 1950, for "Queen".
 10. Subs., *ibid.*, for "the Central or any Provincial Government or Legislature".
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143.

Punishment.

143. Punishment.--Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

144.

Joining unlawful assembly armed with deadly weapon.

144. Joining unlawful assembly armed with deadly weapon.--Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

145.

Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.

145. Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.--Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extent to two years, or with fine, or with both.

146.

Rioting.

146. Rioting.--Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

147.

Punishment for rioting.

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

148.

Rioting, armed with deadly weapon.

148. Rioting, armed with deadly weapon.--Whoever is guilty of rioting, being armed with a 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 three years, or with fine, or with both.

149.

Every member of unlawful assembly guilty of offence committed in prosecution of common object.

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

150.

Hiring, or conniving at hiring, of persons to join unlawful assembly.

150. Hiring, or conniving at hiring, of persons to join unlawful assembly.--Whoever hires or engages, or employes, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

151.

Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.

151. Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.--Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.--If the assembly is an unlawful assembly within the

meaning of section 141, the offender will be punishable under section 145.

152.

Assaulting or obstructing public servant when suppressing riot, etc.

152. Assaulting or obstructing public servant when suppressing riot, etc.--Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, 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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153.

Want only giving provocation with intent to cause riot-if rioting be committed:if not committed.

153. Want only giving provocation with intent to cause riot--if rioting be committed: if not committed.--Whoever malignantly, or wantonly by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both, and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

153A.

Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.

1*[153A. Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.--(1) Whoever--

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever,

disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, 2*[or]

2*[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,]

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

(2) Offence committed in place of worship, etc.--Whoever commits an offence specified in sub-section (1) 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.]

153B.

Imputations, assertions prejudicial to national integration.

2*[153B. Imputations, assertions prejudicial to national integration.--(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,-

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons by reason of their being members of any religious, racial, language or regional group or caste or community be denied, or deprived of their rights as citizens of India, or

1. Subs. by Act 35 of 1969, s. 2, for s. 153A.

2. Ins. by Act 31 of 1972, s. 2.

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(c) makes or publishes and assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,

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

(2) Whoever commits an offence specified in sub-section (1), 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].

154.

Owner or occupier of land on which an unlawful assembly is held.

154. Owner or occupier of land on which an unlawful assembly is held.--Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

155.

Liability of person for whose benefit riot is committed.

155. Liability of person for whose benefit riot is committed.--Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such

riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

156.

Liability of agent of owner or occupier for whose benefit riot is committed.

156. Liability of agent of owner or occupier for whose benefit riot is committed.--Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

157.

Harbouring persons hired for an unlawful assembly.

157. Harbouring persons hired for an unlawful assembly.--Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

158.

Being hired to take part in an unlawful assembly or riot;

158. Being hired to take part in an unlawful assembly or riot;--Whoever is engaged, or hired, or offers or attempts to be hired or

engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

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or to go armed.

or to go armed.--and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any 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 two years, or with fine, or with both.

159.

Affray.

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

160.

Punishment for committing affray.

160. Punishment for committing affray.--Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

CHAPTER IX

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

CHAPTER IX

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

161 to 165A.

161 to 165A.Rep. by the Prevention of Corruption Act, 1988 (49 of 1988), s. 31.

166.

Public servant disobeying law, with intent to cause injury to any person.

166. Public servant disobeying law, with intent to cause injury to any person.--Whoever, being a public servant, knowingly disobeys any direction of the 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.

IIIustration

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.

167.

Public servant framing an incorrect document with intent to cause injury.

167. Public servant framing an 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, frames or translates that document 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.

168.

Public servant unlawfully engaging in trade.

168. Public servant unlawfully engaging in trade.--Whoever, being a public servant, and being legally bound as such public servant not to engages 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.

169.

Public servant unlawfully buying or bidding for property.

169. Public servant unlawfully buying or bidding for property.--Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

170.

Personating a public servant.

170. Personating a public servant.--Whoever pretends to hold any particular office as public servant, knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, 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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171.

Wearing garb or carrying token used by public servant with fraudulent intent.

171. Wearing garb or carrying token used by public servant with fraudulent intent.--Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, 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.

CHAPTER IXA

OF OFFENCES RELATING TO ELECTIONS

OF OFFENCES RELATING TO ELECTIONS

171A.

"Candidate", "Electoral right" defined.

171A. "Candidate", "Electoral right" defined.--For the purposes of this Chapter-

2*[(a) "candidate" means a person who has been nominated as a candidate at any election;]

(b) "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.

171B.

Bribery.

171B. Bribery.--(1) Whoever-

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

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

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

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who 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 have accepted the gratification as a reward.

171C.

Undue influence at elections.

171C. 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 an election.

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

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

1. Chapter IXA was ins. by Act 39 of 1920, s. 2.

2. Subs. by Act 40 of 1975, s. 9. for cl. (a), (w.e.f. 6-8-1975).

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(3) A declaration of public policy or a promise of public action, or the mere exercise or a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

171D.

Personation at elections.

171D. Personation at elections.--Whoever at an election applies for a voting paper on votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

171E.

Punishment for bribery.

171E. Punishment for bribery.--Whoever commits the offence of bribery shall be punished with imprisonment of either description for

a term which may extend to one year, or with fine, or with both:

Provided that bribery by treating shall be punished with fine only.

Explanation.--"Treating" means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

171F.

Punishment for undue influence or personation at an election.

171F. Punishment for undue influence or personation at an election.--Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

171G.

False statement in connection with an election.

171G. False statement in connection with an election.--Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

171H.

Illegal payments in connection with an election.

171H. Illegal payments in connection with an election.--Whoever without the general or special authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees :

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

171-I.

Failure to keep election accounts.

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

CHAPTER X

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

CHAPTER X

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

172.

Absconding to avoid service of summons or other proceeding.

172. Absconding to avoid service of summons or other proceeding.--Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons or notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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173.

Preventing service of summons or other proceeding, or preventing publication thereof.

173. Preventing service of summons or other proceeding, or preventing publication thereof.--Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally

competent, such public servant, to issue such summons, notice or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

174.

Non-attendance in obedience to an order from public servant.

174. Non-attendance in obedience to an order from public servant.--Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A, being legally bound to appear before the 1*[High Court] at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b) A, being legally bound to appear before a 2*[District Judge], as a witness, in obedience to a summons issued by that

2*[District Judge] intentionally omits to appear. A has committed the offence defined in this section.

175.

Omission to produce document to public servant by person legally bound to produce it.

175. Omission to produce document to public servant by person legally bound to produce it.--Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

1. Subs. by the A.O. 1950, for "Supreme Court".

2. Subs. ibid., for "Zila Judge".

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or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a 1*[District court], intentionally omits to produce the same. A has committed the offence defined in this section.

176.

Omission to give notice or information to public servant by person legally bound to give it.

176. Omission to give notice or information to public servant by person legally bound to give it.--Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which

may extend to six months, or with fine which may extend to one thousand rupees, or with both;

2*[or, if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure, 1898 (5 of 1898), with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

177.

Furnishing false information.

177. Furnishing false information.--Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under clause 5, section VII, 3*Regulation III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

1. Subs. by the A.O. 1950, for "Zila Court".

2. Ins. by Act 22 of 1939, s. 2.

3. Rep. by Act 17 of 1862.

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1*[Explanation.--In section 176 and in this section the word

"offence" includes any act committed at any place out of 2*[India], which, if committed in 2*[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act.]

178.

Refusing oath or affirmation when duly required by public servant to make it.

178. Refusing oath or affirmation when duly required by public servant to make it.--Whoever refuses to bind himself by an oath 3*[or affirmation] to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

179.

Refusing to answer public servant authorized to question.

179. Refusing to answer public servant authorized to question.--Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

180.

Refusing to sign statement.

180. Refusing to sign statement.--Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

181.

False statement on oath or affirmation to public servant or person

authorized to administer an oath or affirmation.

181. False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation.--Whoever, being legally bound by an oath 3*[or affirmation] to state the truth on any subject to any public servant or other person authorized by law to administer such oath 3*[or affirmation], makes, to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

182.

False information, with intent to cause public servant to use his lawful power to the injury of another person.

4*[182. False information, with intent to cause public servant to use his lawful power to the injury of another person.--Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant-

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

1. Ins. by Act 3 of 1894, s. 5

2. Subs. by Act 3 of 1951, s. 3 and sch. for "the States".

3. Ins. by Act 10 of 1873, s. 15.

4. Subs. by Act 3 of 1895, s. 1, for the original s. 182.

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Illustrations

(a) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.]

183.

Resistance to the taking of property by the lawful authority of a public servant.

183. Resistance to the taking of property by the lawful authority of a public servant.--Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

184.

Obstructing sale of property offered for sale by authority of public servant.

184. Obstructing sale of property offered for sale by authority of public servant.--Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

185.

Illegal purchase or bid for property offered for sale by authority of public servant.

185. Illegal purchase or bid for property offered for sale by authority of public servant.--Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids

for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

186.

Obstructing public servant in discharge of public functions.

186. Obstructing public servant in discharge of public functions.--Whoever voluntarily obstructs any public servant in the discharge of his public functions, 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.

187.

Omission to assist public servant when bound by law to give assistance.

187. Omission to assist public servant when bound by law to give assistance.--Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

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188.

Disobedience to order duly promulgated by public servant.

188. Disobedience to order duly promulgated by public servant.--Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain

from a certain act, or to take certain order with certain property in his possession or under his management. disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both:

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

189.

Threat of injury to public servant.

189. Threat of injury to public servant.—Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

190.

Threat of injury to induce person to refrain from applying for protection to public servant.

190. Threat of injury to induce person to refrain from applying for protection to public servant.—Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to

give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XI

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

191.

Giving false evidence.

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

Explanation 1.-A statement is within the meaning of this section whether it is made verbally or otherwise.

Explanation 2.-A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

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Illustrations

(a) A, in support of a just claim which B has against Z for one thousand 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 the 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.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document, which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

192.

Fabricating false evidence.

192. Fabricating false evidence.--Whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding is said "to fabricate false evidence".

Illustrations

(a) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

193.

Punishment for false evidence.

193. Punishment for false evidence.--Whoever intentionally gives false evidence in any of a judicial proceeding, or fabricates false

evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, 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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Explanation 1.-A trial before a Court-martial 1****is a judicial proceeding.

Explanation 2.-An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A as given false evidence.

Explanation 3.-An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

194.

Giving or fabricating false evidence with intent to procure conviction of capital offence;

194. Giving or fabricating false evidence with intent to procure conviction of capital offence.--Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital 2*[by the laws for the time being in force in 3*[India]] shall be punished with 4*[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

If innocent person be thereby convicted and executed.

If innocent person be thereby convicted and executed.--and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

195.

Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.

195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.--Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which 2*[by the law for the time being in force in 3*[India]] is not capital, but punishable with 4*[imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is 4*[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to 5*[imprisonment for life] or imprisonment, with or without fine.

196.

Using evidence known to be false.

196. Using evidence known to be false.--Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

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1. The words "or before a Military Court of Request" were omitted by the Cantonments Act, 1889 (13 of 1889).
 2. Subs. by the A.O. 1948, for "by the law of British India or England".
 3. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".

4. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

5. Subs. by s. 117 and Sch., ibid., for "such transportation".

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197.

Issuing or signing false certificate.

197. Issuing or signing false certificate.--Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

198.

Using as true a certificate known to be false.

198. Using as true a certificate known to be false.--Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

199.

False statement made in declaration which is by law receivable as evidence.

199. False statement made in declaration which is by law receivable as evidence.--Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

200.

Using as true such declaration knowing it to be false.

200. Using as true such declaration knowing it to be false.--Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.--A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

201.

Causing disappearance of evidence of offence, or giving false information to screen offender.

201. Causing disappearance of evidence of offence, or giving false information to screen offender.--Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

if a capital offence;

if a capital offence.--shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life;

if punishable with imprisonment for life.--and if the offence is punishable with 1*[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.

if punishable with less than ten years' imprisonment.--and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

202.

Intentional omission to give information of offence by person bound to inform.

202. Intentional omission to give information of offence by person bound to inform.--Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

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203.

Giving false information respecting an offence committed.

203. Giving false information respecting an offence committed.--Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

1*[Explanation.--In sections 201 and 202 and in this section the word "offence" includes any act committed at any place out of 2*[India], which, if committed in 2*[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.]

204.

Destruction of document to prevent its production as evidence.

204. Destruction of document to prevent its production as evidence.--Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or

obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

205.

False personation for purpose of act or proceeding in suit or prosecution.

205. False personation for purpose of act or proceeding in suit or prosecution.--Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

206.

Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.

206. Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.--Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

207.

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

207. Fraudulent claim to property to prevent its seizure as forfeited or in execution.--Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practices any

deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

1. Ins. by Act 3 of 1894, s. 7.

2. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".

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208.

Fraudulently suffering decree for sum not due.

208. Fraudulently suffering decree for sum not due.--Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

209.

Dishonestly making false claim in Court.

209. Dishonesty making false claim in Court.--Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

210.

Fraudulently obtaining decree for sum not due.

210. Fraudulently obtaining decree for sum not due.--Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

211.

False charge of offence made with intent to injure.

211. False charge of offence made with intent to injure.--Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death 1*[imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

212.

Harbouring offender-if a capital offence, if punishable with imprisonment for life, or with imprisonment.

212. Harbouring offender.--Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment,

if a capital offence;

if a capital offence;--shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.

if punishable with imprisonment for life, or with imprisonment.--and if the offence is punishable with 1*[imprisonment for life], or with imprisonment which may extend to ten years, 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 is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

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1*["Offence" in this section includes any act committed at any place out of 2*[India], which, if committed in 2*[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in 2*[India].]

Exception.--This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to 3*[imprisonment for life], A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

213.

Taking gift, etc., to screen an offender from punishment--if a capital offence; if punishable with imprisonment for life, or with imprisonment.

213. Taking gift, etc., to screen an offender from punishment--Whoever accepts or attempts to obtain, or agrees to accept, any gratification

for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

if a capital offence;

if a capital offence;-shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.

if punishable with imprisonment for life, or with imprisonment.--and if the offence is punishable with 3*[imprisonment for life], or with imprisonment which may extend to ten years, 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 is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

214.

Offering gift or restoration of property in consideration of screening offender-if a capital offence; if punishable with imprisonment for life, or with imprisonment.

214. Offering gift or restoration of property in consideration of screening offender.--Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or 4*[restores or causes the restoration of] any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

if a capital offence;

if a capital offence;-shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.

if punishable with imprisonment for life, or with imprisonment.-
and if the offence is punishable with 3*[imprisonment for life] or
with imprisonment which may extend to ten years, 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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1. Ins. by Act 3 of 1894, s. 7.
 2. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".
 3. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".
 4. Subs. by Act 42 of 1953, s. 4 and the Third Sch., for "to restore or cause the restoration of".
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and if the offence is punishable with imprisonment not extending
to ten years, shall be punished with imprisonment of the description
provided for the offence for a term which may extend to one-fourth
part of the longest term of imprisonment provided for the offence, or
with fine, or with both.

1*[Exception.-The provisions of sections 213 and 214 do not
extend to any case in which the offence may lawfully be compounded.]

2* * * *

215.

Taking gift to help to recover stolen property, etc.

215. Taking gift to help to recover stolen property, etc.--
Whoever takes or agrees or consents to take any gratification under
pretence or on account of helping any person to recover any movable
property of which he shall have been deprived by any offence
punishable under this Code, shall, unless he uses all means in his
power to cause the offender to be apprehended and convicted of the
offence, be punished with imprisonment of either description for a
term which may extend to two years, or with fine, or with both.

216.

Harbouring offender who has escaped from custody or whose apprehension
has been ordered-if a capital offence; if punishable with
imprisonment for life, or with imprisonment.

216. Harboursing offender who has escaped from custody or whose apprehension has been ordered.--Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody,

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if a capital offence;

if a capital offence;--if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.

if punishable with imprisonment for life, or with imprisonment.--if the offence is punishable with 3*[imprisonment for life] or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence or with fine, or with both.

4*["Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of 5*[India], which, if he had been guilty of it in 5*[India], would have been punishable as an offence, and for which he is, under any law relating to extradition, 6*or otherwise liable to be apprehended or detained in custody in 5*[India], and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in 5*[India].]

Exception.--The provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

216A.

Penalty for harbouring robbers or dacoits.

7*[216A. Penalty for harbouring robbers or dacoits.--Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity,

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1. Subs. by Act 8 of 1882, s. 6, for the original Exception.
 2. Illustration rep. by Act 10 of 1882, s. 2 and Sch. I.
 3. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".
 4. Ins. by Act 10 of 1886, s. 23.
 5. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".
 6. The words "or under the Fugitive Offenders Act, 1881" omitted by s. 3 and Sch., *ibid.*
 7. Ins. by Act 3 of 1894, s. 8.
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harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation.--For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without 1*[India].

Exception.--This provision does not extend to the case in which the harbour is by the husband or wife of the offender.]

216B.

[Repealed.]

2*[216B. Definition of "harbour" in sections 212, 216 and 216A.] Rep. by the Indian Penal Code (Amendment) Act, 1942 (8 of 1942), s. 3.

217.

Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.

217. Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.--Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to

save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

218.

Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.--Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

219.

Public servant in judicial proceeding corruptly making report, etc., contrary to law.

219. Public servant in judicial proceeding corruptly making report, etc., contrary to law.--Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

220.

Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

220. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.--Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority,

knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

221.

Intentional omission to apprehend on the part of public servant bound to apprehend.

221. Intentional omission to apprehend on the part of public servant bound to apprehend.--Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:-

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

1. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".

2. Ins. by Act 3 of 1894, s. 8.

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with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with 1*[imprisonment for life] or imprisonment for a term which may extend to ten years; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

222.

Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.

222. Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.--Whoever, being a public servant, legally bound as such

public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence 2*[or lawfully committed to custody], intentionally omits to apprehend such person, or intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:-

with 1*[imprisonment for life] or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who, ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to 1*[imprisonment for life] 3*** 4*** 5*** 6*** or imprisonment for a term of ten years or upwards; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years 2*[or if the person was lawfully committed to custody].

223.

Escape from confinement or custody negligently suffered by public servant.

223. Escape from confinement or custody negligently suffered by public servant.--Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence 2*[or lawfully committed to custody], negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

224.

Resistance or obstruction by a person to his lawful apprehension.

224. Resistance or obstruction by a person to his lawful apprehension.--Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.--The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

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1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".
 2. Ins. by Act 27 of 1870, s. 8.
 3. The words "or penal servitude for life" omitted by Act 17 of 1949, s. 2.
 4. The words "or to" omitted by Act 36 of 1957, s. 3 and Sch. II.
 5. The word "transportation" omitted by Act 26 of 1955, s. 117 and Sch.
 6. The words "or penal servitude" omitted by Act 17 of 1949, s. 2.
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225.

Resistance or obstruction to lawful apprehension of another person.

225. Resistance or obstruction to lawful apprehension of another person.--Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with 1*[imprisonment for life] or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to 1*[imprisonment for life], 2*** 3*** 4*** or imprisonment, for a term of ten years 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;

or, if the person to be apprehended or rescued, or attempted to

be rescued, is under sentence of death, shall be punished with 1[imprisonment for life] or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

225A.

Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise, provided for.

5*[225A. Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise, provided for.--Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished--

(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine or with both; and

(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

225B.

Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.

225B. Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.--Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.]

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1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".
 2. The words "or to" omitted by Act 36 of 1957, s. 3 and Sch. II.
 3. The word "transportation" omitted by Act 26 of 1955, s. 117 and Sch.
 4. The words "penal servitude" rep. by Act 17 of 1949, s. 2.
 5. Ss. 225A and 225B were subs. by Act 10 of 1886, s. 24(1), for s. 225A, which had been ins. by Act 27 of 1870, s.9.
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226.

[Repealed.]

226. [Unlawful return from transportation.] Rep. by the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955), s. 117 and Sch.

227.

Violation of condition of remission of punishment.

227. Violation of condition of remission of punishment.--Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

228.

Intentional insult or interruption to public servant sitting in judicial proceeding.

228. Intentional insult or interruption to public servant sitting in judicial proceeding.--Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

228A.

Disclosure of identity of the victim of certain offences, etc.

1*[228A. Disclosure of identity of the victim of certain offences, etc.--(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D is alleged or found to have been committed (hereafter in this section referred to as the victim) 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) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is-

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next-of-kin of the victim:

Provided that no such authorisation shall be given by the next-of-kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

Explanation.-For the purposes of this sub-section, "recognised welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation.-The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.]

229.

Personation of a juror or assessor.

229. Personation of a juror or assessor.--Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a jurymen or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

1. Ins. by Act 43 of 1983, s. 2 (w.e.f. 25-12-1983).

CHAPTER XII

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

CHAPTER XII

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

230.

"Coin" defined.

230. "Coin" defined.--1*[Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.]

Indian coin

Indian coin--2*[Indian coin is metal stamped and issued by the authority of the Government of India in order to be used as money; and metal which has been so stamped and issued shall continue to be Indian coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.]

Illustrations

- (a) Cowries are not coin.
- (b) Lumps of unstamped copper, though used as money, are not coin.
- (c) Medals are not coin, inasmuch as they are not intended to be used as money.
- (d) The coin denominated as the Company's rupee is 3[Indian coin].
- 4*(e) The "Farukhabad rupee", which was formerly used as money under the authority of the Government of India, is 3[Indian coin] although it is no longer so used.]

231.

Counterfeiting coin.

231. Counterfeiting coin.--Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, 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.--A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

232.

Counterfeiting Indian coin.

232. Counterfeiting Indian coin.--Whoever counterfeits, or knowingly performs any part of the process of counterfeiting 3*[Indian coin], shall be punished with 5*[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.

233.

Making or selling instrument for counterfeiting coin.

233. Making or selling instrument for counterfeiting coin.--Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extended to three years, and shall also be liable to fine.

234.

Making or selling instrument for counterfeiting Indian coin.

234. Making or selling instrument for counterfeiting Indian coin.--Whoever makes or mends, or performs any part of the process of making or mending or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting 3[Indian coin], 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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1. Subs. by Act 19 of 1872, s. 1, for the original paragraph.
 2. Subs. by the A.O. 1950, for the former paragraph.
 3. Subs., *ibid.*, for "the Queen's coin".
 4. Ins. by Act 6 of 1896, s. 1(2).
 5. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".
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235.

Possession of instrument or material for the purpose of using the same for counterfeiting coin.

235. Possession of instrument or material for the purpose of using the same for counterfeiting coin.--Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended 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;

if Indian coin.

if Indian coin.--and if the coin to be counterfeited is 1*[Indian coin], shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

236.

Abetting in India the counterfeiting out of India of coin.

236. Abetting in India the counterfeiting out of India of coin.--Whoever, being within 2*[India] abets the counterfeiting of coin out of 2*[India] shall be punished in the same manner as if he abetted the counterfeiting of such coin within 2*[India].

237.

Import or export of counterfeit coin.

237. Import or export of counterfeit coin.--Whoever imports into 2*[India], or exports therefrom, any counterfeit coin, knowingly or

having reason to believe that the same is 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.

238.

Import or export of counterfeits of the Indian coin.

238. Import or export of counterfeits of the Indian coin.--Whoever imports into 2*[India], or exports therefrom, any counterfeit coin, which he knows or has reason to believe to be a counterfeit of 1*[Indian coin], shall be punished with 3*[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.

239.

Delivery of coin possessed with knowledge that it is counterfeit.

239. Delivery of coin possessed with knowledge that it is counterfeit.--Whoever, having any counterfeit coin, which at the time when he became possessed of it, he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any persons or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

240.

Delivery of Indian coin, possessed with knowledge that it is counterfeit.

240. Delivery of Indian coin, possessed with knowledge that it is counterfeit.--Whoever having any counterfeit coin, which is a counterfeit of 1*[Indian coin], and which, at the time when he became possessed of it, he knew to be a counterfeit of 1*[Indian coin], fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

241.

Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.

241. Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.--Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

1. Subs. by the A.O. 1950, for "the Queen's coin".
 2. Subs. by Act 3 of 1951 s. 3 and Sch., for "the States".
 3. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".
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Illustration

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

242.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

242. Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.--Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was 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.

243.

Possession of Indian coin by person who knew it to be counterfeit when he became possessed thereof.

243. Possession of Indian coin by person who knew it to be counterfeit when he became possessed thereof.--Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of 1*[Indian coin], having known at the time when he became possessed of it that it was 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.

244.

Person employed in mint causing coin to be of different weight or composition from that fixed by law.

244. Person employed in mint causing coin to be of different weight or composition from that fixed by law.--Whoever, being employed in any mint lawfully established in 2*[India], does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

245.

Unlawfully taking coining instrument from mint.

245. Unlawfully taking coining instrument from mint.--Whoever, without lawful authority, takes out of any mint, lawfully established in 2[India], any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

246.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

246. Fraudulently or dishonestly diminishing weight or altering composition of coin.--Whoever, fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.--A person who scoops out part of the coin and puts anything else into the cavity alters the composition of the coin.

247.

Fraudulently or dishonestly diminishing weight or altering composition of Indian coin.

247. Fraudulently or dishonestly diminishing weight or altering composition of Indian coin.--Whoever fraudulently or dishonestly performs on 3*[any Indian coin] any operation which diminishes the weight or alters the composition of that coin, 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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1. Subs. by the A. O. 1950, for "the Queen's coin".
 2. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".
 3. Subs. by the A. O. 1950, for "any of the Queen's coin".
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248.

Altering appearance of coin with intent that it shall pass as coin of different description.

248. Altering appearance of coin with intent that it shall pass as coin of different description.--Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

249.

Altering appearance of Indian coin with intent that it shall pass as coin of different description.

249. Altering appearance of Indian coin with intent that it shall pass as coin of different description.--Whoever performs on 1*[any Indian coin] any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

250.

Delivery of coin possessed with knowledge that it is altered.

250. Delivery of coin possessed with knowledge that it is altered.--Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

251.

Delivery of Indian coin, possessed with knowledge that it is altered.

251. Delivery of Indian coin, possessed with knowledge that it is altered.--Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

252.

Possession of coin by person who knew it to be altered when he became possessed thereof.

252. Possession of coin by person who knew it to be altered when he became possessed thereof.--Whoever fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

253.

Possession of Indian coin by person who knew it to be altered when he became possessed thereof.

253. Possession of Indian coin by person who knew it to be altered when he became possessed thereof.--Whoever fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed having known at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

254.

Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered.

254. Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered.--Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two

1. Subs. by the A. O. 1950, for "any of the Queen's coin".

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years or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

255.

Counterfeiting Government stamp.

255. Counterfeiting Government stamp.--Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue shall be punished with 1*[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.

Explanation.--A person commits this offence who counterfeits by causing a genuine stamps of one denomination to appear like a genuine stamp of a different denomination.

256.

Having possession of instrument or material for counterfeiting Government stamp.

256. Having possession of instrument or material for counterfeiting Government stamp.--Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

257.

Making or selling instrument for counterfeiting Government stamp.

257. Making or selling instrument for counterfeiting Government stamp.--Whoever makes or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

258.

Sale of counterfeit Government stamp.

258. Sale of counterfeit Government stamp.--Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

259.

Having possession of counterfeit Government stamp.

259. Having possession of counterfeit Government stamp.--Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it

may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

260.

Using as genuine a Government stamp known to be counterfeit.

260. Using as genuine a Government stamp known to be counterfeit.--Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

261.

Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.

261. Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.--Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

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262.

Using Government stamp known to have been before used.

262. Using Government stamp known to have been before used.--Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

263.

Erasure of mark denoting that stamp has been used.

263. Erasure of mark denoting that stamp has been used.--Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

263A.

Prohibition of fictitious stamps.

1*[263A. Prohibition of fictitious stamps.--(1) Whoever-

(a) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or

(b) has in his possession, without lawful excuse, any fictitious stamp, or

(c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp 2*[may be seized and, if seized] shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both inclusive, the word "Government", when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive Government in any part of India, and also in any part of Her

Majesty's dominions or in any foreign country.]

CHAPTER XIII

OF OFFENCES RELATING TO WEIGHTS AND MEASURES

CHAPTER XIII

OF OFFENCES RELATING TO WEIGHTS AND MEASURES

264.

Fraudulent use of false instrument for weighing.

264. Fraudulent use of false instrument for weighing.--Whoever, fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

265.

Fraudulent use of false weight or measure.

265. Fraudulent use of false weight or measure.--Whoever, fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

1. S. 263A ins. by Act 3 of 1895, s. 2.

2. Subs. by Act 42 of 1953, s. 4 and the Third Sch., for "may be seized and".

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266.

Being in possession of false weight or measure.

266. Being in possession of false weight or measure.--Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, 1****

intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

267.

Making or selling false weight or measure.

267. Making or selling false weight or measure.--Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

CHAPTER XIV

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

268.

Public nuisance.

268. Public nuisance.--A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to 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.

269.

Negligent act likely to spread infection of disease dangerous to life.

269. Negligent act likely to spread infection of disease dangerous to life.--Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

270.

Malignant act likely to spread infection of disease dangerous to life.

270. Malignant act likely to spread infection of disease dangerous to life.--Whoever maliciously does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

271.

Disobedience to quarantine rule.

271. Disobedience to quarantine rule.--Whoever knowingly disobeys any rule made and promulgated 2*[by the 3* Government 4*] for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

272.

Adulteration of food or drink intended for sale.

272. Adulteration of food or drink intended for sale.--Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273.

Sale of noxious food or drink.

273. Sale of noxious food or drink.--Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food

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1. The word "and" omitted by Act 42 of 1953, s. 4 and the third Sch.
 2. Subs. by the A. O. 1937, for "by the G. of I., or by any Govt.".
 3. The words "Central or any Provincial" rep. by the A. O. 1950.
 4. The words "or the Crown Representative" were rep. by the A. O. 1948.
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or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

274.

Adulteration of drugs.

274. Adulteration of drugs.--Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

275.

Sale of adulterated drugs.

275. Sale of adulterated drugs.--Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

276.

Sale of drug as a different drug or preparation.

276. Sale of drug as a different drug or preparation.--Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

277.

Fouling water of public spring or reservoir.

277. Fouling water of public spring or reservoir.--Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, 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.

278.

Making atmosphere noxious to health.

278. Making atmosphere noxious to health.--Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

279.

Rash driving or riding on a public way.

279. Rash driving or riding on a public way.--Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

280.

Rash navigation of vessel.

280. Rash navigation of vessel.--Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

281.

Exhibition of false light, mark or buoy.

281. Exhibition of false light, mark or buoy.--Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

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282.

Conveying person by water for hire in unsafe or overloaded vessel.

282. Conveying person by water for hire in unsafe or overloaded vessel.--Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

283.

Danger or obstruction in public way or line of navigation.

283. Danger or obstruction in public way or line of navigation.--Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished, with fine which may extend to two hundred rupees.

284.

Negligent conduct with respect to poisonous substance.

284. Negligent conduct with respect to poisonous substance.--Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

285.

Negligent conduct with respect to fire or combustible matter.

285. Negligent conduct with respect to fire or combustible matter.--Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

286.

Negligent conduct with respect to explosive substance.

286. Negligent conduct with respect to explosive substance.--Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

287.

Negligent conduct with respect to machinery.--

287. Negligent conduct with respect to machinery.--Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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288.

Negligent conduct with respect to pulling down or repairing buildings.

288. Negligent conduct with respect to pulling down or repairing buildings.--Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

289.

Negligent conduct with respect to animal.

289. Negligent conduct with respect to animal.--Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one

thousand rupees, or with both.

290.

Punishment for public nuisance in cases not otherwise provided for.

290. Punishment for public nuisance in cases not otherwise provided for.--Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

291.

Continuance of nuisance after injunction to discontinue.

291. Continuance of nuisance after injunction to discontinue.--Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

292.

Sale, etc., of obscene books, etc.

1*[292. Sale, etc., of obscene books, etc.--2*[(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, 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.]

3*[(2)] Whoever--

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, reduces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or

publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

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1. Subs. by Act 8 of 1925, s. 2, for the original s. 292.
 2. Ins. by Act 36 of 1969, s. 2
 3. S. 292 renumbered as sub-section (2) thereof by s. 2, ibid.
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(e) offers or attempts to do any act which is an offence under this section,

shall be punished 1 [on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a 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 five thousand rupees].

2*[Exception-This section does not extend to-

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure-

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or

(ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in-

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.]]

293.

Sale, etc., of obscene objects to young person.

3*[293. Sale, etc., of obscene objects to young person.--Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished 1[on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees].]

294.

Obscene acts and songs.

4*[294. Obscene acts and songs.--Whoever, to the annoyance of others,

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.]

1. Subs. by Act 36 of 1969, s. 2, for certain words.

2. Subs. by s. 2, ibid., for Exception.

3. Subs. by Act 8 of 1925, s. 2, for the original s. 293.

4. Subs. by Act 3 of 1895, s. 3, for the original s. 294.

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294A.

Keeping lottery office.

1*[294A. Keeping lottery office.--Whoever keeps any office or place for the purpose of drawing any lottery 2*[not being 3*[a State lottery] or a lottery authorised by the 4*[State]

Government], shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery shall be punished with fine which may extend to one thousand rupees.]

CHAPTER XV

OF OFFENCES RELATING TO RELIGION

CHAPTER XV

OF OFFENCES RELATING TO RELIGION

295.

Injuring or defiling place of worship, with intent to insult the religion of any class.

295. Injuring or defiling place of worship, with intent to insult the religion of any class.--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 two years, or with fine, or with both.

295A.

Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

5*[295A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.--Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of 6*[citizens of India], 7*[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 8*[three years], or with fine, or with both.]

296.

Disturbing religious assembly.

296. Disturbing religious assembly.--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 one year, or with fine, or with both.

297.

Trespassing on burial places, etc.

297. Trespassing on burial places, etc.--Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

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1. S. 294A ins. by Act 27 of 1870, s. 10.
 2. Subs. by the A. O. 1937, for "not authorised by Government".
 3. Subs. by Act 3 of 1951, s. 3 and Sch., for "a lottery organised by the Central Government or the Government of a Part A State or a Part B State" which had been subs. by the A.O. 1950, for "a State lottery".
 4. Subs. by the A.O. 1950, for "Provincial".
 5. Ins. by Act 25 of 1927, s. 2.
 6. Subs. by the A.O. 1950, for "His Majesty's subjects".
 7. Subs. by Act 41 of 1961, s.3, for certain words.
 8. Subs. by s.3, ibid., for "two years".
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shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

298.

Uttering words, etc., with deliberate intent to wound religious feelings.

298. Uttering words, etc., with deliberate intent to wound religious feelings.--Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XVI

OF OFFENCES AFFECTING THE HUMAN BODY

CHAPTER XVI

OF OFFENCES AFFECTING THE HUMAN BODY

Of offences affecting life

299.

Culpable homicide.

299. Culpable homicide.--Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here,

although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.-A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

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

Explanation 3.-The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

300.

Murder.

300. Murder.--Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

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2ndly.-If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused. or-

3rdly.-If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

4thly.-If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound

state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.-When culpable homicide is not murder.-Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-

First.-That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.-That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.-That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.-Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

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Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was giving by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.-Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence or person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.-Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.-It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.-Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

301.

Culpable homicide by causing death of person other than person whose death was intended.

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

302.

Punishment for murder.

302. Punishment for murder.--Whoever commits murder shall be punished with death, or 1*[imprisonment for life], and shall also be liable to fine.

303.

Punishment for murder by life-convict.

303. Punishment for murder by life-convict.--Whoever, being under sentence of 1*[imprisonment for life], commits murder, shall be punished with death.

304.

Punishment for culpable homicide not amounting to murder.

304. Punishment for culpable homicide not amounting to murder.--Whoever commits culpable homicide not amounting to murder 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, if the act by which the death is caused is done with the intention of causing death. or of causing such bodily injury

as is likely to cause death;

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

304A.

Causing death by negligence.

2*[304A. Causing death by negligence.--Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

304B.

Dowry death.

3*[304B. Dowry death.--(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.--For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

2. S. 304A was ins. by Act 27 of 1870, s. 12.

3. Ins. by Act 43 of 1986, s. 10 (w.e.f. 19-11-1986).

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305.

Abetment of suicide of child or insane person.

305. Abetment of suicide of child or insane person.--If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide, shall be punished with death or 1*[imprisonment for life], or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

306.

Abetment of suicide.

306. Abetment of suicide.--If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

307.

Attempt to murder.

307. Attempt to murder.--Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to 1*[imprisonment for life], or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.

Attempts by life-convicts.-2*[When any person offending under this section is under sentence of 1*[imprisonment for life], he may, if hurt is caused, be punished with death.]

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued A would be guilty of murder. A is liable to punishment under this section

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of 3*[the first paragraph of] this section.

(d) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

308.

Attempt to commit culpable homicide.

308. Attempt to commit culpable homicide.--Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

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1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".
 2. Ins. by Act 27 of 1870, s.11.
 3. Ins. by Act 12 of 1891, s.2 and Sch. II.
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Illustration

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he there by caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

309.

Attempt to commit suicide.

309. Attempt to commit suicide.--Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year 1*[or with fine, or with both.]

310.

Thug.

310. Thug.--Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

311.

Punishment.

311. Punishment.--Whoever is a thug, shall be punished with 2[imprisonment for life], and shall also be liable to fine.

Of the causing of miscarriage, of injuries to unborn children, of the exposure of infants, and of the concealment of births.

312.

Causing miscarriage.

312. Causing miscarriage.--Whoever voluntarily causes a woman with child to miscarry, shall if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, 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.--A woman who causes herself to miscarry, is within the meaning of this section.

313.

Causing miscarriage without woman's consent.

313. Causing miscarriage without woman's consent.--Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, 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.

314.

Death caused by act done with intent to cause miscarriage.

314. Death caused by act done with intent to cause miscarriage.--Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

if act done without woman's consent.

if act done without woman's consent.--and if the act is done without the consent of the woman, shall be punished either with 2*[imprisonment for life], or with the punishment above mentioned.

Explanation.--It is not essential to this offence that the offender should know that the act is likely to cause death.

315.

Act done with intent to prevent child being born alive or to cause it to die after birth.

315. Act done with intent to prevent child being born alive or to cause it to die after birth.--Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such

-
1. Subs. by Act 8 of 1882, s. 7, for "and shall also be liable to fine".
 2. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".
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act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

316.

Causing death of quick unborn child by act amounting to culpable homicide.

316. Causing death of quick unborn child by act amounting to culpable homicide.--Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

317.

Exposure and abandonment of child under twelve years, by parent or person having care of it.

317. Exposure and abandonment of child under twelve years, by parent or person having care of it.--Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.--This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

318.

Concealment of birth by secret disposal of dead body.

318. Concealment of birth by secret disposal of dead body.--Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavors to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Of hurt

319.

Hurt.

319. Hurt.--Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

320.

Grievous hurt.

320. Grievous hurt.--The following kinds of hurt only are designated as "grievous":-

First.-Emasculation.

Secondly.-Permanent privation of the sight of either eye.

Thirdly.-Permanent privation of the hearing of either ear.

Fourthly.-Privation of any member or joint.

Fifthly.-Destruction or permanent impairing of the powers of any member or joint.

Sixthly.-Permanent disfiguration of the head or face.

Seventhly.-Fracture or dislocation of a bone or tooth.

Eighthly.-Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

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321.

Voluntarily causing hurt.

321. Voluntarily causing hurt.--Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".

322.

Voluntarily causing grievous hurt.

322. Voluntarily causing grievous hurt.--Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".

Explanation.-A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

323.

Punishment for voluntarily causing hurt.

323. Punishment for voluntarily causing hurt.--Whoever, except in the case provided for by section 334, voluntarily causes hurt, 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.

324.

Voluntarily causing hurt by dangerous weapons or means.

324. Voluntarily causing hurt by dangerous weapons or means.--Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

325.

Punishment for voluntarily causing grievous hurt

325. Punishment for voluntarily causing grievous hurt.--Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

326.

Voluntarily causing grievous hurt by dangerous weapons or means.

326. Voluntarily causing grievous hurt by dangerous weapons or means.--Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with 1*[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.

1. Subs, by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

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327.

Voluntarily causing hurt to extort property, or to constrain to an illegal to an act.

327. Voluntarily causing hurt to extort property, or to constrain to an illegal to an act.--Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

328.

Causing hurt by means of poison, etc., with intent to commit and

offence.

328. Causing hurt by means of poison, etc., with intent to commit and offence.--Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

329.

Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.

329. Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.--Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, 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.

330.

Voluntarily causing hurt to extort confession or to compel restoration of property.

320. Voluntarily causing hurt to extort confession or to compel restoration of property.--Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or 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.

Illustriations

(a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

331.

Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

331. Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.--Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person

1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

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interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

332.

Voluntarily causing hurt to deter public servant from his duty.

332. Voluntarily causing hurt to deter public servant from his duty.--Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

333.

Voluntarily causing grievous hurt to deter public servant from his duty.

333. Voluntarily causing grievous hurt to deter public servant from his duty.--Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

334.

Voluntarily causing hurt on provocation.

334. Voluntarily causing hurt on provocation.--Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

335.

Voluntarily causing grievous hurt on provocation.

335. Voluntarily causing grievous hurt on provocation.--Whoever 1*[voluntarily] causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.--The last two sections are subject to the same provisos as Exception 1, section 300.

336.

Act endangering life or personal safety of others.

336. Act endangering life or personal safety of others.--Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, 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 and fifty rupees, or with both.

337.

Causing hurt by act endangering life or personal safety of others.

337. Causing hurt by act endangering life or personal safety of others.--Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

1. Ins. by Act 8 of 1882, s. 8,

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338.

Causing grievous hurt by act endangering life or personal safety of others.

338. Causing grievous hurt by act endangering life or personal safety of others.--Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Of wrongful restraint and wrongful confinement

339.

Wrongful restraint.

339. Wrongful restraint.--Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.--The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right

to obstruct, is not an offence within the meaning of this section.

Illustration

A obstructs a path along which Z has a right to pass. A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

340.

Wrongful confinement.

340. Wrongful confinement.--Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Illustrations

(a) A causes Z to go within a walled space, and locks Z. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines z.

(b) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts leave the building. A wrongfully confines Z.

341.

Punishment for wrongful restraint.

341. Punishment for wrongful restraint.--Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

342.

Punishment for wrongful confinement.

342. Punishment for wrongful confinement.--Whoever wrongfully confines any person shall be punished with simple 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.

343.

Wrongful confinement for three or more days.

343. Wrongful confinement for three or more days.--Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

344.

Wrongful confinement for ten or more days.

344. Wrongful confinement for ten or more days.--Whoever wrongfully confines any person for ten days, or more, 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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345.

Wrongful confinement of person for whose liberation writ has been issued.

345. Wrongful confinement of person for whose liberation writ has been issued.--Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this Chapter.

346.

Wrongful confinement in secret.

346. Wrongful confinement in secret.--Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

347.

Wrongful confinement to extort property, or constrain to illegal act.

347. Wrongful confinement to extort property, or constrain to illegal act.--Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, 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.

Wrongful confinement to extort confession, or compel restoration of property.

348. Wrongful confinement to extort confession, or compel restoration of property.--Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Of criminal force and assault

349.

Force.

349. Force.--A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

First.-By his own bodily power.

Secondly.-By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.-By inducing any animal to move, to change its motion, or to cease to move.

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350.

Criminal force.

350. Criminal force.--Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other action on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence. A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z, and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(f) A intentionally pulls up a Woman's veil. Here A intentionally uses force to her, and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling, A has therefore intentionally used force to Z; and if he has done this without Z's consent intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

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(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

351.

Assault.

351. Assault.--Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.--Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault

upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

352.

Punishment for assault or criminal force otherwise than on grave provocation.

352. Punishment for assault or criminal force otherwise than on grave provocation.--Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, 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.

Explanation.--Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

353.

Assault or criminal force to deter public servant from discharge of his duty.

353. Assault or criminal force to deter public servant from discharge of his duty.--Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

354.

Assault or criminal force to woman with intent to outrage her modesty.

354. Assault or criminal force to woman with intent to outrage her modesty.--Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

355.

Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.

355. Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.--Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

356.

Assault or criminal force in attempt to commit theft of property carried by a person.

356. Assault or criminal force in attempt to commit theft of property carried by a person.--Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

357.

Assault or criminal force in attempt wrongfully to confine a person.

357. Assault or criminal force in attempt wrongfully to confine a person.--Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, 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.

358.

Assault or criminal force on grave provocation.

358. Assault or criminal force on grave provocation.--Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation.--The last section is subject to the same explanation as section 352.

Of kidnapping, abduction, slavery and forced labour

359.

Kidnapping.

359. Kidnapping.--Kidnapping is of two kinds : kidnapping from 1*[India], and kidnapping from lawful guardianship.

360.

Kidnapping from India.

360. Kidnapping from India.--Whoever conveys any person beyond the limits of 1*[India] without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from 1*[India].

361.

Kidnapping from lawful guardianship.

361. Kidnapping from lawful guardianship.--Whoever takes or entices any minor under 2*[sixteen] years of age if a male, or under 3*[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.--The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

1. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States."
 2. Subs. by Act 42 of 1949, s. 2, for "fourteen".
 3. Subs., by s. 2, ibid., for "sixteen".
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Exception.--This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

362.

Abduction.

362. Abduction.--Whoever by force compels, or by any deceitful means induces any person to go from any place, is said to abduct that person.

363.

Punishment for kidnapping.

363. Punishment for kidnapping.--Whoever kidnaps any person from 1*[India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

363A.

Kidnapping or maiming a minor for purposes of begging.

2*[363A. Kidnapping or maiming a minor for purposes of begging.--(1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever maims any minor in order that such minor may be

employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.

(3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.

(4) In this section,-

(a) "begging" means-

(i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortunetelling, performing tricks or selling articles or otherwise;

(ii) entering on any private premises for the purpose of soliciting or receiving alms;

(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;

(b) "minor" means-

(i) in the case of a male, a person under sixteen years of age; and

(ii) in the case of a female, a person under eighteen years of age.]

1. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".

2. Ins. by Act 52 of 1959, s. 2 (w.e.f. 15-1-1960).

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364.

Kidnapping or abducting in order to murder.

364. Kidnapping or abducting in order to murder.--Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with 1*[imprisonment for life] or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

III Illustrations

(a) A kidnaps Z from 2*[India], intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

364A.

Kidnapping for ransom, etc.

3*364A. Kidnapping for ransom, etc.--Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death or imprisonment for life, and shall also be liable to fine.

365.

Kidnapping or abducting with intent secretly and wrongfully to confine person.

365. Kidnapping or abducting with intent secretly and wrongfully to confine person.--Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

366.

Kidnapping, abducting or inducing woman to compel her marriage, etc.

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.--Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

3*[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid].

4*[366A.

Procuration of minor girl.

6*[366A. Procuration of minor girl.--Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

366B.

Importation of girl from foreign country.

366B. Importation of girl from foreign country.--Whoever imports into 2*[India] from any country outside India 7*[or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person,

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shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.]

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1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".
 2. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".
 3. Ins. by Act 42 of 1997 s. 2.
 4. Subs. by Act 24 of 1995, s. 2.
 5. Ins. by Act 20 of 1923, s. 2.
 6. Ins. by s.3, ibid.
 7. Ins. by Act 3 of 1951, s.3 and Sch.,
 8. Certain words omitted by s.3 and Sch., ibid.
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367.

Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.

367. Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.--Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

368.

Wrongfully concealing or keeping in confinement, kidnapped or abducted person.

368. Wrongfully concealing or keeping in confinement, kidnapped or abducted person.--Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

369.

Kidnapping or abducting child under ten years with intent to steal from its person.

