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LAW OF CRIMES

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THE LAW OF CRIMES
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I- Statutory Material

a) The Indian Penal Code – 1860.

b) Selected Foreign Criminal laws (U.K.& U.S.A)

c) Various law commissions reports in India

d) Selected Acts relating to Criminal law

1) The Juvenile Justice (care and protection) Act – 2000.
2) The Foreign exchange Management Act 1999.
3) The conservation of Foreign exchange and prevention of smuggling Activities Act- 1947.
4) The Prevention of Black-marketing and maintenance of supplies of essential commodities Act 1980.
5) The National security Act .
6) The Prevention of Food Adulteration Act.
7) The Essential commodities Act 1955.
8) The Prevention of illicit traffic in Narcotic Drugs and Psychotropic substances Act 1988.
9) The Dowry Prohibition Act – 1961.
10) The contempt of Courts Act 1971.
11) The Scheduled casts and the Scheduled Tribes (Prevention of atrocities) Act 1989.
12) The Prevention of corruption Act 1988.
13) The Prevention of damage to public property act 1989.
14) The unlawful activities Act 1967.
15) The immoral traffic (Prevention) Act 1956
16) The medical termination of Pregnancy Act – 1971.

17) The Transplantation of human organs Act 1994.

18) Mental Health Act.

19) Indecent representation of Women (Prohibition Act 1986).

20) The negotiable instruments Act 1885.

21) The information Technology Act 2000.

22) The Cinematograph Act 1952.

23) The child marriage restraint Act 1928.

24) The Arms Act 1959.

25) The explosives Act 1884.

26) The explosives substances Act 1908.

II. Reference books and journals.

1) Kenny- outline of criminal law.

2) R.C.Nigam – Law of Crimes Vol-I

3) Smith & Hogen Criminal law.

4) Ratanlal – Dhirajlal – The Indian Penal Code

5) P.S.Atchuthen Pillai- Criminal law

6) K.D.Gaur – cases on Criminal law.

7) Cross & Jones cases on Criminal law.

8) Glanville Williams – Text book of Criminal law.

9) Jerome hall – General Principles of Criminal law.

10) Sri. J.F. Stephan – A history of Criminal law of England.

11) All India reporter

12) Supreme Court Criminal cases.

UNIT -1

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HISTORY OF CRIMINAL LAW - AND DEFINITION OF CRIME

Introduction:

The Criminal law is that part of the law which relates to the definition and punishment of acts or omissions- Sir J.F. Stephan.

Indian legal system follow the English common law system. A Crime is conduct which the State considers worthy of punishment in order to preserve Social order and well being. A crime consists of an act or omission prohibited by law under pain of punishment. This definition of course is not comprehensive or exhaustive, but it emphasizes the most important outward characteristic which distinguished crime from a tort or any non-criminal act, viz. the element of punishment. In order to understand when a person will be liable under the criminal law's the constituent elements a crime have to be studied. All these aspects have been explained in this unit.

Unit Objectives:

- To study the evolution of Criminal law in England
- To understand the evolution of the Indian Penal Code from common Law.
- To know the nature and concept of Crime & Criminal Law.
- To discuss the various definition of Crime.
- To understand the distinction lane in between the Crime & Tort.

Unit Structure:

1.1 Development of Criminal law

1.2 Codification of Indian Penal Code

1.3 The concept of crime

1.4 Crime as a - public wrong- moral wrong- convention wrong- social wrong- procedural wrong- legal wrong

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1.5 Difference between crime and torts

1.6 Summary

1.7 Answer to check your progress

1.8 Key words

1.9 Model Questions

1.1 Development of Criminal law

There was no criminal law in uncivilized society. Everyman was liable to be attacked in his person or property at any time by any one. The person attacked either succumbed or over powered his opponent. "A tooth for a tooth, an eye for eye and a life for a life" was the forerunner of criminal justice. As time advanced the injured person agreed to accept compensation, instead of killing his adversary. Subsequently a sliding scale came into existence for satisfying ordinary offences. Such a system gave birth to archaic criminal Law. For a long time, the application of these principles remained with the parties themselves, but gradually this function came to be performed by the state.

The germs of criminal jurisprudence came into existence in India from the time of manu. In the category of crimes manu has recognized assault, theft, robbery false evidence, slander, criminal breach of trust cheating adultery and rape. The Hindu King protected his subjects and the subjects in return owed him allegiance and paid him revenue. The King administered justice himself and if busy, the matter was entrusted to a judge. If a criminal was fined the money went to the King's treasury, and was not given as compensation to the injured party.

In western jurisprudence, the real notion of crime percolated from the Roman Law. In modern times, crimes have multiplied in an extraordinary degree. It has revolutionized the concept of criminal

law, various statutes have been enacted imposing different kinds of duties, liabilities and Restrictions on individuals.

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Criminal Law in England:

The most obvious meaning of the expression is that part of the law which relates to crimes and their punishment. A crime being defined as an Act or omission in respect of which legal punishment may be inflicted on the person who is in default either by acting or omitting to act. An account of any branch of the law ought to consist of three parts, namely,-

i) Its history.

ii) A statement of it as an existing system

iii) A Critical discussion of its component parts with a view to its improvement.