369. Kidnapping or abducting child under ten years with intent to steal from its person.--Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

370.

Buying or disposing of any person as a slave.

370. Buying or disposing of any person as a slave.--Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

371.

Habitual dealing in slaves.

371. Habitual dealing in slaves.--Whoever habitually imports, exports, removes, buys, sells traffics or deals in slaves, shall be punished with 1*[imprisonment for life], or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

372.

Selling minor for purposes of prostitution, etc.

372. Selling minor for purposes of prostitution, etc.--Whoever sells, lets to hire, or otherwise disposes of any 2*[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

3*[Explanation I.--When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II.--For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage, or by any union or tie which though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.]

373.

Buying minor for purposes of prostitution, etc.

373. Buying minor for purposes of prostitution, etc.--Whoever buys, hires or otherwise obtains possession of any 2*[person under the age of eighteen years with intent that such person shall at

1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".
2. Subs. by Act 18 of 1924, s. 2, for "minor under the age of eighteen years with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be".
3. Ins. by s.3, ibid,

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any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

1*[Explanation I.-Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II.-"Illicit intercourse" has the same meaning as in section 372.]

374.

Unlawful compulsory labour.

374. Unlawful compulsory labour.--Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

2*[Sexual offences

375.

Rape.

375. Rape.--A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

First.-Against her will.

Secondly.-Without her consent.

Thirdly.-With her consent, when her consent has been obtained by putting her or any person in whom she is interested

in fear of death or of hurt.

Fourthly.-With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.-With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.-With or without her consent, when she is under sixteen years of age.

Explanation.-Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.-Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

376.

Punishment for rape.

376. Punishment for rape.--(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he 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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1. Ins. by Act 18 of 1924, s. 4.
 2. Subs. by Act 43 of 1983, s.3 for the heading "Of rape" and ss. 375 and 376.
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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) Whoever,-

(a) being a police officer commits rape-

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or

not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1.-Where a women's is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2.-"women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3.-"hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

Intercourse by a man with his wife during separation.

376A. Intercourse by a man with his wife during separation.--Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

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376B.

Intercourse by public servant with woman in his custody.

376B. Intercourse by public servant with woman in his custody.--Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

376C.

Intercourse by superintendent of jail, remand home, etc.

376C. Intercourse by superintendent of jail, remand home, etc.--Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation 1.--"Superintendent" in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates.

Explanation 2.--The expression "women's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376.

376D.

Intercourse by any member of the management or staff of a hospital with any woman in that hospital.

376D. Intercourse by any member of the management or staff of a hospital with any woman in that hospital.--Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation.-The expression "hospital" shall have the same meaning as in Explanation 3 to sub-section (2) of section 376.]

Of unnatural offences

377.

Unnatural offences.

377. Unnatural offences.--Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1*[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.

Explanation.-Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

CHAPTER XVII

OF OFFENCES AGAINST PROPERTY

CHAPTER XVII

OF OFFENCES AGAINST PROPERTY

Of theft

378.

Theft.

378. Theft.--Whoever, intending to take dishonestly any movable

property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.-A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

1. Subs, by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

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Explanation 2.-A moving effected by the same act which effects the severance may be a theft.

Explanation 3.-A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.-A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.-The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(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.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

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(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.

(l) 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 therefor committed theft.

(m) 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 for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as

she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

379.

Punishment for theft.

379. Punishment for theft.--Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

380.

Theft in dwelling house, etc.

380. Theft in dwelling house, etc.--Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of 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.

381.

Theft by clerk or servant of property in possession of master.

381. Theft by clerk or servant of property in possession of master.--Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

382.

Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.

382. Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.--Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any

person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations

(a) A commits theft on property in Z's possession; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

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(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Of extortion

383.

Extortion.

383. Extortion.--Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Illustrations

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A to Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security A has committed extortion.

384.

Punishment for extortion.

384. Punishment for extortion.--Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

385.

Putting person in fear of injury in order to commit extortion.

385. Putting person in fear of injury in order to commit extortion.--Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

386.

Extortion by putting a person in fear of death or grievous hurt.

386. Extortion by putting a person in fear of death or grievous hurt.--Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

387.

Putting person in fear of death or of grievous hurt, in order to commit extortion.

387. Putting person in fear of death or of grievous hurt, in order to commit extortion.--Whoever in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

388.

Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.

388. Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.--Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with 1*[imprisonment for life], or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall

1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

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shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with 1*[imprisonment for life].

389.

Putting person in fear or accusation of offence, in order to commit extortion.

389. Putting person in fear or accusation of offence, in order to commit extortion.--Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with 1*[imprisonment for life], or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with 1*[imprisonment for life].

Of robbery and dacoity

390.

Robbery.

390. Robbery.--In all robbery there is either theft or extortion.

When theft is robbery.

When theft is robbery.--Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying

away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.

When extortion is robbery.--Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person, so put in fear then and there to deliver up the thing extorted.

Explanation.--The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying--"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such: but it is not robbery, unless Z is put in fear of the instant death of his child.

391.

Dacoity.

391. Dacoity.--When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more,

every person so committing, attempting or aiding, is said to commit "dacoity".

1. Subs, by Act 26 of 1955, s. 117 and Sch., for "transportation for life."

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392.

Punishment for robbery.

392. Punishment for robbery.--Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

393.

Attempt to commit robbery.

393. Attempt to commit robbery.--Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

394.

Voluntarily causing hurt in committing robbery.

394. Voluntarily causing hurt in committing robbery.--If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with 1*[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

395.

Punishment for dacoity.

395. Punishment for dacoity.--Whoever commits dacoity shall be punished with 1*[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also

be liable to fine.

396.

Dacoity with murder.

396. Dacoity with murder.--If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or 1*[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

397.

Robbery or dacoity, with attempt to cause death or grievous hurt.

397. Robbery or dacoity, with attempt to cause death or grievous hurt.--If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, so attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

398.

Attempt to commit robbery or dacoity when armed with deadly weapon.

398. Attempt to commit robbery or dacoity when armed with deadly weapon.--If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

399.

Making preparation to commit dacoity.

399. Making preparation to commit dacoity.--Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

400.

Punishment for belonging to gang of dacoits.

400. Punishment for belonging to gang of dacoits.--Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with 1*[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

401.

Punishment for belonging to gang of thieves.

401. Punishment for belonging to gang of thieves.--Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

402.

Assembling for purpose of committing dacoity.

402. Assembling for purpose of committing dacoity.--Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Of criminal misappropriation of property

403.

Dishonest misappropriation of property.

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.

1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life."

Illustrations

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

(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 with 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 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 belong, 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.

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(d) A sees Z drop his purse with money in it. A pick up the purse with the intention of restoring it to Z, bu 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.

404.

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

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.

Of criminal breach of trust

405.

Criminal breach of trust.

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".

1*[2*[Explanation 1].-A person, being an employer 3*[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 employees' 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.]

4*[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

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1. Ins. by Act 40 of 1973, s. 9 (w.e.f. 1-11-1973).
 2. Explanation renumbered as Explanation 1 by Act 38 of 1975, s. 9 (w.e.f. 1-9-1975).
 3. Ins. by Act 33 of 1988, s. 27 (w.e.f. 1-8-1988).
 4. Ins. by Act 38 of 1975, s. 9 (w.e.f. 1-9-1975).
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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.

406.

Punishment for criminal breach of trust.

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.

407.

Criminal breach of trust by carrier, etc.

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.

408.

Criminal breach of trust by clerk or servant.

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.

409.

Criminal breach of trust by public servant, or by banker, merchant or agent.

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 1*[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.

1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

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OF THE RECEIVING OF STOLEN PROPERTY

410.

Stolen property.

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 1***criminal breach of trust has been committed, is designated as "stolen property", 2*[whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without 3*[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.

411.

Dishonestly receiving stolen property.

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.

412.

Dishonestly receiving property stolen in the commission of a dacoity.

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 has reason to believe to have been stolen, shall be punished with 4*[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

413.

Habitually dealing in stolen property.

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 4*[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.

414.

Assisting in concealment of stolen property.

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.

Of cheating

415.

Cheating.

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.

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1. The words "the" and "offence of" rep. by Act 12 of 1891, s. 2 and Sch. I and Act 8 of 1882, s. 9, respectively.
 2. Ins. by Act 8 of 1882 s. 9.
 3. Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".
 4. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".
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(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.

416.

Cheating by personation.

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.

417.

Punishment for cheating.

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.

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418.

Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.

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 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.

419.

Punishment for cheating by personation.

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.

420.

Cheating and dishonestly inducing delivery of property.

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.

Of fraudulent deeds and dispositions of property

421.

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

421. Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.--Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he 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 may extend to two years, or with fine, or with both.

422.

Dishonestly or fraudulently preventing debt being available for creditors.

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.

423.

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

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 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 two years, or with fine, or with both.

424.

Dishonest or fraudulent removal or concealment of property.

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

425.

Mischief.

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".

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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 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 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.

426.

Punishment for mischief.

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.

427.

Mischief causing damage to the amount of fifty rupees.

427. Mischief causing damage to the amount of fifty rupees.--Whoever commits mischief and thereby causes loss or damage to the amount of fifty 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.

428.

Mischief by killing or maiming animal of the value of ten rupees.

428. Mischief by killing or maiming animal of the value of ten rupees.--Whoever commits mischief by killing, poisoning, maiming or rendering useless any animals or animal 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.

429.

Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.

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, of any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment or either description for a term which may extend to five years, or with fine, or with both.

430.

Mischief by injury to works of irrigation or by wrongfully diverting water.

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.

431.

Mischief by injury to public road, bridge, river or channel.

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.

432.

Mischief by causing inundation or obstruction to public drainage attended with damage.

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.

433.

Mischief by destroying, moving or rendering less useful a light-house or sea-mark.

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.

434.

Mischief by destroying or moving, etc., a land-mark fixed by public authority.

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.

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.

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 1*[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.

436.

Mischief by fire or explosive substance with intent to destroy house, etc.

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.

437.

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

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.

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1. Ins. by Act 8 of 1882, s. 10
 2. Subs, by Act 26 of 1955, s. 117 and Sch, for "transportation for life".
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438.

Punishment for the mischief described in section 437 committed by fire or explosive substance.

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 1*[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.

439.

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

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.

440.

Mischief committed after preparation made for causing death or hurt.

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 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.

Of criminal trespass

441.

Criminal trespass.

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".

442.

House-trespass.

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.

443.

Lurking house-trespass.

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".

444.

Lurking house-trespass by night.

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".

445.

House-breaking.

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 it in 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 house-trespass, in order to the committing of the house-trespass.

1. Subs. by act. 26 of 1955, s. 117 and Sch., for "transportation for life".

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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-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.

(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.

446.

House-breaking by night.

446. House-breaking by night.--Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night".

447.

Punishment for criminal trespass.

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.

448.

Punishment for house-trespass.

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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449.

House-trespass in order to commit offence punishable with death.

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 1*[imprisonment for life], or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

450.

House-trespass in order to commit offence punishable with imprisonment for life.

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 1*[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.

451.

House-trespass in order to commit offence punishable with imprisonment.

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.

452.

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

452. 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.

453.

Punishment for lurking house-trespass or house-breaking.

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.

454.

Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.

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 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.

455.

Lurking house-trespass or house-breaking after preparation for hurt,

assault or wrongful restraint.

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.

456.

Punishment for lurking house-trespass or house-breaking by night.

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.

457.

Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.

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.

458.

Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint.

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.

1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

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459.

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

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.

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.

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 lurking house-trespass by night or house-breaking by night, shall be punished with 1*[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.

461.

Dishonestly breaking open receptacle containing property.

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.

462.

Punishment for same offence when committed by person entrusted with custody.

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.

CHAPTER XVIII

OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

CHAPTER XVIII

OF OFFENCES RELATING TO DOCUMENTS AND TO 2****PROPERTY MARKS

463.

Forgery.

463. Forgery.--Whoever makes any false document or part of a document 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.

464.

Making a false document.

464. Making a false document.--A person is said to make a false document-

First.-Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by

whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly.-Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed 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, 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 the nature of the alteration.

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1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".
 2. The words "Trade or" omitted by Act 43 of 1958, s. 135 and Sch. (w.e.f. 25-11-1959).
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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 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 for 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.

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Explanation I.-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 bills 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 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 fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

465.

Punishment for forgery.

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.

466.

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

466. Forgery of record of Court or of public register, etc.—Whoever forges a document, 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.

467.

Forgery of valuable security, will, etc.

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 1 * [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.

468.

Forgery for purpose of cheating.

468. Forgery for purpose of cheating.--Whoever commits forgery, intending that the document 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.

469.

Forgery for purpose of harming reputation.

469. Forgery for purpose of harming reputation.--Whoever commits forgery, intending that the document 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.

470.

Forged document.

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

471.

Using as genuine a forged document.

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

472.

Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467.

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 punishable with 1*[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.

473.

Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.

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.

474.

Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it genuine.

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, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document 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 1*[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.

1. Subs. by Act 26 of 1955. s. 117 and Sch., for "transportation for life".

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475.

Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.

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, 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 1*[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.

476.

Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.

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 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.

477.

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

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 1*[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.

477A.

Falsification of accounts.

2*[477A. Falsification of accounts.--Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, willfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, 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 willfully, 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, 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.]

3*[Of 4****property and other marks

478.

[Repealed.]

478. [Trade Mark.] Rep. by the Trade and Merchandise Marks Act, 1958 (43 of 1958), s. 135 and Sch. (w. e. f. 25-11-1959).

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1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".
 2. Added by Act 3 of 1895, s. 4.
 3. Subs. by Act. 4 of 1889, s. 3, for the original heading and ss. 478 to 489.
 4. The word "trade," omitted by Act 43 of 1958, s. 135 and Sch. (w.e.f. 25-11-1959).
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479.

Property mark.

1*479. Property mark.--A mark used for denoting that movable property belongs to a particular person is called a property mark.

480.

[Repealed.]

480. [Using a false trade mark.] Rep. by the Trade and Merchandise Marks Act, 1958 (43 of 1958), s. 135 and Sch. (w.e.f. 25-11-1959).

481.

Using a false property mark.

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.

482.

Punishment for using a false property mark.

482. Punishment for using a false property mark.--Whoever uses 1***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.

483.

Counterfeiting a property mark used by another.

483. Counterfeiting a property mark used by another.--Whoever counterfeits any 3***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.

484.

Counterfeiting a mark used by a public servant.

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.

485.

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

4*[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 proper 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.]

486.

Selling goods marked with a counterfeit property mark.

486. Selling goods marked with a counterfeit property mark.--
5*[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--

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1. Ss. 147 to 489 were subs. by Act 4 of 1889, for the original sections.
 2. The words "any false trade mark or" omitted by Act 43 of 1958, s. 135 and Sch. (w.e.f. 25-11-1959).
 3. The words "trade mark or" omitted by s. 135 and Sch., ibid. (w.e.f. 25-11-1959).
 4. Subs. by s. 135 and Sch., ibid., for the former section (w.e.f. 25-11-1959).
 5. Subs. by s. 135 and Sch., ibid., for certain words (w.e.f. 25-11-1959).
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(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.

487.

Making a false mark upon any receptacle containing goods.

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.

488.

Punishment for making use of any such false mark.

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.

489.

Tampering with property mark with intent to cause injury.

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.]

1*[Of currency-notes and bank-notes

489A.

Counterfeiting currency-notes or bank-notes.

489A. Counterfeiting currency-notes or bank-notes.--Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, 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.

Explanation.--For the purposes of this section and of sections 489B, 3*[489C, 489D and 489E], the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money.

489B.

Using as genuine, forged or counterfeit currency-notes or bank-notes.

489B. Using as genuine, forged or counterfeit currency-notes or bank-notes.--Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, 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.

1. Ss. 489A to 489D were ins. by Act 12 of 1899, s. 2
2. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".
3. Subs. by Act 35 of 1950, s. 3 and Sch., II, for "489C and 489D".

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489C.

Possession of forged or counterfeit currency-notes or bank-note.

489C. Possession of forged or counterfeit currency-notes or bank-notes.--Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

489D.

Making or possessing instruments or materials for forging or counterfeiting currency notes or bank-notes.

489D. Making or possessing instruments or materials for forging or counterfeiting currency notes or bank-notes.--Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument of material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with 1 * [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.]

489E.

Making or using documents resembling currency-notes or bank-notes.

2*[489E. Making or using documents resembling currency-notes or bank-notes.--(1) Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note shall be punished with fine which may extend to one hundred rupees.

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose to a police-officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that that person caused the document to be made.]

CHAPTER XIX

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

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OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

490.

490. [Breach of contract of service during voyage or journey.]
Rep. by the Workmen's Breach of Contract (Repealing) Act, 1925 (3 of 1925), s. 2 and Sch.

491.

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

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.

492.

492. [Breach of contract to serve at distant place to which servant is conveyed at master's expense.] Rep. by the Workmen's Breach of Contract (Repealing) Act, 1925 (3 of 1925), s. 2 and Sch.

1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation for life".

2. S. 489E was ins. by Act 6 of 1943, s. 2.

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CHAPTER XX

OF OFFENCES RELATING TO MARRIAGE

CHAPTER XX

OF OFFENCES RELATING TO MARRIAGE

493.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.--Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

494.

Marrying again during lifetime of husband or wife.

494. Marrying again during lifetime of husband or wife.--Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.--This section does not extend to any person whose

marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

495.

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.--Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

496.

Marriage ceremony fraudulently gone through without lawful marriage.

496. Marriage ceremony fraudulently gone through without lawful marriage.--Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

497.

Adultery.

497. Adultery.--Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as

an abettor.

498.

Enticing or taking away or detaining with criminal intent a married woman.

498. Enticing or taking away or detaining with criminal intent a married woman.--Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XXA

OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND

1*[CHAPTER XXA

OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND

498A.

Husband or relative of husband of a woman subjecting her to cruelty.

498A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

1. Chapter XXA inserted by Act 46 of 1983, s. 2.

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Explanation.--For the purposes of this section, "cruelty" means--

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on

account of failure by her or any person related to her to meet such demand.]

CHAPTER XXI

OF DEFAMATION

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OF DEFAMATION

499.

Defamation.

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 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.

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.

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.

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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 a 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 expresses 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 farther.

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.

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(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, inasmuch 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 good faith for the protection of the interest 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.

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500.

Punishment for defamation.

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.

501.

Printing or engraving matter known to be defamatory.

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.

502.

Sale of printed or engraved substance containing defamatory matter.

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.

CHAPTER XXII

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

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OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

503.

Criminal intimidation.

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.

504.

Intentional insult with intent to provoke breach of the peace.

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.

505.

Statements conducing public mischief.

1*[505. Statements conducing public mischief.--2*[(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, 3*[sailor or airman] in the Army, 4*[Navy or Air Force] 5*[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

-
1. Subs. by Act 4 of 1898, s. 6, for the original section.
 2. Renumbered by Act 35 of 1969, s. 3.
 3. Subs. by Act 10 of 1927, s. 2 and Such. I, for "or sailor".
 4. Subs. by s. 2 and Sch. i. ibid., for "or navy".
 5. Subs. by the A.O. 1950, for "of Her Majesty or in the Imperial Service Troops". The words "or in the Royal Indian Marine" occurring after the word "Majesty" were rep. by Act 35 of 1934.

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(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 1*[three years], or with fine, or with both.

2*[(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 2[in good faith and] without any such intent as aforesaid.]

506.

Punishment for criminal intimidation.

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.

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 3*[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.

507.

Criminal intimidation by an anonymous communication.

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.

508.

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

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.

-
1. Subs. by Act 41 of 1961, s. 4, for "two years".
 2. Ins. by Act 35 of 1969, s. 3.
 3. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation".

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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.

509.

Word, gesture or act intended to insult the modesty of a woman.

509. Word, gesture or act intended to insult the modesty of a woman.--Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

510.

Misconduct in public by a drunken person.

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.

CHAPTER XXIII

OF ATTEMPTS TO COMMIT OFFENCES

CHAPTER XXIII

OF ATTEMPTS TO COMMIT OFFENCES

511.

Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.

511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.--Whoever attempts to commit an offence punishable by this Code with 1*[imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with 2*[imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.

Illustrations

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it.

He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

-
1. Subs. by Act 26 of 1955, s. 117 and Sch., for "transportation".
 2. Subs. by s. 117 and Sch., *ibid.*, for certain words.

CYBER CRIME AND LAWS IN INDIA

A DISSERTATION

SUBMITTED TO NATIONAL LAW SCHOOL OF INDIA UNIVERSITY IN THE
PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF
THE DEGREE OF

MASTERS IN LAW

BY
KULDEEP BAIRWA
(ID: 887/2019)

Under the Guidance and Supervision of

Dr. A. Nagarathna
Associate Professor of law

CANDIDATE DECLARATION

I hereby certify that the work which is being presented in the dissertation entitles **“CYBER CRIME AND LAWS IN INDIA”** in partial fulfilment of the requirements for the award of the Degree of Masters in Law and submitted to the National Law School of India University, Bangalore is an authentic record of my own work and carried out during a period of November 2019 to May 2020 under the supervision of Dr. A. Nagarathna, Associate Professor of law. The matter presented in the thesis has not been submitted by me for the award of any degree of this or any other Institute.

Date

(Kuldeep Bairwa)

Place: Bangalore

Id- 887/2019

CERTIFICATE

This is to certify that the research work being reported in the dissertation entitled **“CYBER CRIME AND LAWS IN INDIA”** is the original contribution of the candidate and the work has not been presented anywhere else for the award of any other degree to the best of my knowledge.

(Dr. A. Nagarathna,)

Associate Professor of law

National Law School of India University

Bangalore.

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LIST OF ABBREVIATIONS

&	And
%	Percent
AD&SJ	Additional District and Session Judge
CFAA	Computer Fraud and Abuse Act
CISA	Cyber security Information Sharing Act
CPC	Code of Civil Procedure
Cr.PC	Code of Criminal Procedure
DCP	Deputy Commissioner of Police
DGP	Director General of Police
DoT	Department of Telecommunication
DSP	Deputy Superintendent of Police
ECPA	Electronics Communication Privacy Act
FIR	First Investigation Report
GOI	Government of India
HC	High Court
IDRBT	Institute for Development of Research in Banking Technology
IPC	Indian Penal Code
ISP	Internet Service Provider
IT	Information Technology

ITAA	Information Technology Amendment Act
MNC	Multi National Company
NHTCU	National Hi-Tech Crime Unit
PO	Police Officer
POCSO	Protection of Children from Sexual Offences
SC	Supreme Court
SCA	Stored Communications Act
Sec.	Section
SOCA	Serious Organised Crime Agency
SWIFT	Society for Worldwide Interbank Telecommunications
UNCITRAL	The United Nations Commission on International Trade Law
UNGA	United Nation General Assembly
WWW	Worldwide Web

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- Shreya Singhal v Union of India, AIR 2015 SC 1523
- Shri Umashankar Sivasubramaniam v. ICICI Bank
- SMC Pneumatics (India) Pvt. Ltd. vs. Jogesh Kwatra
- sony.sambandh.com case
- Syed Asifuddin & other v. The State of Andhra Pradesh & Another
- Tamil Nadu Vs Suhas Katti AIR 2004
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CHAPTER I

INTRODUCTION

Introduction

The world is facing a great malady called cybercrime since the last two decades. Use of the malevolent programs in computers and over internet by malicious people to attack data or sell contraband and someone else's identity is known as cybercrime. This type of crime is committed with the use of computers and internet. A cybercrime criminal is capable of hacking and planting viruses to destroy website and other portals across the world. Fraudulent transactions and online banking frauds are carried out by them by gaining access to highly confidential information as well as cyber pornography and various other crimes are committed. In simple words, no one is secure in the cyber world.

Like the conventional concept of crime, cybercrime is also an act or omission which results in breach of law and backed by sanction of the state. Two essential ingredients of cybercrimes are *actus reus* and *mens rea*. The main reason behind the growing menace of cybercrime is our heavy dependence on computers and internet. Cyber spaces have advantages as well as disadvantages. Conventional crime can be prevented to an extent by patrolling of policemen, but in the cyber space, information is open to Trojan Horses and other viruses as well as to cyber stalking and cyber terrorism. This type of crime poses a bigger challenge to the police, prosecutors and legislators.

Statement of problem

Cybercrime is now a global concern engulfing the world. India is also not free from its clutches. It is a unique threat that is not confined to any border. It can be carried out from anywhere in the world and against any computer system. This problem has become a global issue and is becoming more difficult to bring under control.

Objective of the study

The researcher has undertaken this topic to analyse the law of cybercrime in a comprehensive manner and achieve new insights to it. The main objectives of the present study are under:

- To understand the basic concept of the cybercrime and forms of cyber crimes
- To analyse Indian cyber crime
- To decipher as to how the issue of cybercrime has been dealt with in the Indian scenario;
- To point out the possible defects in the existing law relating to cybercrime;
- To suggest the reform and remedial measure for the prevention and control of cybercrime.

Scope and limitation

The scope of the study is to do a detailed study of cyber crimes, their magnitude and nature and throw light on who are the ones responsible for it. The researcher will also analyse the success and failure of the efforts taken by India in combating this type of crime. Efforts will be made to analyse the law as laid down in the IT Act, 2000, its implementation, shortcomings and efforts to repair them as well as referring to the ITAA, 2008. The researcher will also compare the selected provisions of Indian legislation with that of US and UK wherever necessary. The only limitation of this paper is that it covers only the laws of India and only two other developed countries i.e. US and UK.

Hypothesis

The hypothesis of this paper is that cyber security at national level is poor and inadequate. The cyber space is not adequately protected. A huge number of population is present in the cyber space every moment and are using very well developed complicated technologies. Developed technologies require developed protection mechanisms. This demands for having comprehensive and effective laws and regulations for the protection of the population from the various cyber crimes. It would be effective to have a universal legal framework accepted globally since

cybercrime does not have any boundary. The legal framework should also be backed by the specialized enforcement mechanisms.

Research question

1. What is the concept of cybercrime ?
2. what are the Indian laws dealing with cybercrimes?
3. Whether the Indian laws are efficient as compared to those of developed countries like US and UK?
4. What are the possible reasons behind the increasing number of cyber crimes against individual, government and legal entities?
5. Whether the existing legal framework is sufficient enough to keep the cybercrimes under control?
6. What measures are necessary to combat cybercrimes?

RESEARCH METHODOLOGY:

The researcher has undertaken a doctrinal method of research for the purpose of this paper. The researcher has made use of primary as well as secondary sources of research like books, articles from journals, articles from newspapers and law dictionaries.

LITERATURE REVIEW:

- **Anirudh Rastogi, “Cyber Law- Law of Information Technology and Internet” -**

In this book author analysed and provided critique of laws relating to IT and different kinds of cybercrime in India. It also covered IT Act together with laws which governing jurisdiction, e-contracts IPR end E- evidence. This book also includes emerging fields of study and issue such as state surveillance, cloud computing, virtual currencies and social media regulation conditions and terms of the website, and e-governance.

- **Mohak Rana, “Crimes in Cyberspace: Right to Privacy and Other Issues”-**

This article deals with meaning and types of the cybercrime in India as well as US and UK. Also discuss about the evolution of the cybercrime, cybercrimes’ categories, Indian prospective of cyber space law and cyber space crime, different types of liability under IT Act and cases of cyber crime in india.

- **Talat Fatima, "Cybercrimes" -**

In this book Dr. Fatima (i) highlights the novel issues the legal world faces in current cyber-age. (ii) Identifies online crime offences; and (iii) Analyze the legal problems and the arraignment measures for cyber criminals;. The book extensively analyses and discusses the cyber laws and judicial practices in India alongside those of the United Kingdom and the United States.

- **Vakul Sharma, “Information Technology- Law & Practice”-**

It has been written lucidly with examples, anecdotes and diagrams, which the readers may not find in any other book of this genre. This book also discusses the different challenges and aspects of the IT. And issues related to the cybercrime, Internet blocking, virtual currency, child pornography, cyber terrorism, cyber security and social media covered in legally, Also covered international prospective of jurisdiction and other issues.

- **Talwant S. “CYBER LAW & INFORMATION TECHNOLOGY”**

An AD&S Judge has made a discourse on harmony between law enforcement agencies and the computer professionals. According to the author, both are very important for securing a strong cyber security regime in the country and make cyberspace safe. The author has also made comparative study on the law definition in US and India.

TENTATIVE CHAPTERIZATION

Chapter I-Introduction

Chapter II-Concept of cyber crime and types of cyber crime

Chapter III- Analysis of Information Technology Act, 2000

Chapter IV- Cases related to cyber crime in India

Chapter V- Analysis of Information Technology Laws of UK and US

Chapter VI - Conclusion and Suggestions

CHAPTER II

CONCEPT OF CYBERCRIME AND TYPES OF CYBER CRIME

Social networking sites have been very popular right from the beginning of the new millennium. These sites provided space for many to relax, connect with old friends and also get new also.¹ But the cyber-criminal organizations have sadly misused these sites to serve their criminal acts. In the past couple of years, people started spending more time on these networks as the populations are gradually dependent on them. In the digital era, information technology growth influences the lives of people all over the world. Day after day, modern inventions and discoveries have broadened the science spectrum and created new problems for the legal community. With the rapid development of this technology leads to the commission on cyber space with emerging different types of new cybercrime today, which has also been a topic of global interest in the future.

In the cyber world era as computer use became more widespread, the rise of technology also grew, and people became more familiar with the word 'cyber.' The evolution of IT gives rise to the "cyber space" in which internet provides all people with equal opportunities to access information, analysis, data storage, etc. by using high technology.² Such offences are like the assault on people, companies, or governments' guarded records. Such types of attacks don't exist on the physical body but on virtual body, either personal or corporate.

Technology has exploded into communities, businesses, and individual's life over the last two decades, altering the way people study, work and interact. People in different parts of the world can connect on a range of devices, such as computers, cell phones or tablets in real time.³ A text message, photo, video, or email exchanged by a single person can be seen by hundreds of users in a couple of seconds, and can go viral. The IT has now become a modern tool for harassing, doing misconduct or bullying, manipulating and harming others.

¹ Dr.S.V.Joga Rao "Law of Cyber Crimes and Information Technology Law", p.109 (2nd ed. 2009).

² Farooq Ahmad, "Cyber Law in India- Law on Internet", p. 367, (2nd ed. 2008).

³ Saraswathi Murali, "Information Technology Handbook", p.234, (2003)

Through a socio-cultural viewpoint, there is a negative distinction between the limitations of machine criminal activity of environmental (computer availability) and societal (norms, legislation) which is a direct consequence of technology globalization. Despite having a major impact on daily life through computers and the internet, the truth remains that only a small percentage of people understand what the computer and the internet are all about?⁴ Systematic analysis is required which discusses in detail the basic concepts of cybercrime, cyber space and types of cybercrime.

CONCEPT OF CYBER SPACE

William Gibson first used the phrase 'cyber space,' which he later defined as "an evocative and essentially meaningless" buzzword that could act as a code for all of his thoughts of cybernetic (transforming a text to hide its meaning). Now it's used to explain anything related to computers, IT, the internet and the complex culture of the internet. Also referred to as 'Cyber Space' is the cyber environment in which all information technology Driven contact and actions take place. Cyberspace can not be placed spatially. It's made of intangible objects like the website, forum, social networks, personal information, reputation and email addresses. Cyber space can be called an online global community with quick connectivity and no territorial barriers.⁵

Cyber space is the interactive system of computer networks where online communication takes place between the people and where people can communicate, exchange ideas, transfer knowledge, provide social support, perform business, create artistic media, direct actions, participate in political dialogue, etc.⁶ Cyberspace, the modern frontier, is mankind's shared heritage, but sadly certain people exploit the common heritage and thus cyberspace is indeed a new frontier with various forms of crime. Now it's used to explain anything related to computers, IT, the internet and the complex culture of the internet.⁷ The people participating in cyberspace are recognized as netizens by the fusion of two terms 'Net' and 'citizen.' Whereas Netizens implies any person affiliated with the use of Internet, computers, IT.

⁴ S.C. Sharma, "Study of Techno- Legal Aspects of Cyber Crime and Cyber Law Legislations", p. 86, (2nd ed. 2008).

⁵ Anirudh Rastogi, *Cyber Law- Law of Information Technology and Internet*, p. 2 (2nd ed. 2014).

⁶ Jyoti Ratan, *Cyber Laws & Information Technology*, p. 48. (3rd ed. 2017)

⁷ *Ibid.*

Webster's Dictionary explain the Cyberspace, it is the electronic structure of computer, bulletin board, interlinked networks that is considered to be a boundless world providing access to information, digital networking, and a type of virtual reality in science fiction. Cyberspace means that "the notional environment in which electronic communication occurs or virtual reality" F. Randall Farmer and Chip Morningstar defined cyberspace, by the involving social interactions than by its implementation of technology.

MODERN CONCEPT OF CRIME

A functional approach is a new approach to crime.⁸ Scientific progress, industrial revolution, modernization of political institutions, schooling and intellectual emancipation of the person, loosening religious hold on culture and weakening moral values have changed the trends of crime in the modern society, especially in the information society.⁹

The law differs in nature, thereby shifting indefinitely, introducing new offenses to the catalogs and updating, removing and abolishing existing ones. Astonishing changes have been made in the crime area. The growing understanding of criminality all over the world relies on the development of individuals in society. The definition of crime occurs in different ways in various countries at all times, Like if xyz crime is crime in country A, same may not be crime in country B.

The emergence of the new method of the criminality due to industrial growth and income accumulation, Dramatic advancement in the mass media has modified the definition of conventional crimes such as homicide, dacoity, kidnapping, arson, stealing, pornography, adultery, etc. both quantitatively and qualitatively, and brought new modes of crime.

NATURE OF CRIMES

In fact, most of the societies have such values, principles, practices and rituals that its participants indirectly accept as favorable to their well-being and safe growth. Anti-social behavior is condemned as infringement of these norms and customs. Human

⁸ 1 R.C. Nigam, "Law of Crimes in India", Principles of Criminal Law, p. 3 (1st ed. 1965).

⁹ Talat Fatima, *Cyber Crimes*, p. 61 (2nd ed. 2016).

activities prohibited by Penal Law and prosecuted by State by Criminal Law shall be regarded as crimes. There are many human behaviours in our society some are forbidden by civil law, criminal law and moral code, crimes and those not forbidden by these are not wrong. The evolving character of crime can be understood as follows:

Crime is a public wrong according to Blackstone. He describes crime in two ways: first, criminality is an act committed or excluded in violation of public statute that forbids or commands it. We cannot support this concept in its entirety because Administrative Law and constitutional law etc. are infringements of public law but are not crimes. Second, he modifies his definition of crime and states a crime is a breach of the duties of public rights owed to the society as a whole, regarded as a community.¹⁰

Editor of the Blackstone's Commentaries, Stephen, further modified the aforementioned definition and said "a crime is a violation of a right, considered in reference to the evil tendency of such violation as regards the community at large."¹¹ He further added that an act is crime if it is forbidden by the law and against the societies' moral sentiments.

Secondly, Crime is social wrong. John Gillin describes criminality as an act which has been proven to be objectively detrimental to society, or which is considered to be harmful socially by a group of individuals who have the ability to impose their views, and which puts such activities under the prohibition of constructive sanctions.¹²

Thirdly, crime as conventional wrong. According to Edwin Sutherland Crime as criminal conduct in contravention of the law. Doesn't matter what the degree of immorality, unless the legislation forbids it, it's not a crime.

¹⁰ William Blackstone, *Commentaries on the Laws of England*, vol. IV, p. 5, available at: [http://www.ijlp.in/ijlp/imageS/Volume%20-1,Issue-1\(1\),%20Mar-14.pdf](http://www.ijlp.in/ijlp/imageS/Volume%20-1,Issue-1(1),%20Mar-14.pdf) last accessed on 12 april 2020.

¹¹ Kenny, *Outlines of Criminal Law*, p. 532 (18th ed. 2013).

¹² Dr. K.N. Chan Drasekharan Pillai, *General Principles of Criminal Law*, p. 6 (2nd ed. 2020)

Fourthly, crime is procedural wrong. According to Austin “wrong which is pursued by the sovereign or his subordinate is a crime. A wrong which is pursued at the discretion of the injured party and his representatives is a civil injury.”¹³

Fifthly, crime as legal wrong, according to the Halbury, crime can be understood as illegal activity which is offence against the society, and wrong doer is liable for his act for legal punishment.¹⁴ According to the section 40 of the IPC offence means which is punishable under this Act.

FUNDAMENTAL ELEMENTS OF CRIME

To prove anybody whether he/she guilty of any offence under criminal law, evidence of *Actus reus* and *Mens rea* have to show except in strict liability crimes. Initially in Europe wrongdoer were inflicted with many charges, they did not considered the *Mens rea* as important element. But later on development in criminal law, before imposing any punishment, they start consider both *Mens rea* and *actus reus*. And acts reas must be proved beyond the reasonable doubt.

Initially crimes were simple and in very limited nature so that time criminal law was also plain. After 13th century some cases of serious offence came they led to first distinction between tort and crime. With criminal liability moral blame was linked. By this change mental element in liability got recognition.

There are two important element of crime namely

1. *Actus reus* in Cyber Crimes

Actus reus defined as “such result of human conduct as the law seeks to prevent”¹⁵ in cybercrime *actus reus* is highly varied and dynamic. In simple word *actus reus* means result of human conduct. it does not include mental element. it does not limited an act only, but also includes state of affairs.

C.J. Smith & B. Hogan found *actus reus* to be a product of human action because the law attempts to prevent it. Simply guilty intent is not adequate to resolve the criminal fault but any act or omission is required to complete the offence. In in cybercrimes,

¹³ Austin, *Lecture on Jurisprudence*, pp. 249-253(1920).

¹⁴ Kenny, *Outlines of Criminal Law*, p. 532 (18th ed. 2013).

¹⁵ J. W. C. Turner, *Kenny's Outlines of Criminal Law*, p. 17(1st ed. 1966).

Actus reus has become a challenge because whole act is committed in the intangible surroundings. the offender may leave some sign in the computer. Although it becomes a huge challenge to prove in the court of law, as it is needed to be in the physical form or in that form in which they becomes admissible in evidence.

In cybercrime it easy to find the *actus reus* but very hard to prove. The act can be considered a crime may be said to have happened when a person makes use of computer function; or trying to obtain access from the internet or sending signals via different computers.¹⁶ In cases of rape, an important feature of the *actus reus* is absence of the consent on part of prosecutor. If the prosecutor can not show this denial of consent then the *actus reus* of accused does not prove and the case will lose here. In this context we can say that *mens rea* also forms part of *actus reus*.

2. *Mens rea* in cybercrime

According to the current jurisprudence crime can be committed with *mens rea*. *Mens rea* is second basic factor that constitutes crime, sometimes referred to as 'a guilty mind.' definition of *mens rea* underwent a gradual shift before modern criminal law came to accept as often necessary a guilty mind of some sort or some such mental feature.¹⁷ *Mens rea*, refers to the individual's thematic intention to commit the act. The act remains same although the state of mind causes the act 'reus' and therefore an offence. Quick all crimes need evidence of some kind of a mental dimension. many courts held that 'primarily all crime exists in the mind' Each offence requires a clear state of mind reflected by the terms in the particular section of the law: 'recklessly', 'with intent', 'maliciously', 'wilfully', 'unlawfully', 'knowingly', 'fraudulently', 'dishonestly', 'corruptly', 'knowing or believing', 'allowing' and 'permitting' Expressing different mental states which differ from one another. However, the basic tenets of criminal liability are motive, recklessness and knowledge.¹⁸

It consists of a large number of different mental activities such as recklessness, negligence, intention etc. word intention is used for a man's state of mind not only because of his ability to predict but also because it contains the expectation of the future result of his actions, as it is rightly believed that there can be no intention

¹⁶ *Ibid.*

¹⁷ J.C. Smith and B. Hogan, Criminal Law, p.103 (1st ed. 1988).

¹⁸ Talat Fatima, *Cyber Crimes*, p. 70 (2nd ed. 2016).

unless there is foreseeability. When a man decides to do particular act, then he must have fair foresight of the consequences of such an act. There are no criminal liability under the Common Law for any damage or injury caused by a individual without conduct or any intention which is not unexpected.

Mens rea has been accepted as an integral component of crime except in criminal offences where there is a strict liability. Since the rise of e-crimes, the legal community is facing the challenge of defining *mens rea* in cybercrimes, in addition to many others.¹⁹ As an important component for deciding *mens rea* in cybercrime, the offender's part is that at the time of causing t computer to perform the task, he / she must be informed that access intended to be obtained was not lawful. There must be intention on the part of hacker to secure access, although that intention may be directed with any computer and not with a particular computer. Therefore the hackers does not need to be aware of exactly which computer he / she was attacking. There are two important ingredients that make up the *mens rea*, in hacking, 1) access intended to be protected must've been unauthorized, 2)as there should be knowledge on the part of hacker regarding the access.

The mens rea requires two important elements in the case of cybercrimes. 1) 'Intention to secure access to the any software or data stored on any computer, computer network or computer system must be made. 2) The individual must know that access he intends to obtain is unauthorized at the time when he commits *actus reus*.²⁰The nature and skilled involved in the cybercrime such that current legal framework couldn't do much to handle and contain same thing. In addition, the cyberspace technology has greatly eroded conventional legal principles such as property and impacted the rules of evidence such as the *locus standi*, burden of proof, and '*mens rea*' concepts.

¹⁹ J.C. Smith and B. Hogan, Criminal Law, p. 103 (1st ed. 1988).

²⁰ Vakul Sharma, Information Technology- Law & Practice, p. 135, (5th ed. 2016)

CRIMINAL LIABILITY UNDER CYBER CRIMES

Crime's nature and concept has clearly established that there are two aspects of crime one being *mens rea*, and another being *actus reus*. To enforce criminal liability as white collar crime, counterfeiting coin, false evidence, false evidence etc. on the offense against State *actus reus* is sufficient. the general principle under criminal law is that unless the prosecution proves it beyond reasonable doubt person can't be convicted and the criminal law should prohibits his act or omission. The offender shall be liable for same if he has a given state of mind regarding the crime committed. The *actus reus* without *mens rea* is therefore deemed not to be a crime, and vice-versa.²¹

In the case of cybercrime, proving all aspects of Crime is very difficult. In the case of cybercrime, proving all aspects of Crime is very difficult. *Actus reus* of the cybercrime is very varied and dynamic.²² For example , when any person starts using a mouse and keyboard to work with a computer and attempts to access the information on the others computers without his permission, there is presence of *actus reus* in the cyber space that the law seeks to control.

In a debate about whether a new law is required to deal with this emerging type of crime, cybercrimes have set in. The order school gives some creditability to the peculiar existence of new technology and peculiar set of problems unfamiliar to current criminal jurisprudence, such as scope and nature of cybercrimes, intention and difficulty in identifying the accused, jurisdiction and compliance. It contends that for dealing with cybercrimes requires a new comprehensive legislation.

Two approaches should be implemented to combat cybercrimes: firstly, crime related to computer must be treated as both conventional crime and current crimes committed through the use of high-tech technology, secondly, crime related to computer must be viewed as a crime that is special in nature and requires new legal structure.

²¹ Dr. Vijaykumar shrikrushna chowbe, “ The Concept of Cyber Crime:Nature, Scope”, p. 15, 21 february (2011) SSRN,

²² M. Dasgupta, Cyber Crime in India- A Comparative Study, p.8 (1st ed. 2009).

MEANING AND CONCEPT OF THE CYBER CRIME

The word 'Cyber,' whose usage became common in the 1980s, emerged many decades earlier since Norbert Wiener coined the word 'cybernetics' in 1948 and defined same as 'studying message as a method of controlling society and society.'²³ In reality, the phrase 'cybercrime' is mostly used in knowledge society of the 21st century, and is created by combining two terms cyber and crime. The term cyber signifies the cyber space, and it means the computer-modelled information space in which there are different objects or information of symbols image exist. It is, therefore, the place where computer programs operate and data processing takes place.²⁴

Cybercrimes are nothing but real-life crimes perpetuated in digital medium and thus there is little distinction between the concept of a crime in the cyber world and the real world. The only difference is medium of crime. Cybercrime is 'transnational or international' – there is no border in cyber world. Computer crime, cybercrime, electronic crime, e-crime or hi-tech crime typically refers to illegal activity in which computer or network is source, device, target or crime location as well as conventional crime through use of technology such as , Internet fraud, child pornography.

Broadly cybercrime means an act or omission, which committed on through internet connectivity, may be directly or indirectly, this is forbidden by any statute, and for which corporal and/or monetary punishment is given.

DEFINITION OF CYBER CRIME

The term 'cybercrime' as a generic term that refers to all type criminal activities perpetrated through the use of computers, the Internet on the cyber space and the www. In India, in no law has any definition of the term 'cybercrime' been given yet. In addition, the IPC 1860 does not at any time use the word 'cybercrime'. Even after 2008 amendment cybercrime is not define under Act. "In absence of a specific definition of notion of 'cybercrime' in European Union's legal system, a range of steps proposed in the Strategy to tackle 'cybercrime' (such as initiatives to improve cooperation

²³ Dhawesh Pahuja, "Cyber Crime & the law", Legal India, July (2011) last access on 20 may 2020.

²⁴ Jyoti Ratan, *Cyber Laws & Information Technology*, p. 62. (3rd ed. 2017)

between law enforcement agencies) are not explicitly related to concrete and well-defined offences."²⁵

Cybercrime can be defined as any unlawful act promoted or facilitated by the computer, whether computer is object of a crime, a repository of evidence relating to a crime, or an instrument that used commit a crime. In plain language cybercrime means crime engaged in computer network or computer. But in such simplistic and limited terms complex nature of the cybercrimes can't be sufficiently expressed. Cybercrime, according to Pavan Duggal, refers to all activities that are carried out with criminal intention in cyberspace or using internet medium. These can be either traditional or newly developed criminal activities with growth of new medium. Any conduct that basically offends human awareness may be included in the cybercrime context.

Commit a crime with the using of computer technology is better definition of cybercrime; engaging in activities that threaten the ability of a society to maintain internal order. So this definition covers both traditional cybercrimes and the emerging ones. This also includes the use of computer technology, and not just the use of the networked computer technology.

TRADITIONAL CRIME AND CYBER CRIME

Cybercrimes, which are distinctly different from the traditional crimes, are often more difficult to detect and prosecute. Cybercrimes are perpetrated by perpetrators through small, targeted cyber threats, and large networks of commercial purposes leased, hijacked computers are used to launch significant attacks.²⁶ Researching on legal issues of the cybercrime in China, by Chen Junjiing concludes that such crimes are much more widespread unlike traditional crimes and these are increasing at faster rate. In addition, cybercrime harms society more than traditional crime, and is much more difficult to investigate.

Cybercrime contains any computer and network-related criminal act. In addition, cyber-crime also includes traditional Internet-based crimes. for example; telemarketing, hate crimes, fraud on the Internet and identity theft, are considered

²⁵ Prabhash Dalei & Tannya Brahme, "Cyber law in India: An analysis", 2 IJHAS, p.1, (2013).

²⁶ The Swedish Emergency Management Agency's 2008 report,

cybercrimes when illegal activities are committed using a computer and Internet.²⁷ Cybercrime hackers are skilled criminals, disgruntled workers, professional, disillusioned youth, and state critics in contrast with conventional crimes.

The other distinction is based on evidence of crimes between these two words. In conventional crimes the offenders typically leave some traces of the crime, such as fingerprints or any other physical evidence, after or during the execution of the crime. But in cybercrimes cybercriminals commit their crime via the internet and there is very little chance of leaving any evidence. According to Forensic investigators who usually have experience of difficulty in evidence gathering for conviction of the cyber criminals because they either change their identities or do crime on the basis of the fake identities But as compared to conventional criminals, faking their age, sexuality, race, etc. is very difficult.²⁸

Depending on the use of power, those two words can be distinguished. Many of the crimes such as robbery, murder, rape, etc. in traditional crimes involve use of excess force which leads to the physical injury on the person suffered. But as compared to cybercrimes there's really no requisite to use any type of force since in this crime criminals only use other person's identities in order to steal any private data etc.

RELATION BETWEEN CYBER CRIME AND CYBER SECURITY

Cyber crime

Cyber criminality is a crime involving use of the computer devices and Internet. This can be committed against private organisations, governmental, individual, group of individuals. It is usually with the intention of harm someone's reputation of someone, causing mental or physical harm, and benefit from it such as spreading hate, monetary benefits, and terror.²⁹ As happened in 1998, more than 800 e-mails were sent to Sri Lankan embassies by Tamil guerrillas, (Tamil Tigers.) According to mail sent by Tamil Tigers "We are Internet Black Tigers and we are doing this to

²⁷ Raj Samani "Cybercrime: The Evolution of Traditional Crime", The Journal of Complex Operations, p.275, (2011)

²⁸ *Ibid.*

²⁹ Cyber Crime Vs Cyber Security: What Will You Choose?; Europol; <https://www.europol.europa.eu/activities-services/public-awareness-and-prevention-guides/cyber-crime-vs-cyber-security-what-will-you-choose> Last accessed on 15 may 2020.

interrupt your communications." Intelligence authorities have described it as the first recorded terrorist attack on computer systems in a country.³⁰

The basic principle of cybercrime law is to punish, who is with criminal intentions access without authority or unlawful use of the computer systems and internet, in order to prevent damage and alteration of systems and data on it. The greatest threat of cybercrime, however, is to an individual's financial security as well as government.

Cyber security

Cyber security is strategy against unauthorized access or threats to computers, programs, networks, personal data, etc. This is an activity which protects and defends information and communication systems against who is to be authorised to use or alteration or device exploitation. Cyber protection is often referred to as security in information technology.³¹ It involves the techniques to protect networks computers, data and programs from access, which does not have authorisation or attacks that can harm or manipulate them in some way. Cyber security is basically a technical approach to safeguarding systems from such attacks.

All threats to computer system or network and all vulnerability by good cyber security recognize. It identifies the cause and fixes, as well as ensuring system security. Strong cyber security systems are focused on a blend of human and technical elements.³²

³⁰ Pravin Karna "Cyber law & Cyber Crime The Concept of Cyber Crime: Nature, Scope" SSRN 2011,

³¹ Robert Roohparvar, Elements of cyber security by; InfoGuard Cyber Security; Dated: 02.03.2019; < <http://www.infoguardsecurity.com/elements-of-cybersecurity/>> last accessed on 1 May, 2020

³² *Ibid.*

Differences between Cyber Crime and Cyber Security

There are a few aspects that can be differentiated on cybercrime and cyber security, these are:

Types of crime:

In cybercrime- the main target in the cybercrime is individual or group of people and their data, Governments and organisations may also be the victim of cybercrimes (hate speech, trafficking, trolling, child pornography, cyber bullying)³³

In cyber security- Such crimes are where the main target is computer network or computer software or hardware (viruses, worms, distributed denial of service attacks, ransomware)³⁴

Victim: in case of cybercrime victims are individual, group of people, may be family, government or organizations or corporation. In cyber security organization and government, so range of victim in cybercrime is wider.

Area of study: under cybercrimes Psychology, Criminology, Sociology are addressed. And how crime is committed, and what are the reason and how can be it prevent. On other hand cyber security for making network secure deals with computer engineering, Computer science, IT, Networking, Coding, and engineering strategies.

ELEMENTS OF CYBER SECURITY

Certain elements are needed to build a strong cyber security system. The elements read as follows:

1. Application security- In business ventures essential role played by the application; that is why every organization needs to concentrate on security of web applications. The security of web applications is critical for protecting customers, their interest and information. Application security helps curtail any

³³ Understanding the Difference between Cyber Security and Cyber Crime; Privacy International <<https://privacyinternational.org/explainer-graphic/2273/understanding-difference-between-cyber-security-and-cyber-crime>> last accessed on 1 May 2020

³⁴ Roderick S. Graham, "The difference between cyber security and cybercrime, and why it matters" The Conversation; < <https://theconversation.com/the-difference-between-cybersecurity-and-cybercrime-and-why-it-matters-85654>> last access on 2 May 2020.

attempts to break the authorization limits set by network security policies or computer system.³⁵

2. Information security- intellectual property, business records, customer data, personal data, etc. Information included. It is therefore important for a company to have very strong cyber security for data/information in order to avoid leakage.

Security of information involves the safeguarding of sensitive information from unlawful access, use or other damage. This also means that critical data will not get lost if any problems such as malfunction of system, natural disasters, fraud or other potentially harmful circumstances occur. Integrity, confidentiality and availability are the characteristics which define information security. Data privacy, data quality, data reliability and Data confidentiality, are all part of information security.

3. Network Security- Network security is about safeguarding network and data usability and reliability. Network penetration test is performed to evaluate vulnerabilities within a system and network.

This applies to broad variety of security policies to thwart and track unauthorized access, abuse, computer device harm and other network structures. Network protection extends coverage across companies and organizations, to multiple computer networks covering private and public communication systems.

4. Business continuity planning- Its aim is to prepare for any form of intrusion or cyber threat by detecting timely threats to systems and evaluating how they could impact the operations and methods to combat that danger. This also called as Disaster Recovery.
5. Operational security (OPSEC)- it is used for protecting functions of the organisation. This defines essential information and properties in functional system to monitor the risks and vulnerabilities.
6. End-user education- Training their employees about the cyber security is critical for an organization, since data breached caused due to the human error. Each employee must be aware of and have knowledge to deal with the common cyber threats.

³⁵ *Ibid.*

Training can help management to get used to and threats to system users and training of user will help eliminate resistance to change and improvements and lead to closer user scrutiny.

7. Leadership commitment- In order to have a good cyber security system it is necessary to have leadership involvement in companies and organisations. The management, implementation and development of cyber security processes without having leadership in team is complicated.

TYPES OF CYBER CRIME

We can see every day cases of cybercrime increasing and figuring out what is traditional crime and cybercrime,, is quite difficult. However cybercrime can be categorized and discussed under following heading to tackle this challenge: cybercrime against 1) against person 2) against the property 3) against the government 4) against the society.

1. CYBERCRIME AGAINST THE PERSON

Cybercrime against persons committed. This form of offences directly influenced the individual's personality. Following are the cybercrimes of some kinds that threat the user.³⁶

Harassment via E-Mails- This form of harassment is very popular by file attachments, sending letters, & links, i.e. through e-mails. Harassment is growing nowadays as the use of social media sites. like Twitter, Facebook, orkut, instagram, etc. day by day increasing.

Cyber-Stalking- The phrase derives from the term 'stalking,' which means following a person to embarrass or harass that person. If computer or email is used for commit stalking.

It is often achieved by using certain criminal activities such as abuse of identity, extortion, defamation, spoofing etc. Cyber stalkers may create fake websites, create fake forums, send threatening spam, make fake profile or send harassing mails for stalk another person.

Cyber Defamation- for causing defamation Injury can be done through oral or written words, or through signs or visible representations. The person making that defamatory comment must be intent to lowering the image of person about whom the accusation was made in general public's eyes.

³⁶ Prabhash Dalei & Tannya Brahme, Cyber law in India: An analysis, 2013. IJHAS, volume 2, issue 1

If anybody publishing any defamatory statement by using cyber technology by like website, email or any social site may amount to cyber defamation

Hacking- In simple language hacking means accessing in computer for which you are not authorized.

Hacking isn't necessarily a crime because when a hacker is permitted to access computer networks lawfully called "ethical hacking". However, hacking crosses criminal line after computer network of someone is accessed by a hacker without their permission or authority.

Cracking- it is an act of without my consent or knowledge breaking into the my computer system and he tampered with the confidential information or data.

E-Mail Spoofing- Here an attacker steals another person's identity in form of a cellphone number and receives the SMS from the victim's cellphone number via internet and receiver. It is a very dangerous cybercrime against any human.

Carding It means fake credit and Debit cards used by offenders with Draw money from the bank account of victim for their monetary gains. This type of cybercrimes often includes illegal use of ATM cards.

Child Pornography- Defaulters in this cybercrime create access materials or distribute that exploit the sexual exploitation of minors. This is classified among India's most heinous type of cybercrime

Phishing- Phishing is financial crime in which criminal acts as a legitimate individual and sends an email demanding that person update his records or may be confirm details of his credit card and acquires confidential personal information.

2. CYBERCRIME AGAINST THE PROPERTY

The second category of the cybercrimes is cybercrimes against property, including computer vandalism, harmful program transmission, unlawful computer trespassing

through cyberspace and without possession of computerized information without authority.³⁷

Intellectual Property Crimes- depriving owner wholly or partially of his rights is a crime if it is done unlawfully. Most common type of breach of IPR may be s copyright infringement, software piracy, patents, trademark infringement, service mark infringement and designs, computer source code theft, etc.

Cyber Squatting- It involves two people claiming the similar domain name either through claiming to have first registered the name by right to use it before other or by using something which is similar to the previous one.

Cyber Vandalism- Vandalism means intentionally damaging another's property and includes the destruction or disruption of information or data stored on a computer when network service is disrupted and stopped. These actions may take form of a computer theft, any computer component.

Hacking Computer System- Hackers target those like Popular Facebook, twitter, Instagram, blogging site via unauthorized computer access / control. These attacks were not intended primarily for financial gain as well as to diminish public image of a particular company or person. In April, 2013, hackers targeted MMM India.

Transmitting Virus: virus is a type of programs which is written by the programmers which attach to a pc or file and then transmit to other computers and files on a network in order to alter or delete it.

Cyber Trespass: it means accessing in to computer or network of someone without any right or authority of owner and alters, misuse, disturb and damage data by using internet.

3. CRIME AGAINST GOVERNMENT

Third category of the cybercrime is crime against crime government. Under this category cybercrime is deferent kind of crime. The development of internet has shown

³⁷ Shital Kharat, “Cyber Crime – A Threat to Persons, Property, Government and Societies”, SSRN (2017).

that individuals and groups use the medium of cyberspace for international governments as well as To threaten nationals of a country. Such crimes manifest themselves in terrorism when an person "cracks" into a website run by a government or the military.

Cyber Terrorism- Issue of Cyber terrorism concern both domestically and globally. Attacks on the Internet by Terrorist are by the distributed denial of the service attacks, hate emails and hate websites, attacks on the sensitive computer networks etc. Cyber-terrorism practices threaten the nation's security and dignity.

Cyber Warfare - It refers to hacking which is politically motivated for espionage and sabotage . It is often seen as an analogous type of information warfare to conventional warfare however this analogy is controversial both for its political motivation and for its accuracy.

Distribution of printed software- This includes distributed "printed software" from one device to different with the purpose of destroying government data and official records.

Possession of unauthorized information- Using the Internet, it is quite easy to obtain any information by terrorist and to hold that information for religious, financial, political, ideological purposes.

4. CYBERCRIME AGAINST THE SOCIETY

This is fourth category of crime. If an crime is done with intention of causing harm via using cyber means to the society at large or number of the people.³⁸

Child Pornography- It involves using computer network to develop, access or distribute materials that exploit the sexual abuse of minors.

Financial Crimes- Phone networking and network sites where the offender will attempt to attack by sending false mails or messages via the internet, like using credit cards by illegally obtaining password.

³⁸ 3 Harpreet Singh Dalla & Ms. Geeta, "Cyber Crime – A Threat to Persons, Property, Government and Societies", ARCSSE 2013.

Forgery- This means deceiving large numbers of people by sending threatening mails, since online business payments are the normal lifestyle requirement of today.

CYBER CRIME DURING COVID -19

Most of the countries are affected by the covid-19 till now more than 50,000 people are infected. Due spreading risk government of India announced lockdown for the whole country which started from 25 March, 2020 in starting phase of lockdown all private or public companies are closed. Employees suggested to do work from home. Companies' security is at risk as all the data like financial details, customer information, trade secrets, and all other business confidential information can be accessed by click of a button to employees from their homes. To avoid misuse of the data or loss of confidential information, it is important for the employees to take special care of the data of the company and protect it from family members and friends. In addition to company information, an individual's personal confidential and financial information is also at risk given the increase in the cyber-attacks.³⁹

Covid-19 and Malware, Spyware, Ransom ware⁴⁰

Virus Attacks ,During this lockdown period , people access websites on social media such as twitter, Facebook , instagram, more frequently than watching series and movies by subscribing to the web channels such as Amazon, Netflix , Zee 5, HotStar etc. and even indulging in the online games by downloading various applications. Both of these practices are internet-based. People have to provide and/or offer permissions to readily access their personal details on their mobile, tablets, computers, and social media pages in order to use services offered by applications. Many times, users share financial information too in order to purchase applications or access online services. Citizens are becoming more dependent on different payment gates to pay their electricity bills, recharge their cell phones, purchase online essential goods and medicines, and participate in the various online activities of this nature. All those activities opened the door to attacks on ransom ware and spyware. A spyware steals the user's confidential personal data thus, ransom ware monitors a person's username and other important credentials. Such attacks could lead to losses

³⁹ Kiratraj Sadana & Priya Adlakha, "Cyber Crime During Coronavirus Pandemic", Mondaq (2020).

⁴⁰ Dr Mohan Dewan "COVID 19 Lockdown: Increasing Cyber Crimes in India", Lexology 2020.

not only economically but also otherwise for people. Different agencies recommend other counter-measures and safe activities that can be followed to prevent these attacks. Secured apps and Operating systems are sending its users regular updates to address security vulnerabilities and to provide additional security.

Phishing Attacks and other banking related fraud-

Banks currently operate with limited sources, & people are recommended to use online banking or telephone banking to take advantage of banking services. Cyber criminals make phishing calls or SMS message or send phishing emails to customers of the bank claiming to be officials of bank and demanding confidential details, such as their a/c number, debit or credit card number, OTP, CVV etc. Recently, in compliance with the RBI's COVID 19 regulatory plan, banks have allowed a moratorium by postponing payment of Term Loan/EMI Instalments & Interest for 3 months. Cyber attackers are now contacting loan holders on pretext of negotiating the postponement of payment of EMI and requesting them for sharing CVV, OTP, PIN or password relevant to their accounts in order to make use of moratorium facility.⁴¹

Fake News or Rumours

Fake news or rumours that are circulating quickly throughout the country are another key concern that has arisen. Below are some instances of rumours & their side effects. In the month of March, on social media there is one misleading information where "chicken is a carrier of Coronavirus" was declared cost poultry industry a lump sum loss of 1.6 billion rupees in a day. In another incident, an audio clip went viral, claiming that vegetable vendors licked vegetables to spread Corona virus. The Government subsequently responded and released a statement saying the audio clip was false. There were another rumours that during lockdown period, government was going to cut pension by 30 per cent.⁴²

Taking into account the rising number of the fake news, Karnataka and Maharashtra Cyber Police have agreed to take serious actions against anyone found to be spreading false and unverified information about COVID-19 on social media. It was also determined that in these situations a person found posting misinformation on the

⁴¹ Kiratraj Sadana & Priya Adlakha, "Cyber Crime During Coronavirus Pandemic", Mondaq (2020).

⁴² Dr Mohan Dewan "COVID 19 Lockdown: Increasing Cyber Crimes in India", Lexology 2020.

What's App group, admin of the group should be held personally responsible in his group for these material and will be liable under the applicable law. Together GOI, police and social media channels are taking steps to prevent the spread of rumours.

CHAPTER III

ANALYSIS OF INFORMATION TECHNOLOGY ACT 2000

APPLICATION - This Act extends to whole of India and also to offences committed outside India. There are certain exceptions to the Act as provided in the First Schedule:

- a) Negotiable instrument as defined u/s. 13 of Negotiable Instrument Act (other than cheque);
- b) Power of attorney defined u/s. 1A of the Powers of Attorney Act, 1882;
- c) A trust defined under section 3 of Indian Trusts Act, 1882;
- d) Will defined u/s. 2(h) of Indian Succession Act, 1925, including other testamentary disposition
- e) Contract for sale or conveyance of the immovable property or interest;
- f) Any class of transactions or documents, notified by Central Government

DEFINITION - The Act 2000 defines many important words like ‘access’, ‘communication device’, ‘information’, ‘computer resource’, ‘computer system’, ‘data’, etc. The definition of computer is given as any electronic, magnetic, optical or high speed data processing device or system which performs many arithmetical, mathematical and memory functions by manipulations of electronic, magnetic and optical impulses, including all input, output, processing facilities which are connected to computer in the computer system or network;

Similarly, ‘computer system’ is also comprehensively defined in the Act to mean a device or collection of devices with output , input and storage capabilities. Both ‘computer’ and ‘computer system’ have been widely defined in the Act to mean any electronic device with data processing capability, performing a wide range of arithmetical, mathematical, and memory functions with output, input and storage facilities. A very careful reading of each word of the definitions will show that a high-end electronic programmable gadget like switch, router or for that matter even a washing machine used in a network can be brought under the ambit of the definition. Similarly, the definition of the word “communication devices” in ITAA 2008 is very

inclusive covering cell phones and such other devices which used to transmit text message, video, etc. like iPad and other similar devices. Later, words like “cyber café” was also introduced in the Act.

DIGITAL SIGNATURE – in ITAA 2008, “electronic signature” was defined but in the Act of 2000, ‘digital signature’ was covered in detail where the procedure to get digital signature certificate was also given, giving it a legal validity. It is defined as “authentication of electronic record” as per the procedure in Sec. 3. Sec. 3 of the Act, talks about the use of the asymmetric crypto system, the use of hash functions and Public Key Infrastructure. This is actually dependent on high level of technology, relying on specific technology of hash functions and asymmetric crypto system.

Thus, after the ITAA 2008, “Digital Signature” was renamed as “Digital Signature and Electronic Signature” giving legal validity to electronic signatures as a mode of executing signatures. The introduction of electronic signature brought about technological neutrality. It also includes digital signature as a mode of signature which is broader in range covering biometrics and other forms of creating electronic signature. In India there are some digital certifying authority of digital signature like M/s. TCS, M/s. MTNL and M/s. Safescript. I DRBT is the research wing of RBI which is Certifying Authority for financial sector and Indian Banking licensed by Controller of Certifying Authorities, GoI.

It is important to understand the concept of digital signature. Electronic signature does not mean a digitized or a scanned copy of the signature. In fact, there is no real signature of the person. It is not storing a signature or scanning a signature and sending it in electronic communication. It is process of the authentication of message as given under Section 3 of the Act.

Other simpler forms of authentication are retina scanning by biometric based, etc. these systems can be effective in the implementation of Act. But, the government still needs to evolve procedures in detailed to increase awareness about these systems by introducing necessary tools and conditions. The duties of the certificate of electronic signature issuing authorities have to be evolved regarding biometric based authentication and necessary steps have to be taken to make it user friendly without compromising security.

PENALTIES – chapter IX deals with Penalties, Compensation. It is a major step in claiming compensation, combatting data theft, security practices, etc.

Section 43 deals with penalties in case of damage to computer or computer system, etc. this is first ever provision for combating data theft issue. The IT Industry had been demanding legislation for a long time to address the issue of data theft, just like other physical theft. This section also deals with the civil offence of data theft. If a person, without the permission of owner of the computer, accesses, introduces virus, takes data, downloads copies, damages any computer or denies access to it to an authorized user, will be liable to pay Rs. 1 crore damages. It was removed by the ITAA 2008.

The interesting part of this provision is the civil liability for the offences. Criminality in offence of data theft is given under Sections 65 and 66. Spreading virus or writing a virus program, or other malware in a computer system, etc. all come under civil liability. This section defines all the words like computer database, computer virus, Source Code, etc.

There were debates about the liability of the organization which was sued for data theft. For the first few years of IT Act 2000, questions like responsibility of the owner, employee's liability, concept of due diligence, all of these were debated in court litigations like that of the Bazeem.com case⁴³. Thus, the need was felt to have a separate provision for corporate liability for information security and data protection.

A new sec. 43A was introduced in the ITAA 2008. It deals with compensation for failure in protecting data. This is like a watershed in the domain of data protection at the corporate level. It says that when a corporate body is negligent in the implementing reasonable security practices, affected person entitle to get damages by way of compensation from corporate body. The section explains the terms “body corporate”, “reasonable security practices” and “sensitive personal data or information”.

Thus, the corporate responsibility was brought into picture by the insertion of Sec. 43A., the corporate are under the obligation to adopt reasonable security measures.

⁴³ Sharat Babu Digumatri v. Government of NCT Delhi, MANU/SC/1592/2016

What comes under sensitive personal data has been clarified by the Central Government by its Notification of 2011 as including details of bank account, passwords, card details etc. After this, the IT industry became widely aware of data protection and data privacy.

Section 45 is the residual penalty provision which says that in case there is any contravention of rules for which no penalty is provided, Rs 25,000 have to be paid to the affected person.

On 11 April 2011, the Government of India, Department of I.T. notified The IT Rules. Anybody corporate will be considered to have complied with reasonable security practices if they have implemented such security practices and have a documented information security program and policies containing all types of security control measures at all levels commensurate with the information asset being protected with the nature of business. If there is a breach, the body corporate will be called upon to demonstrate the agency under the law that they have implemented all such information security program and policies. One standard security system is the Information Technology – Security Techniques – “Information Security Management System – Requirements”, which is an international standard IS/ISO/IEC 27001.

It has become very important for not only the IT companies but also the financial and the banking sector that have huge computerized acts dealing with the public data, to implement data protection measures. In the event of a litigation where a breach has been committed and there is a claim of compensation, it is upon the body corporate to prove that the said “Reasonable Security Practices and Procedures” were implemented and all the procedure mentioned in the Rules of April 2011 have been taken.

This section is likely to create chaos as there is a need to redefine the role of top management, employee and responsibility of the employer and the in the data protection. Then there are issues of vicarious and actual liability, contributory and actual negligence of all the stake holders involved.

Another issue that has not been taken into account is that of cloud computing scenario. Many organizations handle other people’s data and the information is stored somewhere else and not in the system of owner. There are questions regarding the information owners vis-à-vis information custodians and information container and

Service Level Agreements of the all involved parties. The entire scenario is still doubtful and there is no clear answer to these.

ADJUDICATION – after civil offences, the Act describes civil remedies for the same without the procedure of filing a police complaint. Section 46 lays down the procedure for adjudication. Any officer who is not below rank of Director as adjudicator to central or state govt. appointed by the Central Government. The Secretary of IT in a state is the nominated Adjudicator for civil offences of theft of data and the losses caused. This section is heavily criticized as it could not gain any popularity. In the first few years of the legislation, only few applications were made in the nation, and very few adjudications had been obtained. The first adjudication was obtained in April 2010 in Chennai in a case of ICICI Bank in which ordered to compensate applicant with wrongfully debited amount from internet banking, along with the cost and damages⁴⁴.

This section should be made popular among all and spread awareness among the public that recourse is there where one does not have to file a police complaint. Victims of cybercrime should be made aware of this procedure as most are not willing to take recourse of the police and file a case. The state should spend some time in spreading awareness on the procedure of adjudication for the civil offences. so that purpose for which this provision was made is served.

The appellate procedure and at the national level composition of the Cyber Appellate Tribunal under this process has also been given under this Act. The adjudicating officer has the powers of civil court and Cyber Appellate Tribunal has the same powers as that of a civil court under the CPC.

Interestingly, the IT Act does not define the term “cybercrime”. It lists some of the cybercrime and stipulates punishments for the same. This is dealt under in Chapter IX titled “Offences”

⁴⁴ ICICI Bank Limited v. Mr. Umashankar Sivasubramanian and Ors. Petition No. 2462/2008

OFFENCES

Section 65 – this section deals with tampering of the source documents. Destroying, Concealing, or altering source code of any computer when it is required to be maintained by the law is a punishable offence. The punishment stipulated for this offence is 3 years imprisonment or 2 lakh rupees or both. “Fabrication of an electronic record or committing forgery by interpolation in CD when produced as evidence in the court of law is punishable under this section”⁴⁵. The term computer source code used in this section refers to computer commands, listing of programs layout, design, etc.

Section 66 – this section deals with computer related offences. This section also refers to the data theft that is mentioned in Section 43. The difference between the two is that in Section 43, it was a civil offence with compensation and damages, whereas in this section, it is the same act done with a criminal intention for making it a criminal offence. The act of data theft mentioned in Section 43, if done fraudulently and dishonestly is punishable under this sec. with 3 years’ imprisonment or 5 lakh rupees fine or both. Earlier, in sec. 66, hacking was defined and was an offence.

After the amendment of this Act, data theft of Sec. 43 is given in Section 66 making the provision more purposeful. The term ‘hacking’ does not exist in the section now. Earlier, the term hacking was used in the section. Simultaneously, there would be academic courses on ‘ethical hacking’, etc. This created a very ambiguous situation wherein an illegal activity is being taught academically only with the addition of the word ‘ethical’ with it. The question is whether something which is an offence can be taught academically by prefixing ‘ethical’ to it. Then, courses like ‘ethical assault’, ‘ethical burglary’ can also be taught for physical defence. This anomaly was brought to an end by ITAA when Section 66 was rephrased by mapping it with civil liability of Sec. 43 and removed the word ‘Hacking’. Hacking is still an offence under this section. Though some experts interpret it differently according to their convenience. They say hacking is for the good purpose and ‘cracking’ is for the illegal purpose. The technology is same. The only difference is that hacking is with the owners’ consent and ‘cracking’ is an offence.

⁴⁵ Bhim Sen Garg v. State of Rajasthan and Ors., 2006 CriLJ 3463 Raj 2411.

After the ITAA, Section 66 has become very wide to include a list of offences. The researcher will analyze the offence as mentioned under Section 66.

Section 66A lays down that, sending offensive messages via communication service which was struck down in the case of *Shreya Singhal*.

Section 66B lays down that dishonestly receiving stolen communication device computer resource is an offence punishable with upto 3 imprisonment or 1 lakh fine or both

Section 66C lays down that identity theft like using others' electronic signature or is an offence punishable with 3 years' imprisonment or 1lakh rupees fine or both.

Section 66D lays down that cheating by personation by using computer or any other communication device is an offence punishable with either imprisonment of extending to 3 years and fine upto 1 lakh rupees.

Section 66E – Privacy violation – it is an offence if without consent person's private area publish or transmit and is punishable with 3 years imprisonment or fine 2 lakh rupees or both.

Section 66F – Cyber Terrorism – if there is intent to threaten the integrity, unity, sovereignty or security of the nation & denying access to any person who is authorized to access that computer resource or trying to access computer resource without authorization. If a computer is contaminated with Trojan horse, virus or other forms of malware or spyware, likely to cause injuries or death to a person or damage to property is an offence under this sec., punishable with life imprisonment.

The offences under the purview of Section 66 are cognizable and bailable. Presence of elements like intention, *mens rea*, knowledge, destruction, alteration, deletion in utility or value of data, all come under this Section.

Thus what constituted a civil offence under Sec. 43 has been made a criminal offence under Sec. 66, if offence committed with a criminal intention, attracting imprisonment or fine or both.

Section 67 deals with obscene material published and transmit in electronic form. The ITAA 2008 has widened the earlier section by including child pornography and by liability of intermediaries regarding retention of records are all included.

The section says that whoever publishes or transmits any material which is the lascivious or appeals to prurient interest or its corrupt the minds of those who will read the matter contained in it, is a punishable offence with 1st conviction for upto 3 years and 5 lakh rupees fine and 2nd conviction for 5 years and 10 lakh rupees fine or both.

This section has assumed great importance after the landmark judgment which was the first conviction under IT Act in India. In the case of *State of Tamil Nadu v. Suhas Katti*,⁴⁶ Accused was involved in the sending obscene messaged by using name of a married woman which amounted to email spoofing, stalking and the criminal offence according to the Section. Reliability of electronic evidences and strength of this section were proved by prosecution and the conviction was made.

Section 67A this section deals with publication in electronic form and transmission of material containing sexually explicit act.

Section 67B deals with **Child Pornography**.

Some of the acts which are included in this section are:

Firstly, when a child is depicted in a sexually explicit act, or digital images or creating text or promoting or advertising such material portraying child in obscene manner;

Secondly, facilitating online abusing child or inducing child to the online relationship.

⁴⁶ AIR 2015 SC 1523

Here, chil Dren mean below the age of 18 years. The punishment for the 1st conviction is imprisonment for maximum of 5 years and 10 lakh rupees fine. For subsequent convictions, imprisonment of 7 years and 10 lakh rupees fine.

There are exceptions to this section. Bonafide heritage material distributed for the purpose of education is excluded from the purview of this section, to ensure that distribution and printing of the ancient epics or the heritage material and academic books are not affected.

Screening photographs and videographs of illegal activities via use of internet are also covered under this section. Secondly, making MMS clippings or pornographic video or distributing such videos through cell phone or any other forms of communication by using internet also come under this sec.

Section 67C places certain responsibility on the intermediaries. The intermediaries should retain and preserve such information for such time period as specified by Central Govt. Non-compliance with this provision is an offence upto 3 years imprisonment or fine.

Section 69 – this is interesting section. It allows the govt or agencies to monitor, intercept, or decrypt any information received or stored in a computer resource according to the procedure laid down there. The power can be exercised by the govt, if it satisfied that such interception is necessary or the interest of integrity or sovereignty of India, security of state, defence of India, public order or friendly relations with foreign states or for preventing incitement to commission of any offence which are cognizable or if it is necessary for the investigation of any offence. In any case, the necessary procedure has to be followed and reasons for the taking such action has to be recorded in the writing. The intermediary shall extend the all technical support When asked to do so.

Section 69A as inserted by ITAA, vests Central govt or any officers of it, with power to issue guidelines for the blocking access to any such information through the any computer resource under the circumstances as mentioned above.

Section 69B lays down the power to authorize the monitoring and collecting traffic data or information through the any computer resource.

CERT-IN

CERT-IN is the single authority for issue of directions for blocking sites. It verifies the authenticity of complaint and after being satisfied that blocking is absolutely necessary, instructs the DoT – Latest Release Cell to block website. DoT ensures that the website is blocked and then informs CERT-IN accordingly. DGP of all states and such other agencies of enforcement could also approach CERT-IN.

The blocking of website becomes necessary for many agencies which are engaged in the different walks of public and administrative lives. The provision regarding blocking of website is given under Sec. 69 A of IT Act, relating to pornographic material on the website.

After CERT-IN blocks the website, it can be challenged if it results in breach of freedom of speech and expression as guaranteed to the citizens. However, websites which promote slander or defamation, hate content, promoting gambling, violence, racism, terrorism etc. along with promoting pornography, including violent sex and child pornography can be blocked since these cannot be included in constitutional right of freedom of speech and expression. Blocking of such websites may be “balanced flow of information” and not censorship.

Section 72 lays down the penalty for breach of privacy and confidentiality, upto 2 years imprisonment or 1 lakh rupees fine or both.

The most significant part of this Act is that its extra territorial applicability. The nature of cybercrime is global now. Fraudster sitting in one part of the world can commit any other kind of cybercrime in another part of the world. Thus, Section 75 states that the Act applies to offences committed outside India, of the contravention involves a computer network located in India.

This Act has over-riding provisions with regard CrPC. According to Section 78, notwithstanding the provisions of the Cr.PC, a P.O. not below rank of Inspector shall

investigate offence under this Act. Such powers belonged to officers not below the rank of a DSP in IT Act but it was later amended by ITAA as Inspector.

DUE DILIGENCE – section 79 discusses the liability of intermediaries and the concept of due diligence. Intermediary will not liable for any information from third parties that he hosts, if he has just limited functions of providing access to communication system on which third party information is transmitted or hosted or temporarily stored or he doesn't initiate transmission, select receiver of transmission and select or modify information contained in transmission and due diligence observed by him and guidelines followed which prescribed by Central Government.

The concept of due diligence has caused a lot of debates. It was believed to be an outcome of the Bazeem.com case⁴⁷ where The company's NRI CEO was arrested for making MMS clipping of unacceptable pornographic content depicting school kids available for sale on public domain website he owned. In this case, there was extensive discussion on the extent of responsibility of the content provider and the ISP and what is due-diligence he should have exercised, as CEO of company.

After ITAA and the introduction of “reasonable security practices and procedures”, the onus on the body corporate under Section 43A, the concept of due diligence there was a new set of rules on April 2011 titled IT (Intermediaries Guidelines) Rules. As per this, “the intermediary, on whose computer system the information is stored or hosted or published, upon obtaining knowledge by itself or been brought to actual knowledge by an affected person in writing or through email signed with electronic signature about any such information as mentioned in sub-rule (2) above, shall act within thirty-six hours and where applicable, work with user or owner of such information to disable such information that is in contravention of sub-rule (2). Further the intermediary shall preserve such information and associated records for at least ninety days for investigation purposes.....⁴⁸”

In short, an intermediary will be liable for any contravention committed by any user unless he can prove that he had taken all due diligence and has not conspired or abetted in the act.

⁴⁷ (2005) 3 CompLJ 364 Del.

⁴⁸ Information Technology (Intermediaries Guidelines) Rules 2011.

Section 80 lays down the power of any PO, not below rank of an Inspector, to enter any place, search and arrest w/o warrant any person found to have been committed an act or about to commit an offence under this Act. This is a very effective provision but has been rarely utilized by the police officers.

The Act is also applied to truncated cheques and electronic cheques.

OBSERVATIONS ON ITA AND ITAA

The researcher will now discuss broader areas of omissions and commissions in the Act and the general criticism that it has faced.

Awareness: there is no provision made in the Act to create awareness. The government or investigating agency like Police department, have not taken any serious step to create awareness among the public about the provisions of the Act, which is very essential considering that there is new technology that have to be learnt by legal professionals, litigants, the judicial officers and the public at large. It is not surprising that the adjudication process is still not known to many including the investigating agencies.

Jurisdiction – the matter of jurisdiction is mentioned in Sec. 46, 48, 57 & 61 in context of adjudication process & appellate procedure and Sec. 80 lays down the power of PO to enter and search a place for cybercrime. With regards to electronic record, Sect. 13(3) & (4) discusses place of receipt and dispatch of electronic record.

There are fundamental issues of jurisdiction that still arise in many cases. If an email is hacked by someone who is a resident of another state and the act came to be known in another state, then what should be the jurisdiction? Again, if he is an employee of an MNC with branches all over India and is frequently travelling and he suspects another employee of the same firm from his branch or from another branch and informs the police that the evidence can be found from the suspect's computer system, then what should be the jurisdiction to file the complaint? Often, the investigators don't accept complaint on grounds of the jurisdiction. Thus, it is clear that people lack the knowledge that cybercrime is borderless, geography-agnostic, territory-free and

beyond all jurisdictions. People should be made aware that cybercrime happens over ‘space’ or ‘cloud’, and proper training has to be given to the concerned people of all fields.

Evidences: evidences are a main concern in the cybercrime. In cybercrime, there is no scene of crime. We cannot mark a specific place, a computer, a network, seize hard-disk immediately and seize it as an exhibit.

The evidence, the network and the devices, the files, etc. are the crime scenes in a cybercrime. While filing a cybercrime case, be it a civil case or a criminal complaint filed with the police, evidences are found in the computer system of the intermediaries or in the opponent’s system too. The police is required to immediately seize the system for the evidence as it is easy to destroy such evidences. In fact, as soon as one comes to know of the seizure, he may try to destroy the evidences by removing history, formatting etc. since these are all volatile in nature.

There is no common repository of the electronic evidences in India by which in event of dispute, The affected computer can be delivered to third party with appropriate software tools who will keep it with himself the copy of the disk and return original to owner so he can keep using that and the whenever he required he can copies. For this purpose, there are tools like “EnCase” and “C-DAC” tools which are available with search features, retrieval facilities and preserving original version.

Non coverage of many crimes: India has only one legislation regarding cybercrime – the IT Act 200. Because there is only one legislation, thus, it has not been possible to include all issues of cybercrime and many crimes per se are left uncovered. Cybercrimes like cybersquatting, etc. are not covered and cybercrimes like ISP’s liability in the copyright infringement, spam mails etc. are inadequately covered.

Most of the Indian corporates use Operating Systems from the Western countries and many software and hardware items are from somewhere else. In such cases, the reach of the IT Act dealing with a utility software or Operating System, is to be specifically addressed otherwise, the user may not know whether an update is downloading or spyware is getting installed, which will give rise to very peculiar situations. The Act does not mention anything about the policy government on keeping backup of

corporates in our country or abroad and Subjective legal jurisprudence over backups of such software.

One good part is that most of crimes are also covered by IPC. So even if someone escapes the ITA or the ITAA, one cannot escape the IPC.

The existing legislation is not cybercrime friendly. It is a valuable piece of legislation and notable achievement in nation's technological growth. But it is not sufficient. We should not forget that the criminals are always way ahead in matters of technology. For example, steganography was used in case of Parliament attack to convey messages (coded) between criminals. This proves that investigators need to learn more about technology. Similarly, in Mumbai attack case satellite phones were used in November 2008 after which investigators became more aware of technological perils, since until then they were just relying on cell phones or other less complicated technologies. Hopefully there will be more awareness campaigns, and govt. will be able to enact more legislation. However, it may not be enough to introduce more legislation to deter cybercrime as we know that cybercrime conviction rates are very low compared to IPC. What may act as a deterrent is the certainty of punishment and not severity of punishment. It is not number of legislations that is important but the certainty of punishment that the legislation will bring. Thus, the government should be more proactive in cybercrime cases and ensure that there is appropriate conviction.

CHAPTER IV

CASES RELATED TO CYBERCRIME IN INDIA

Bois Locker Room case⁴⁹

Recently the "Bois Locker Room" incident has caused a wave of anger across the nation.

The incident came in to light while multiple Instagram group chat screenshots were leaked, exposing group where images of girls, under age, were shared, and the girls were objectivized and shamed using vulgar and offensive language. There have also been alleged comments and discussions about committing heinous and gory crimes toward their modesty along with sexual violence threats.

The members were teenage school-going boys who formed the group to exchange pictures of girls, many of whom were under 18.

As much as incident highlighted need for the gender education in each household, also it brought up questions about the role of the intermediaries who provide users with platforms to host these criminal discussions.

Under **Sec. 2(w)** of IT Act 2000 define intermediary as under:

“2. (w) “intermediary”, with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes.”

In some cases intermediaries is not liable if they fall under section 79 of the IT act 2000.

⁴⁹ Aman Singh Bakshi, “Bois Locker Room: The role of Intermediaries in regulation of content”, Bar and Bench, 2020.

- a) Where the intermediary 's function is limited to only providing access to communication system through which third-party information is transmitted or hosted or temporarily stored: or
- b) Where the intermediary doesn't initiate transmission, select transmission receiver and select or change the transmission information; and
- c) The intermediary shall exercise due diligence in carrying out its duties under IT Act and also follow such other guidelines as may be issued in that name by the Central Government.

However, in the view of Sec 79(3) of IT Act, this is not blanket immunity given to intermediaries, which stipulates that intermediary shall not be excluded from liability if:

- a) The intermediary itself in commission of said unlawful act conspired or abetted or induced or aided ;
- b) Where any data, information or communication link which residing in or connected to the computer resource managed by the intermediary, is notified to intermediary, by the government or upon receipt of actual knowledge, , is used to commit illegal acts, and the intermediary shall not immediately disable or remove access to that content on that network without in some way vitiating the proof

Division bench of the supreme court upheld the sec. 79 of IT Act, in the *shreya singhal v. UOI*⁵⁰ “*subject to Section 79(3)(b) being read down to mean that an intermediary upon receiving actual knowledge from a court order or on being notified by the appropriate government or its agency that unlawful acts relatable to Article 19(2) are going to be committed then fails to expeditiously remove or disable access to such material.*”

Under section 20 of POCSO Act , on intermediary there is additional duty cast to provide the relevant info and report any such offense to "Special Juvenile Police Unit," or "local police," within ones knowledge, which is child sexually exploitative. Under Section 21 of POCSO Act, failure to disclose these offences shall be liable to punish for a period that may extend to 6 months/fine or both.

⁵⁰ AIR 2015 SC 1523

In 2015, India's Supreme Court took cognizance by suo motu of a letter addressed to SC by Prajwala, an NGO, raising concerns over the rampant proliferation of videos depicting sexual abuse such as child pornography/ gang rape / rape on the online platforms such as Twitter, Facebook Whatsapp, etc.

The SC thus impleaded Facebook , WhatsApp, Google, Yahoo as parties & directed that committee should be set up for advising the Court on feasibility of making sure that videos featuring child pornography, gang rape and rape, are not available for the circulation.

Its final outcome is still pending. Although there was common consensus within committee that law enforcement agencies should block the portal and websites that don't constructively censor content that portrays sexual violence.

The government then launched the cyber-crime portal to report such instances, and recommended that a DNA software's photo to block such content at threshold. It will also set up constructive monitoring tools by the deploying tools bases on Artificial Intelligence to auto-delete illegal content. The Court also proposed that such content be established hash bank which controlled by the government.

However, the GoI notified the POCSO Rules this year on March 9 with an opinion that role of the intermediaries increasing in actively monitoring content so circulated.

Rule 11 of POCSO makes it clear categorically that, in addition to reporting offense, an intermediary shall also provide to "Special Juvenile Police Unit" or "local police" or the "cyber-crime portal" the required information, along with source from where the such information may have originated.

The report shall contain the description of the computer in which that pornographic content was found and the alleged computer from which that content was obtained, including platform on which content was shown.

IT Rules 2011 (*Intermediary Guidelines*) imposes duty on intermediaries regarding due diligence , when conducting their duties, the duty to publish privacy policies, rules and regulations, and user agreements for each person's access to or use of the computer resource of the intermediary. These will notify the computer resource users

not to view, upload, host, alter, post, send, share or update any information that is prohibited in this way. SC upheld These guideline on intermediary in *Shreya singhal case* with limitation provided in the sec. 79(3)(b) of IT Act

It is not sufficient for the intermediaries in India that their hands will be clean by just washing their hand, claiming no responsibility under safe harbor clause, for crimes committed just under their noses, specifically as sexual crimes on internet are on the rise, for both minors and adults alike.

Therefore, a vital need for revised intermediary guidelines to highlight and remedy abuse of social media platforms is required.

Following various parliamentary debates in 2018 on instances of violence arising from the abuse of social media sites, the "Ministry of Electronics and Information Technology" prepared Draft IT Rule 2018 [Intermediary Guidelines (Amendment)]. Such guidelines amend due diligence standards for these intermediaries and compel them to employ automated tools to detect and delete from public access unlawful content.

The same has still not been notified, however. Nevertheless, the same shall be made toothless if role of these intermediaries is not standardized like that in the Singapore in combating virtual offences as described above. We can only hope that events such as "Bois Locker Room" and other automated mob-lynching cases will come to a halt until effective and stricter regulation is in place.

Pune Citibank MphasiS Call Center Fraud⁵¹

Under this case defendant defrauded with the four customers of the City bank of US. Around 3.5 lakh US Dollar transferred to the bogus account in pune . some defendants are employee of the call centre and they got confidence in the plaintiff and get their Pin numbers. After that they used these pin numbers for committing online fraud. This case raise many question about the role of data protection. Obviously the crime was committed using "Unauthorized Access" to the clients' "Electronic Account Space." So it is firmly inside the "Cyber Crimes" context. IT Act -2000 is fairly

⁵¹ Talwant Singh Addl. Distt. & Sessions Judge, Delhi , "CYBER LAW & INFORMATION TECHNOLOGY", available on <<https://delhidistrictcourts.nic.in/ejournals/CYBER%20LAW.pdf>> accessed on april 16,2020

flexible to handle criminal elements not protected by IT Act -2000 but protected by other laws as any IPC offense committed using "Electronic Records" may be considered a crime using "written Documents." Therefore, in addition to the section in IT Act-2000, "Cheating," "Breach of Trust" "Conspiracy," etc. are applicable in the above case' Under IT Act-2000 both Section 66 and Section 43 recognize the offence. Accordingly, persons who involved are liable for imprisonment & fine as well as liable to pay compensation to the victims to up to 1 crore rupees every victim for which "Adjudication Process" may be invoked.

Sony.sambandh.com case⁵²

This is the first case in which accused of cybercrime convicted in 2013. It all started after a complaint from "Sony India pvt Ltd," they have website called "www.sony-sambandh.com" that targets NRIs. The website allows NRIs to gift or deliver Sony products for Indian friends and relatives after paying for it online. The company agrees to deliver products to interested recipients. According to the case study on cybercrime, in May 2002, someone signed on to site under "Barbara Campa 's" identity and placed a Sony Color TV set and a wireless headphone. She paid via credit card number and asked to deliver the products to Arif Azim in Noida. The agency of credit card duly cleared the payment, and processed the transaction. Sony has delivered the products to Arif Azim after following the correct due diligence and testing procedures. The organization took digital photos when product was delivered for the proof that Arif Azim accepting the delivery. After the completion of the transaction credit card agency informed to company by saying that this transaction happened without authority of the card holder he denied that he purchased any item from the company. Then company file formal complaint at CBI regarding online cheating, CBI registered the case under IPC sec. 418,419, 420. Matter investigated and accused arrested. According to the investigation accused was working in the call centre. CBI recovered the item which delivered to him. In this case he plead guilty because CBI had sufficient evidence against him. Court convicted him under IPC sec. 418,419, 420. This is the first time when any accused convicted for committing cybercrime. But court took lenient view in this case because he was just 24 year old and that was his first crime. So court released him on probation. The decision is of

⁵² Mohak Rana, "Crimes in Cyberspace: Right to Privacy and Other Issues", Lawoctopus on August 7, 2014

utmost importance for the country as a whole. In addition to being first conviction in the cybercrime case, it has shown that IPC can be extended successfully to other types of cybercrimes not protected by the IT Act 2000. Second, a decision of this nature sends out a strong message to everyone that it is difficult to take law for a ride.

The Bank NSP Case⁵³

One of the important cases of cybercrime is Bank NSP case, in which a bank management trainee got engaged for marry. The couple exchanged several emails using their computers of companies. After a while both broke up and girl generated fake email ids like "indianbarassociations" and sent out emails to international clients of the boy. She used a computer from the bank to do so. Company of that boy lost a huge number of clients and brought bank to court. bank was held responsible for emails sent by using system of bank.

SMC Pneumatics (India) Pvt. Ltd. vs. Jogesh Kwatra⁵⁴

This case known as india's first case on cyber defamation. In this case In this case, Jogesh Kwatra (defendant), being an employee of company of plaintiff , began to send out insulting, obscene, vulgar, abusive, defamatory abusive emails to the his employers as well as to various subsidiaries of said company throughout world with the intention of defaming company and Mr. R K Malhotra, Managing Director of company . The complainant lodged a case seeking a permanent injunction preventing the defendant from carrying out his illegal acts by sending out insulting emails to complainant. He further argued that defendant's actions in sending emails resulted in invasion of plaintiff's legal rights. The defendant is also under an agreement not to send above-mentioned emails. In this case, Hon'ble Delhi HC allowed an ex-parte, interim injunction to observe that the complainant had made a prima facie case and barred the defendant from making such comments.

This Delhi HC's order assumes considerable significance as this is first time that Indian Court exercises jurisdiction in a case relating to cyber defamation and grants ex-party injunction prohibiting defendant from defaming complainant by sending

⁵³ Talwant Singh Addl. Distt. & Sessions Judge, Delhi , "CYBER LAW & INFORMATION TECHNOLOGY", available on <<https://delhidistrictcourts.nic.in/ejournals/CYBER%20LAW.pdf>> accessed on April 16,2020

⁵⁴ CS(OS) No. 1279/2001 (Delhi High Court, 2001)

abusive, obscene insulting and defamatory, emails to either plaintiffs or respective subsidiaries.

Tamil Nadu Vs Suhas Katti AIR 2004⁵⁵

this case was related to posting defamatory , annoying and obscene, message in group on yahoo message about divorcee woman. The accused also forwarded e-mails to the victim for details via a fake e-mail ID that he opened in victim's name. The message posting resulted in unwanted phone calls to the woman, in the assumption she was soliciting. police identified the accused in the Mumbai and within next few days he was arrested by police on the basis of a complaint lodged by victim in 2004, February. He was family friend of the women and wanted to marry with her. Although she was married with another person. After took divorce from her husband accused again started approaching her. When she refused to marry him he started harassing via internet.

Court relied on the 12 witness of prosecution side and other document presented before the court. Included testimony of the owner of the cyber café and concluded the case and held that accused found guilty under section 469 & 509 of IPC and 67 of IT act.

Cosmos Bank Cyber-Attack in Pune⁵⁶

In 2018, a very famous cyber-attack on the "Cosmos Cooperative Bank Ltd" Pune. That daring attack shocked India 's entire banking sector when the hackers siphoned off "Cosmos Cooperative Bank Ltd." 94.42 crore rupees in Pune. ATM server of bank hacked and took information of various debit and visas cardholders. These money with Drawn from around 12000 ATM of different country. And around 13.92 crore rupees were transfer to the Entity based in Hong Kong which uses the SWIFT facility. According to investigation, they used visa card for money transferring from the outside India and in India by Rupay card. FIR was registered under IPC and IT Act under different section.

⁵⁵ Talwant Singh Addl. Distt. & Sessions Judge, Delhi , “CYBER LAW & INFORMATION TECHNOLOGY, available on <<https://delhidistrictcourts.nic.in/ejournals/CYBER%20LAW.pdf>> accessed on April 16,2020

⁵⁶ Indian Express, August 11, 2018, available on <<https://indianexpress.com/article/cities/pune/malware-attack-cosmos-bank-gets-rs-5-72-cr-from-hong-kong-based-bank-6273134/>> last access on 23 may 2020

According to press report issued by Cybercrime department DCP police is contacting HongKong bank for 13.92 crore rupees, and police of Pune also trying contact to authorities of Hong Kong with the help of External Affairs Ministry. cosmos bank also filed civil suit in court of Hong Kong, and by the court order first instalment return to the Cosmos bank amount, 572 crore of 94 crore according to the press released. Around 18 person arrested in this case and SIT filed charge sheet of 1700 pages.

Hack Attack on Indian Healthcare Websites⁵⁷

In 2019, Healthcare websites based in India recently became victim of cyber-attack. According to US-based firms of cyber security have reported, hackers broke into and attacked a leading Indian-based healthcare website.0d hacker stole record of 68 lakh physician and patient.

Shreya Singhal v Union of India⁵⁸

Sec. 66A of IT Act, 2000 came into force pursuant to a 2009 Amending Act. And the plaintiff questioned the substantive validity of sec. 66A in the current writ petition. The petitioner argued Section 66A has given lead to new, incorrect forms of crime. petitioner challenges constitutional validity of Act on the ground of Art. 19(2). Vagueness of the section and Art. 19(1) (a), and there is no “intelligible differentia” mode of communication like one who uses internet or other medium of communication.

Issue was whether sec. 69 of the IT Act pass the challenge of constitutionality?

Court held that “India is a sovereign, democratic and republic country as has been stated in the preamble of the Constitution. It cannot be overemphasized that when it comes to democracy, liberty of thought and expression is a cardinal value that is of paramount significance under our constitutional scheme. The content of the expression “freedom of speech and expression” is thus three: discussion, advocacy, and incitement. It is only when all these three contents are fulfilled that Article 19(2) is applied. Under our constitutional scheme, it is not open to the state to curtail

⁵⁷ India Today, August 22, 2019, available on <https://www.indiatoday.in/crime/story/hackers-attack-indian-healthcare-website-steal-68-lakh-records-1590345-2019-08-22> last accessed on 23 May 2020

⁵⁸ AIR 2015 SC 1523

freedom of speech to promote the general public interest. If a public order under section 19(2) is violated by a law then that law is unconstitutional and void for public order is synonymous with public safety and tranquillity. The test to identify whether the public order has been infringed or not is to ask a question: Does a particular act lead to disturbance of the current life of the community or does it merely affect an individual leaving the tranquillity of society undisturbed?”

Where no rational criteria are provided for determining liability in section that creates an offense and where no specific guidance is provided either to authorities and courts, law-abiding citizens, a section that creates a crime which is ambiguous must be struck down unreasonable and arbitrary. It is very clear that words used in the sec. 66A are entirely open-ended, ambiguous and undefined.

Moreover, a Future offender of the sec. 66A and the enforcement authorities of sec 66A have absolutely no acceptable criteria for booking a person for an offense under sec 66A. Section 66A therefore arbitrarily, disproportionately and excessively invades right to freedom of speech and upsets balance between that right and reasonable restrictions which may be enforced on that right. This Section is therefore unconstitutional on the basis that it requires with its sweepingly protected expression and expression which is innocent with nature and is thus likely to use in the such a manner as to have a harmful impact on freedom of speech and th this sec. have to struck down on ground of over broadness.

In addition, there is an “*intelligible differentia*” between online speech and other communication channels for which the law will establish different offences. Section 66A is also not discriminatory according to Article 14

And court held that sec. 66A is unconstitutional it is violate Art. 19(1)(a).

Ritu Kohali Case⁵⁹

It was first case recorded in India against cyber stalking and this cases lead to the to amendment in IT Act in 2008. under this case one women named Ritu Kumari was stalked. Where kathuria followed the Ritu Kumari chat on social media via online

⁵⁹ Prachi Shah, “Cyber Stalking & the Impact of its Legislative provisions in India” <https://www.legalindia.com/tag/ritu-kohli-case/> last access on 25 May, 2020

source and used obscene language to harass her, he also circulate her number to different men. After that she received unwarranted obscene calls at night-time , continuing for three days. Following this situation, she were forced to file complaints with Delhi police and police tracked his IP addresses after complain was file and arrested kathuria u/s. 509 of IPC and Sec. 66-A was adopted in 2008 solely because of this case.

Sanjay Kumar v. State of Haryana⁶⁰

Manager of the "Vijay Bank, NIT, Faridabad," filed a complaint with the police asserting that Telecommunications Ltd.and M / S Virmati Software had charged petitioner for software system maintain which supplied to bank by petitioner. But petitioner has exploited computerized bank account interest entries and thus cheated complainant bank through forging electronic records for causing wrongful losses to the bank. Trial court found him guilty under IPC sec 420, 467, 468 & 471 and under IT Act sec. 65&66 with rigorous imprisonment, accused file appeal in the HC, and HC dismiss the appeal by stating that The Trial Court was fully justified in convicting petitioner, and as can be seen clearly, the learned Appellate court had made no mistake in upholding accused petitioner's conviction. The petitioner's learned counsel was not able to prove any non-reading or misreading of any evidence, and judgment of trial court was upheld.

Lakshmana Kailash K.case 2017⁶¹

Under this case police arrested A 26 year old engineer Lakshmana, on August 31 arrested form home and wrongfully and detain for the period of 50 days, because person was mis-identified by the Airtel who was service provider, as that the person insulted the great historic person Chatrapati Shivaji bu posting some photos on Orkut, a social network site. He was identified by police based on The ip address details which acquired from Airtel and Google ISP of Lakshmana. He was transported to Pune and police detained him for 50 days before this was found that Airtel had incorrectly provided the IP address. clearly this was a mistake according to fact that

⁶⁰ 2013) CRR 66 (O&M) 1.

⁶¹ CRIMINAL PETITION No.4617/2009

police was n't properly stipulated whether the accused person posted the contents at 1:15 p.m. while asking for information from ISP Airtel.

Verdict: State Human Rights Commission took cognizance of newspaper accounts of his plight and order subsequently that company have to pay 2 lakh rupees to Lakshmana as damages. The case highlights how minor breaches of privacy by intermediaries and ISPs may have implications that severely undermine certain fundamental human rights

Yahoo Inc. v Akash Arora & Anr.⁶²

This was the first case of cybersquatting in India. The plaintiff filed a complaint against defendants for obtaining a order of permanent injunction prohibiting defendants from carrying on business, advertising, selling in any products or services under domain name or trademark a name "yahooindia.com" on Internet or otherwise or under Any other domain name or trademark which deceptively or identical similar to "Yahoo" of the plaintiff! i.e well-known trademark ”.

It was contention of the defendant that “Yahoo!” 'Domain name or trademark allegedly belonging to complainant was not registered in India at that time and therefore he could not use it as a grounds for action in the respect of infringement of the trademark

Also another argument made by the defendant that maintained that word "Yahoo!" "It is a generic term which is neither invented nor special and as such has no distinctive feature.

It was further argued that because the accused have used disclaimer all along, so there was no deceit and therefore accused can't take any action of the passing of or cybersquatting.

The Court ruled in favour of the complainant and issued injunction against Akash Arora. It was held that internet service provided by the complainant had become accepted and recognized globally. though Court agreed with contention of the defendant that the “Yahoo!” is a dictionary word but it had gained ample

⁶² 1999 IIAD Delhi 229.

uniqueness and distinctive character to prevent complainants from cybersquatting or passing off.

Mr. Arun Jaitley vs Network Solutions Private Ltd⁶³

Infringement of copyright, High Court of Delhi ordered the accused No. 3 to permanently refrain from using, endorsing, advertising or maintaining the domain name 'Arunjaitley.com' and to refrain from adopting, using logo, the name in any of Internet domain names where name 'ARUN JAITLEY' is features. Also ordered to transfer the aforementioned domain name to plaintiff with immediate effect by defendant no. 3 and others. It was also directed to necessary regulatory body under ICANN Rules to block such domain name and to transfer this domain name to complainant immediately and for carrying out the necessary formalities in this regard.

Sandeep Varghese Vs. State of Kerala⁶⁴

A complaint lodged by a company representative engaged in India and abroad , in the business exporting and trading petrochemicals was filed against nine persons accusing offenses u/s 65, 66 & 66A, C , D of IT Act also with Sections 419 & 420 of IPC. “www.jaypolychem.com” was the website of the company but accused Sam made another similar website “www.jayplychem.org”. Accused was dismissed from that company. Accused conspired with other co accused namely charanjeet and preeti who was relative of the accused. On the similar website accused make publish malicious and defamatory matters regarding the company and the director of the company. charanjeet and preeti had been based in Cochin and had acted in collusion with known and unknown individuals who collectively cheated company and impersonation, forgery etc. committed. Rahul and amarjeet another accused had visited Cochin and Delhi. The accused sent e-mails to defame the image and name of Company and Directors of company from fake e-mail accounts of the different clients, bank, suppliers etc. The defamation campaign conducted by all of the above listed individuals has done considerable harm to the Company's name and reputation. Company suffered losses by suppliers, producers, and consumers of several crores rupees, and was not able to do business.

⁶³ CS(OS) 1745/2009 & I.A. No. 11943/2009 & 17485/2010.

⁶⁴ Bail Appl..No. 2003 of 2010.

Syed Asifuddin & other v. The State of Andhra Pradesh & Another⁶⁵

Tata Indicom employees were charged under hacking with source code of computer u/s 65 of the IT Act , for exploiting the mobile phone-programmed Electronic 32 Bit Number, that was used only on "Reliance Info Com Service Network." Any copyright infringement in the computer program is punishable u/s 63 of the Copyright Act. Hence, prima facie, when any person alters another person's computer program or another company's computer ,then it will be copyright infringement. Court held that The court held that such tampering of code amounts to tampering with the computer source code and will not be covered by fair dealing and other exceptions to copyright infringement under section 52 of the Copyright Act as it was not reverse engineered to perform the intended function it was supplied for and nor was it reverse engineered for a lawful purpose. “

Tata Indicom is also competitor according to the sec. 52 of Copyright Act, and not a legitimate processor. Since the phone has been reverse engineered with unlawful purpose of unlocking code as then it can even be used on "Tata Indicom Network," ingredients required by sec. 65 of the IT Act, 2000 were sufficient. With regard to quashing FIR , the court quash the FIR w.r.t. sec. 409, 420 & 120B but court refused to quash FIR under Sec, 63 of Copyright Act under Sec. sec. 65 of IT Act

Abhinav Gupta v. State of Haryana⁶⁶

The petitioner has been charged with hacking his former employer's confidential documents, confidential design plans and Drawings while in its employment . He had allegedly purposely given the secret details to his former employer's competitor. The Punjab and Haryana HC dealt with this petition filed by petitioner for anticipatory bail u/s 438 of CrPC, w.r.t. of a FIR lodged pursuant to Sec. 66 of IT Act, , Sec. 420 & 406 of IPC. The Punjab and Haryana HC examined the 'hacking' definition pursuant to Sec. 66 of IT Act, and discovered from the screen shots submitted by defendants that the petitioner had transferred secret information to his private e-mail during his previous employment and subsequently disclosed the same information by forwarding it to competitor's e-mail box that he later joined. The High

⁶⁵ 2005 CRI LJ 4314.

⁶⁶ 2008 CriLJ 4536.

Court refused to consider the petitioner's claim that these material was sent to his private Id for fulfilment of his duties on ground that he would in no case have sent that email to company of the competitor where he afterwards took up jobs. The court found that accused is "hacker" who accessed information for his own financial profit or for his new employer and refused to grant the petitioner anticipatory bail.

National Association of Software v. Ajay Sood & Other⁶⁷

in this case meaning of phishing explained by the court, as cybercrime where criminals use computer or internet to cheat gullible people through impersonating real institutions such as bank to thief sensitive personal information like credit or debit card no. and misuse the information to make unlawful money.

Shri Umashankar Sivasubramaniam v. ICICI Bank⁶⁸

The plaintiff filed a case for damages u/s. 43 of IT Act 2000 as he was the victim of the phishing attack through an e-mail which indicated that it has been sent through his bank demanding that his personal account data be updated. When bank argued there was some negligence on the part of petitioner, Adjudicating Authority found that bank had not taken due diligence steps to protect its banking network in such a way that customer could identify the bank's mail and petitioner was granted 12,85,000 rupees as compensation. Similar to the phishing concept is 'vishing' and 'smishing.' Smishing is using sms on cell phones to make monetary gains by impersonating and cheating a legitimate service provider. Vishing is by using phone calls or voice recordings to accomplish the similar goal. However, no cases reported on these emerging concept.

⁶⁷ 119 (2005) DLT 596.

⁶⁸ Petition No. 2462/2008 dated 18.04.2010

CHAPTER V

ANALYSIS OF INFORMATION TACHNOLOGY LAWS OF UK AND US

IT LAWS OF UK

CYBERSECURITY AND THE UK LEGAL LANDSCAPE

As the businesses are expanding worldwide and digitisation of assets and operations are taking place, it is imperative to continuously assess the information technology infrastructure to safeguard important information and data.

One of the key challenges faced worldwide and especially UK is implementing cyber security measures that adequately protects against online attackers and also ensures compliance with the laws of cyber security. Situation is more complex in UK as there is no one single all-encompassing “cyber security” law in the country. There are different laws which impose cyber security obligations on all entities.

Cybercrime is a major concern around the world today. The developed countries are also not free from it even though they have well developed enforcement mechanisms. Money is being made illegally with the help of malwares and various other computer-specific crimes are committed.

COMPUTER MISUSE ACT, 1990

The first piece of legislation enacted to address computer misuse in UK was Computer Misuse Act 1990. Existing legislation for dealing with hackers was not adequate and this legislation came as a response to the same. The inadequacy of existing legislation was highlighted by the failure to convict Stephen Gold and Robert Schifreen who had gained unauthorized access to BT’s Prestel service in 1984. They were charged under the Forgery and Counterfeiting Act 1981. Concerns arose when they were acquitted by the Court of Appeal and the acquittal was upheld by the House of Lords.

The Computer Misuse Act 1990 was enacted with the aim of securing computer material against unauthorized access or modification and for other similar purposes. This Act sets out three computer misuse offences:

1. Unauthorized access to computer material
2. Unauthorized access with intent to commit or facilitate commission of further offences
3. Unauthorized modification of computer material⁶⁹

Maximum sentence prescribed for the offences is ten years for the fourth offence. The sentence for the second and the third offence is five years whereas it is six months for the first offence. The first prosecution under this Act was brought about in 1995 when an individual, Christopher Pile, was prosecuted for distributing a computer virus. He had created the virus Pathogen and Queeg. Both of these malwares implemented his SMEG (Simulated Metamorphic Encryption Generator) polymorphic engine. This made it more difficult to be detected and were designed to trash the victim's hard Drive. He placed these viruses on bulletin boards in the form of games and anti virus programs. The virus had caused damage amounting to £ 1 million⁷⁰. He had pleaded guilty to eleven charges under Sec. 2 and 3 of the Computer Misuse Act and had ultimately received an 18 months' prison sentence⁷¹.

Another conviction was that of a 22 year old Welsh web designer called Simon Vallor⁷². He had pleaded guilty to creating and distributing three mass mailer viruses - Gokar, Redesi and Admirer. The offence was covered by Section 3 of the Act. He was sentenced to 2 year prison in January 2003. His worms had spread to 27,000 computers in 42 countries⁷³.

⁶⁹ The Computer Misuse Act, 1990.

⁷⁰ Peter Victor, "Black Baron a self taught whiz kid", The Independent, 16 November 1995.

⁷¹ *Ibid.*

⁷² R v Vallor [2003].

⁷³ John Leyden, "Welsh virus writer Vallor jailed for two year", The Register, 21 January 2003.

COMPUTER MISUSE ACT AMENDMENTS

Most significant amendment came about in 2005 when the Act was updated to align with the Serious Crime Act 2015⁷⁴. Computer misuse was added to the list of serious crimes with maximum penalty being increased to a prison sentence of 14 years and fine, if found guilty. If an individual is charged with an offence that constitutes a threat to the national security or human welfare in general, the sentence can be up to lifetime imprisonment.

There were subsequent developments to the Act. In 2006, Section 37 of the Police and Justice Act, 2006 was inserted in the Computer Misuse Act as Section 3A. This section classified making, supplying or obtaining any article for use in a malicious act using a computer, as a criminal activity.

PROBLEMS

Thus, the Computer Misuse Act was enacted to help deal with the problem of misuse of computers by way of 'hacking' and 'unauthorised access'.

The Act was a way forward in terms of cyber laws in the UK. However, it still had many loopholes and had failed to combat the challenges of unauthorised access gained by hackers or viruses created by cyber criminals. The case of *R v. Bedworth* [1991] proves the problem with Section 2 in proving 'intent'. This case is a peculiar example of how the offender had used the defence of addiction to counter the allegation of intention of committing the crime. He had pleaded that he had no intention in committing the crime. Strangely, even though addiction is not a defence to a crime, the jury had acquitted him as they believed that he did not deserve heavy penalty.

Another loophole that might come as a blow is that the judges might lack technical knowledge regarding the use of computers. Inadequate knowledge will make it difficult to apply the law properly and tend to make inappropriate interpretations. This problem was highlighted in *Rv. Cropp* [1991] where the judge acquitted the person on the basis of his opinion that an offence was only committed if one computer is used to

⁷⁴Explanatory Notes , Serious Crime Act 2015 available at http://www.legislation.gov.uk/ukpga/2015/9/pdfs/ukpgaen_20150009_en.pdf last accessed on May 25, 2020.

obtain material stored on another computer. His was not the correct interpretation and it sprung from the judges' inadequate technical knowledge about computers.

These are the problems that raise questions on effectiveness of prosecuting offenders and preventing hackers. The definition of 'computer crimes' is too broad in the Act as it simply states 'unauthorised access to computer material'. This had created problems in the case of *DPP v. Bignell [1998]*. The Drafting of the law seems very general and casual. With time, it has just become a blunt instrument when policing cybercrimes. This is proved from the fact that inspite of high reporting of crimes, there have been very few prosecutions till date⁷⁵.

SPAM, MALWARE AND THE LAW

Mostly, everybody deals with the problem of spam. The problem of spam is widespread. It does not only include inappropriate content but it is also used to deliver malicious code to the recipients. Spam messages work in a way that the recipients will open the link to the website which are infected with malicious codes by cyber criminals. This method is also used by phishers to direct victims to fake websites from where their confidential data is stolen.

To address the problem of spam, the Department for Trade and Industry introduced the "Privacy and Electronic Communication Regulations (EC Directive) 2003." These regulations exist alongside the Data Protection Act and the GDPR. These regulations protect specific privacy rights of people in relation to electronic communications⁷⁶. They have specific rules on:

- a) Marketing calls, emails, texts and faxes
- b) Cookies (and similar technologies)
- c) Keeping communications services secure
- d) Customer privacy as regards traffic and location data, itemized billing, line identification, and directory listings⁷⁷.

⁷⁵ Michael J L Turner, "Computer Evidence" available at <https://www.computerevidence.co.uk/Cases/CMA.htm> last accessed on May 25, 2020

⁷⁶ PECR, available at <https://ico.org.uk/for-organisations/guide-to-pecr/what-are-pecr/> last accessed on May 25, 2020

⁷⁷ *Ibid.*

These regulations were derived from the European Law. It had implemented the European Directive 2002/58/EC, which is also called ‘the e-privacy Directive’⁷⁸.

The e-privacy Directive is complementing the general data protection regime. It also sets out very specific privacy rights of all entities in the domain of electronic communication. It very categorically acknowledges the fact that the use of computer and internet poses new threats to the privacy of people.

The PECR have been amended many times till now. Last amendment was in 2018 where cold calling of claims management services was banned. Secondly, director’s liability for serious breaches of marketing rules was inserted. In 2019, cold calling of pension schemes was banned and the definition of consent was incorporated from the GDPR.

These regulations mandated that companies must seek permission before sending emails or SMS messages. The law states that no one is permitted to transmit unsolicited communications for the purposes of direct marketing unless the recipient has consented to receiving such messages.

However, there are limitations of this law. These regulations only apply to individual email addresses and not business email addresses. The penalties are also inadequate as compared to the ones provided under the Computer Misuse Act, 1990. Breach of any provision of this regulation requires reporting of the act too the Information Commissioner’s Office who is responsible for deciding whether the person should be taken to the court or not.

Another serious limitation is that the legislation is only applicable to senders within the UK. Most spam originates beyond the UK (Russia and US are the top sources of spam)⁷⁹. Thus, if this legislation is not applicable beyond UK, it is not effective against the actual spammers. This highlights a very important problem with the measures taken by the countries to combat cyber crime and deal with cyber criminals: geo-political restrictions.

⁷⁸ *Ibid.*

⁷⁹ Darya Gudkova , Daria Bronnikova, “Kaspersky Security Bulletin: Spam Evolution 2008” , March 2 , 2009.

THE POLICE AND JUSTICE ACT 2006

This Act incorporates the amendments to the Computer Misuse Act. Under Section 1 of this Act, the maximum sentence was increased from six months to two years. Section 3 of this Act originally read ‘unauthorised modification of computer material’. This was changed to ‘unauthorised acts with intent to impair or with recklessness as to impairing, operation of computer,..’ etc. It now provides a maximum sentence of ten years.

The Act also added another section, ‘making, supplying or obtaining articles for use in computer misuse offences’, which carries a maximum sentence of two years.

This provision had invited a lot of criticisms. It was initially intended to make hacking tools illegal but it came to be applied to legitimate tools used illegally.

EUROPEAN CONVENTION ON CYBERCRIME

One of the most serious limitations of any cyber law is its applicability. The European Convention on Cybercrime was introduced for the purpose of providing a common framework for dealing with cyber crimes. It was adopted in November 2001 by the EU Committee of Ministers of the Council of Europe⁸⁰.

The treaty is very wide in scope and covers a wide range of cybercrime. It includes illegal access, data interference, misuse of devices, illegal interception of data, system interference, computer-related fraud, offences related to child pornography, computer-related forgery, offences related to infringements of copyright and related rights. The treaty is designed to provide a common law enforcement framework for dealing with cybercriminals⁸¹. It also fosters information sharing among all signatories.

However, many countries have still not ratified the convention. It is worrying because some of them are big sources of malicious code.

⁸⁰ European convention on cybercrime.

⁸¹ *Ibid.*

PERSONAL INTERNET SECURITY

House of Lords Science and Technology Committee published a report on Personal Internet Safety in August 2007⁸². The report heavily criticized the UK government for placing the main onus on the individuals for making the internet a secure space. Internet was described as “the playground for criminals”. It suggested that there are many entities which have a stake in the internet like the ISPs, police, etc. They should put in all efforts to promote personal internet security.

The Committee suggested that all parties should take utmost care to secure the internet. Companies, banks, software vendors, ISPs, etc. should put every possible effort that comes under their domain, to protect the internet.

CRIME AND PUNISHMENT

It is true that only legislations are not enough to tackle the problem of rampant cybercrime unless there is adequate enforcement mechanisms to implement them. It is of utmost importance for police to have the resources to deal with the growing problem. After the Computer Misuse Act was introduced, only a very few police officials outside the Metropolitan areas had the technical knowledge and expertise to deal with the problem of cybercrime. Later, resources were put together to create a dedicated agency to deal with the problem of cybercrime.

In April 2001, the government established the National Hi-Tech Crime Unit to provide directed response to cybercrime. It worked in association with a lot of experts and specialist organizations like the National Crime Squad and the National Criminal Intelligence Service.

The NHTCU was a success. It was successful in the arrest of Russian hackers and some others who were trying to steal money from the London branch of the Japanese Sumitomo Mitsui Bank in October 2004⁸³.

In April 2006, the NHTCU's responsibilities were taken over by the Serious Organised Crime Agency (SOCA).

⁸² Report on Personal Internet Safety, 2017

⁸³ John Leyden, “How police busted UK’s biggest cybercrime case”, The Register, 19 March, 2009.

In April 2007, the rules relating to reporting of bank frauds were changed. The Fraud Act, 2006 was introduced which laid down that banks and other financial institutions should be contacted in the first instance, for reporting card, cheque and other online banking frauds. The main aim of this law was to reduce the bureaucracy in the system. However, one concern of this Act was that after this there will be under reporting of frauds.

In 2009, the Police Central crime unit(PCeU) was created. This did not replace the SOCA or other police agencies. It was just for coordinating the response to cybercrime and provide a national investigative capability for the most serious e-crime incidents⁸⁴. Then, the National Fraud Reporting Centre was introduced to provide public a way to report non urgent fraud via telephone or online⁸⁵.

Even where the law is sufficient to deal with cybercrime, it falls short because of inadequate enforcement mechanisms. Thus, mechanisms in UK have in a way been able to enforce the few laws of cybercrime that are in force there.

USING CIVIL LAW TO DEAL WITH CYBERCRIMINALS

In a paper called New Powers Against Organised and Financial Crime⁸⁶, the government proposed to fill the gaps in criminal law for catching the criminals by making use of civil courts, including the use of Organised Crime Prevention Orders. The Courts would be able to impose an order on the basis of balance of probabilities.

The proposals finally took shape in Serious Crime Act 2007, to provide the best tools for law enforcement agencies.

BALANCING SECURITY AND FREEDOM

The Serious Crime Act came as relief as it provided the police with powers ‘to detect, disrupt and prevent serious crime’⁸⁷. After this, the main concern was relating to the impact on civil liberties. This is because the burden of proof required in a civil court

⁸⁴ PCeU mission statement.

⁸⁵ *Ibid.*

⁸⁶ Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272311/6a875.pdf last accessed on May 25, 2020.

⁸⁷ The Serious Crime Act.

is lesser than that required in a criminal court. Thus, it gives way to miscarriage of justice in many instances.

However, UK is not the only country dealing with the problem of balancing personal freedom and security. Many developed countries like Germany are also doing the same. But so far, no resolution has been made brought about in any of the countries.

Thus, this act of balancing has to be done by UK till there is a permanent solution to this.

IT LAWS OF US

Cyber security is a growing concern for the government as well as the private sector in the US. With the growth in complicated information technology regime and the e-commerce sector in the US, there is a rapid rise in cybercrimes, causing huge losses to the government and the people.

In the US, data breaches have gained particular attention due to the heavy impact on the financial, healthcare and other sectors. After the development of complicated digital platforms, data breaches have assumed new dimensions and have caused more losses than ever before.

The number of data breaches in the US increased from 157 million in 2005 to 781 million in 2015. In 2019, number of data breaches was 1473 with 164.68 million records exposed⁸⁸.

The year 2019 witnessed the largest data breach till date in US history. In 2016, Yahoo revealed that hackers stole user data and information of atleast 500 million accounts in 2014⁸⁹. In December 2016, the company announced another hack in 2013 that affected over 1 billion user records.

⁸⁸ Clement, "Cybercrime: number of breaches and records exposed 2005-2019", Statista, (2020) available at <https://www.statista.com/statistics/273550/data-breaches-recorded-in-the-united-states-by-number-of-breaches-and-records-exposed/> last accessed on May 27, 2020

⁸⁹ Dustin Volz, "Yahoo says hackers stole data from 500 million accounts in 2014", Reuters , (2016).

CONSUMER PRIVACY PROTECTION ACT 2017

The Act aims at protecting the personal information of customers, to avoid identity thefts and to update citizens and organisations of security breaches and prevent the misuse of sensitive information of users⁹⁰.

The Act is applicable to all institutions which access, collects, uses, stores and transmits personally identifiable information of more than 10,000 US citizens over a specific period of time. The penalties do not exceed \$5 million. However, if it is found that it was an intentional misuse of data, an additional \$5 million can be imposed.

COMPUTER FRAUD AND ABUSE ACT [CFAA]

In 1984, the US passed the Computer Fraud and Abuse Act. Since then, there has been many amendments to this Act. CFAA focusses on many types of computer related crimes.

This Act penalizes any conduct that attacks a computer system. It is a cyber security law of US. It protects computers connected to the internet. It protects the computers from trespassing, damage, threats, espionage, and from being misused as instruments of fraud. It is not a comprehensive law, but tries to fill the gaps of the other federal criminal laws. The CFAA focusses on the following types of crime:

- 18 U.S.C. 1030 (a)(3) – computer trespassing (e.g. hacking) in a government computer;
- 18 U.S.C. 1030 (a)(2) – computer trespassing (e.g. hacking) resulting in exposure to certain governmental, credit, financial, or computer-housed information;
- 18 U.S.C. 1030 (a)(5) – damaging a government computer, bank computer, or a computer used in affecting commerce, interstate or foreign (e.g. worm, virus, Trojan horse, etc.);
- 18 U.S.C. 1030 (a)(4) – committing fraud which involves unauthorized access to a government computer, bank computer, or a computer used in affecting commerce interstate or foreign;

⁹⁰ The Consumer Privacy Protection Act 2017.

- 18 U.S.C. 1030 (a)(7) – threatening to damage a government computer, bank computer, or computer used in affecting commerce, interstate or foreign;
- 18 U.S.C. 1030 (a)(6) – trafficking in passwords for a government computer, or when the trafficking affects commerce, interstate or foreign;
- 18 U.S.C. 1030 (a)(1) – accessing a computer to commit espionage.⁹¹

Subsection 1030 (b) makes it a crime to attempt or conspire to commit any of the aforementioned offences. Subsection 1030 (c) lays down the penalties for committing the offences, that range from imprisonment of not more than a year for simple cyberspace trespassing to a maximum of life imprisonment when death results from intentional computer damage⁹². Subsection 1030 (d) protects investigative authority of the Secret Service. Subsection 1030(f) denies any application to other law enforcement activities. One interesting provision is that in subsection 1030 (g), there is a civil cause of action for victims of these crimes. Subsection 1030(i) and (j) authorize confiscation of property used to commit any of the aforementioned offences.⁹³

Act condemns unauthorized intrusion (“hacking”) into federal government computers. The Act includes provisions which prevent attempts and conspiracies to intrude⁹⁴. It prohibits only “intentional” trespassing.

One limitation of the provision is that it is applicable only to trespassing upon governmental computer space.

The penalties for conspiracy to violate, or for violations or attempted violations are imprisonment of not more than one year and fine upto \$100,000 for first offence and not more than \$250,000 for subsequent convictions⁹⁵.

Other offences attract punishments like forfeiture, money laundering, restitution, sentencing guidelines and other civil liability provisions

⁹¹ The Computer Fraud and Abuse Act.

⁹² The Computer Fraud and Abuse Act.

⁹³ *Ibid.*

⁹⁴ Subsection 1030 (b) of the CFAA.

⁹⁵ 18 U.S.C. 1030 (c).

ELECTRONICS COMMUNICATION PRIVACY ACT [ECPA]

The Electronics and Communication Privacy Act is another legislation dealing with crimes over wire, oral and electronic communications while being made, transmitted or stored in a computer, as well as email and data stored electronically⁹⁶.

It is a law that makes it illegal to tap, or capture communications over wires⁹⁷. This law was an updated form of the Federal Wiretap Act of 1968. Several subsequent legislations including the USA PATRIOT Act clarified and updated the ECPA to keep pace with the new technologies and methods.

Title I of the ECPA, which is referred to as the Wiretap Act, prohibits the intentional actual or attempted interception of any wire, oral or electronic communication. It also prohibits procuring any person to intercept the same⁹⁸. It also prohibits the use of communications that are obtained illegally, as evidence⁹⁹. Further, it provides certain exceptions to service providers and other people who are authorised to intercept wire, oral, or electronic communications.

Title II of the Act is referred to as the Stored Communications Act (SCA). It safeguards the privacy of the contents of the files stored by service providers. Secondly, it also protects the records of subscriber held by the service providers like subscriber name, IP address, etc.

Title III of the Act addresses pen register and trap and trace devices. It makes it mandatory for a government entity to obtain a court order authorising the installation and use of a pen register, a trap and trace device.

This law has not been very effective as it does not take into account how people currently share, store, and use information. Nowadays, people store data in clouds. In other words, it is quite outdated.

It is easy for government agency to demand service providers to give them consumer data stored on their servers. Emails that have been stored for over 180 days is considered to have been abandoned. The law enforcement agency can demand such

⁹⁶ Electronics Communication Privacy Act

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ Electronics Communication Privacy Act.

emails but will have to justify that the information is relevant for an investigation. When the law was enacted, they did not have the current situation in mind, when emails are stored indefinitely as customers have access to nearly unlimited cloud storage.

FEDERAL LAWS

The federal government has also passed cybercrime laws such as:

CREDIT CARD FRAUD ACT – This Act is applicable when computers and other technologies are used to make fraudulent credit card transactions like duplicating card, gaining unauthorised access to card details, etc¹⁰⁰.

IDENTITY THEFT ASSUMPTION AND DETERRENCE ACT – This Act criminalised stealing others' personal data by posing oneself to be someone else in cyber space¹⁰¹. In other words, it prohibits data theft by impersonation.

ECONOMIC ESPIONAGE ACT – This Act deals with the theft of trade secrets and other forms of intellectual property¹⁰².

CHILD PORNOGRAPHY PREVENTION ACT – This Act deals with criminalising the digital possession, production, and distribution of images or videos that show minors in sexually explicit conduct¹⁰³.

THE VIOLENCE AGAINST WOMEN REAUTHORISATION ACT This Act prohibits the use of computers or other electronic communication to harass, intimidate, threaten, kill or place one under surveillance¹⁰⁴.

FEDERAL CYBERSECURITY LAWS

Other Federal Laws which serve as cyber security laws are:

¹⁰⁰ Credit Card Fraud Act.

¹⁰¹ Identity Theft Assumption and Deterrence Act.

¹⁰² Economic Espionage Act.

¹⁰³ Child Pornography Prevention Act.

¹⁰⁴ The Violence Against Women Reauthorisation Act.

CYBERSECURITY INFORMATION SHARING ACT (CISA) The main objective of this Act is to improve cybersecurity in the US through information sharing about cybersecurity threats.

CYBERSECURITY ENHANCEMENT ACT OF 2014 – The purpose of this Act is to provide a public-private partnership to strengthen cybersecurity in the country.

FEDERAL EXCHANGE DATA BREACH NOTIFICATION ACT OF 2015 – This requires a health insurance exchange to update each individual whose personal information was unauthorisedly accesses due to security breach within a period of 60 days of the discovery of the breach.

NATIONAL CYBERSECURITY PROTECTION ADVANCEMENT ACT OF 2015 – This law is an amendment to the Homeland Security Act of 2002. The main purpose of this Act was to enable the Department of Homeland Security's (DHS's) national cybersecurity and communication integration centre (NICC) to include the tribal governments and other private entities among its non-federal representatives.

Thus, the cyber laws and the cyber security laws and regulations of US have been continuously updated to keep pace with the technologies. It has been made stricter over time to equip organisations to secure the data from various cyber threats. However, cyber attacks on systems are still prevalent in US despite humongous efforts.

It is advisable that every entity becomes very active about securing their data. Cyber criminals are always on the hunt to attack computer systems. They are also continuously developing themselves in their approach to target the systems. Everyone should keep a regular check on their own systems to identify any kind of threat and address the loophole immediately.

CHAPTER VI

CONCLUSION AND SUGGESTION

CONCLUSION

Cybercrime is one of the fastest growing areas of crime across the world. Nowadays, more and more criminals are exploiting this branch of crime with the help of developing technologies. This type of crime includes attacking computer data and computer systems, identity thefts, distribution of child sexual abuse images and the like.

The global nature of cybercrime has enabled criminals sitting in one part of the world to attack a computer in another part of the world. This has necessitated all countries to adopt their own domestic laws to protect their own cyberspace. This is because the entire world is interconnected. With increased connectivity, there is also an increased risk of theft, fraud and abuse over internet. As we heavily rely on modern technology, we are becoming more vulnerable to cyber attacks. In simple words, cybercrime is the use of a computer as an instrument to further illegal ends. It basically involves a computer and a network. The computer may be used in the commission of the crime or target of the crime.

In India, the only legislation dealing with cybercrimes is the Information Technology Act. The Act does not provide any definition of the term 'cybercrime'. However, the scope of cybercrime has been made clear under the various provisions of the Act. The main purpose of this Act is to protect the field of e-commerce, e-governance, e-banking as well as provides penalties and punishments in the field of cybercrime. The Act has been amended by the ITAA, 2008.

However, a single piece of legislation is not enough to protect a country with such a high rate of crime. Further, territorial jurisdiction is a major issue which has not been adequately addressed in the Act. Preservation of evidence is also a big concern. However, most of the cybercrimes are also covered by the Indian Penal Code which is a comforting factor for the investigating agencies. This is because criminals, even if

they are able to evade the IT Act, they will not be able to evade the provisions of the IPC.

US and UK also have a well developed legal system to address the issue of cybercrimes. India is developing day by day in every sector but in terms of cyber laws, it is behind the developed countries like US and UK. Most developed countries have separate rules, regulations and laws which deals with the cyber sector. However, in India, the Information Technology Act is not enough to deal with information technology and cyber sectors of India properly. India is making some progress to provide better services and protection in cyber sector. In 2013, the Government of India introduced a National Cyber Security Policy with the aim of protecting information infrastructure, reducing vulnerability, increasing capabilities and safeguarding it from cyber attacks. India should make the IT Act more efficient which needs some more amendments in the future. The difference in approach can be attributed to the different circumstances existing in these countries. There is a significant gap between India and the other two countries in terms of access to technology and resources.

Cybercrime is rampantly increasing across the world. One of the reasons for this is complex technology. Hackers are easily able to steal access codes, retina images, etc. to get past security systems. Secondly, storing data in small space makes it easy for people to steal data from other storage and use for their own profit. Thirdly, due to weak security control systems, attackers take advantage to commit crime. In terms of law enforcement, the major deterrent would be certainty of punishment which still does not exist in India. The conviction rate is still very low. Above all, the root cause of this is our heavy reliance on internet.

The IT Act does not cover all aspects of information technology that needs protection. Copyright and trademark violations have not been dealt with adequately in this Act. Even the internet service providers who transmits third party information have not been made liable under the Act. Thirdly, the Act does not specify how the extra territoriality will be enforced. However, apart from some gaps, the Act more or less covers all the major aspects of cybercrime.

To sum up, a crime free society is a Utopian concept. However, it should be the endeavor of all to keep the crime at the lowest. In a society which is heavily dependent on technology, crime based on electronic offences are definitely going to increase and law makers need to take extra measures to keep the fraudsters at bay. Technology, like all other things have good purpose as well as bad purpose. What is wrong is that when it falls in the wrong hands with a criminal intent who misuse them and then commit cybercrime. Hence, it should be the constant effort of the law makers to ensure that technology grows but is used legally and ethically and not for committing crimes.

FUTURE PROSPECTS

It is a known fact that cybercrime is not going to disappear altogether. Cybercrime is a side effect of our growing dependence on the internet. If something is useful, there will always be someone to misuse it. Cyber laws are all about mitigating the risks associated with the use of internet.

To deal with the risk, there needs to be a global legal framework along with adequate enforcement mechanisms. Many of the law enforcement agencies have developed expertise in dealing with hi-tech crimes. There must be an international legislation applicable globally without the limitation of any boundaries, development of ‘cyber-interpol’ to pursue criminals beyond geo-political borders. This way, we will progress in combating against cybercrime.

Law enforcement is not the only solution. We have to ensure that each individual and business entities are aware of the risks associated with the use of internet. All need to be aware of how to minimize their exposure to cybercrime. This is more important for inexperienced people who are regular users of online shopping, internet banking and social networking. It is highly essential to have mass public awareness programs about cybercrime and methods to mitigate the risks.

SUGGESTIONS

There is an urgent need for unification of laws relating to internet to reduce any kind of information. For example, for the offence of publication of harmful contents, we have IPC, IT Act, Data Protection Act, etc. all of which vaguely deal with the subject but lacks efficient enforcement mechanism. Due to many laws dealing with the same subject, there is always a confusion regarding their applicability and none of the laws deal with the subject specifically. Thus, there is a need for one cyber legislation.

One crucial problem in combating cybercrime is the inefficient enforcement mechanisms. Harsher laws are required to deal with criminals and also certainty of punishment is required.

Thirdly, it is very important to have Extradition Treaties among countries to make extra territorial provisions workable.

Lastly, all countries need to update their laws either by amendments or by adopting unified laws. There is a strong need to have better law enforcement mechanism to make the laws better workable.

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TABLE OF STATUTE

India

- Information Technology Act,2000
- Indian Penal Code

UK

- Computer Misuse Act, 1990
- Serious Crime Act 2015
- The Police and Justice Act 2006

US

- Consumer Privacy Protection Act 2017
- Computer Fraud and Abuse Act 1984
- Electronics Communication Privacy Act 1986
- Credit Card Fraud Act
- Identity Theft Assumption and Deterrence Act
- Child Pornography Prevention Act
- Cybersecurity Information Sharing Act
- Cybersecurity Enhancement Act Of 2014
- Federal Exchange Data Breach Notification Act Of 2015
- National Cybersecurity Protection Advancement Act Of 2015

BIBLIOGRAPHY

Articles

- Aman Singh Bakshi, "Bois Locker Room": The role of Intermediaries in regulation of content, published on Bar and Bench, 2020
- Darya Gudkova , Daria Bronnikova, 'Kaspersky Security Bulletin: Spam Evolution 2008', published on Securelist, March 2 , 2009.
- Dr Mohan Dewan "COVID 19 Lockdown: Increasing Cyber Crimes in India", Lexology 2020.
- Dustin Volz, "Yahoo says hackers stole data from 500 million accounts in 2014", Reuters , 2016.
- Harpreet Singh Dalla, Ms. Geeta, Cyber Crime – "A Threat to Persons, Property, Government and Societies", published in International Journal of Advanced Research in Computer Science and Software Engineering. 2013
- John Leyden, "How police busted UK's biggest cybercrime case", The Register, 2009.
- John Leyden, "Welsh virus writer Vallor jailed for two year", The Register, 2003.
- Kiratraj Sadana & Priya Adlakha, "Cyber Crime During Coronavirus Pandemic", Mondaq 2020.
- Mohak Rana, "Crimes in Cyberspace: Right to Privacy and Other Issues", publish on Lawoctopus, 2014
- Robert Roohparvar, "Elements of cyber security", InfoGuard Cyber Security, 2019.
- Shital Prakash Kharat, "Cyber Crime – A Threat to Persons, Property, Government And Societies" SSRN, 2016.

Books

- Anirudh Rastogi, “Cyber Law- Law of Information Technology and Internet”, 2nd ed., Published by Lexis Nexis, 2014.
- Dr.S.V.Joga Rao: “Law of Cyber Crimes and Information Technology Law”, 2nd ., Wadhwa and Company, Nagpur, 2009,
- Farooq Ahmad, “Cyber Law in India (Law on Internet)”, 4th ed., Allahabad Law Agency, 2011.
- Jyoti Ratan, “Cyber Laws & Information Technology”, 3rd ed., Published by Bharat Law House, Delhi, 2017.
- M. Dasgupta, “Cyber Crime in India- A Comparative Study”, published by Eastern Law House 2009.
- Talat Fatima, "Cybercrimes", 1st ed., published by Eastern Book Company 2011.
- Vakul Sharma, “Information Technology- Law & Practice”, 5th ed., Published by Universal Law Publishing, 2016.

Websites

- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272311/6a875.pdf
- <https://ico.org.uk/for-organisations/guide-to-pecr/what-are-pecr/>
- <https://www.computerevidence.co.uk/Cases/CMA.htm>
- <https://www.statista.com/statistics/273550/data-breaches-recorded-in-the-united-states-by-number-of-breaches-and-records-exposed/>
- <https://www.europol.europa.eu/activities-services/public-awareness-and-prevention-guides/cyber-crime-vs-cyber-security-what-will-you-choose>

- <https://delhidistrictcourts.nic.in/ejournals/CYBER%20LAW.pdf>
- <https://theconversation.com/the-difference-between-cybersecurity-and-cybercrime-and-why-it-matters-85654>
- [http://www.ijlp.in/ijlp/imageS/Volume%20-1,Issue-1\(1\),%20Mar-14.pdf](http://www.ijlp.in/ijlp/imageS/Volume%20-1,Issue-1(1),%20Mar-14.pdf)
- <https://privacyinternational.org/explainer-graphic/2273/understanding-difference-between-cyber-security-and-cyber-crime>

Newspaper Articles

- India Today, available on <https://www.indiatoday.in/crime/story/hackers-attack-indian-healthcare-website-steal-68-lakh-records-1590345-2019-08-22>, August 22, 2019
- Indian Express, <https://indianexpress.com/article/cities/pune/malware-attack-cosmos-bank-gets-rs-5-72-cr-from-hong-kong-based-bank-6273134/>, August 11, 2018
- Peter Victor, 'Black Baron a self taught whiz kid', The Independent, November 16, 1995.