Early English Criminal law:

It is a matter of great difficulty indeed, I think it would be impossible, to give a full and systematic account of the Criminal Law which prevailed in England in early times. Because both the laws of the early kings and our own statute Book presuppose knowledge of an unwritten law.- J.F. Stephen. There are hardly any definitions of crimes in the early laws, but they contain provisions of one sort or another about a large proportion of the offences which would be defined in a modern criminal code.

The following are the Principal offences against the government referred to in the earlier English laws.

- Plotting against the king's life (or) a lord.
- Fighting in a church (or) in the king's house.
- Breaking the King's peace of offences against public justice. Perfuncy is mentioned on several occasions, Offences against

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religion and morals are dealt with at length in the ecclesiastical ordinances, but they are also mentioned frequently in the secular ordinances.

Offences against the persons of individuals are most minutely provided for by some of the laws. Which contain provisions as to homicide, different kinds of wounds, rape, and indecent assaults. Of offences against property theft is the one most commonly referred to such were the crimes known to Anglo – Saxon law. The punishments prescribed for them were either fines or corporal punishment, which was either death mutilation, or in some cases flogging.

Generally all crimes, were, on a first conviction, punishable by *wer, bot ana wite.*

Wer – some type of compensation.

(i.e) as where a man was murdered and compensation had to be made to his relations.

Wite- Fine paid to the king or Lord.

(i.e.) as when the thief, being outlawed, his sureties had to pay his fine to the king or lord.

Bot- The punishment upon a second conviction for nearly every offence was death or mutilation.

1.2 Codification of Indian Penal Code

Vascodegama, a subject of Portugal, first discovered the passage to Indian, the Portuguese began to carry on trade with India. The English came on the scene and began to carry on trade with India. As they were very successful queen Elizabeth granted in 1600,a charter which is corporated the east India company. The company had power to make laws. **In 1609 James** I renewed the charter and in **1661 Charles II** gave similar powers while renewing it. The Charter of 1668 transferred Bombay to the East India

Company, and directed that proceedings in Court should be like unto those that were established in England. Unto those that were established. The Court of Judicature which was established in 1672 sat once a month for its general sessions and of cases that remained disposed of were adjourned to **"Petty sessions"** which were held after general sessions. This Court inflicted punishment of slavery in cases of theft the offender had to pay monetary compensation, or else he was forced to work for the owner of the article stolen.

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In 1683, Charles II granted a further charter for establishing a court of judicature at such places as the company might decide. In 1687, another charter was granted by which a mayor and corporation were established at **Fort. St. George Madras** in order to settle small disputes. By these charters Englishmen who came to India were entrusted with administration of justice both civil as well as criminal. In these Courts the powers exercised by the authorities were very arbitrary strange charges were framed and strange punishments were inflicted. In 1726, the court of directors made a representation to the crown for proper administration of justice in India in Civil and criminal matters. There upon, mayor's court were established for proper administration of justice. But the laws administered were arbitrary because the mayor and Aldermen were the company's mercantile servants and they possessed very little legal knowledge. The Law that was administered was utterly unsuited to the social conditions of either the Hindus or the mahomedans.

In 1753, another charter was passed under which mayors were not empowered to try suits between Indians and no person was entitled to sit as a judge who had an interest in the suit. English law was no more applicable to Indian, and they were left to be governed by their own laws and customs. **In 1765, Robert Clive** came to India

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for the third time and succeeded in obtaining the grant of the Dewani from the Moghul Emperor. The grant of the Dewani included not only the holding of Dewani Courts. But the Nizamat also i.e. the right of superintending the whole administration in Bengal Bihar and Orissa.

In 1772 Warren Hastings took steps for proper administration of criminal justice. A Fouzdari Adalut was established in each district for the trial of criminal offences with these courts the company's European subjects had no connection, nor did they interfere with their administration. The Kazi or Mufli Sat in these Courts to expound the law and determine how far criminals were guilty of the offence charged. The collector of each district was ordered to exercise a general supervision over their procedure. In addition to district Courts a Sudder Nizamab Adalut was also established. This Court was to revise and confirm the sentences of Fouzedari Adalut in Capital cases and offences involving fines exceeding one hundred Rupees. The officers who presided over these Courts were assisted by Mohamedan law officers. The scheme of justice adopted by Warren Hastings had two main features first he did not apply English law to the Indian provinces and secondly Hindu and Muslim laws were treated equally. The administration of criminal justice remained in the hands of the Nawab and therefore Mohamedan Criminal law remained in force. These were the Courts in the capital.

In the rest of the country the administration of justice was in the hands of Zamindars, in Bengal and Madras. Mahomedan criminal law was in force. In the Bombay presidency, Hindu criminal law applied to the Hindus and Muslim criminal law to the Muslims. The Vyavahara mayukha was the chief authority in Hindu Law. but the

Hindu criminal law was a system of despotism and priest craft. It did not put all men on equal footing in the eye of law and the punishments were discriminatory.

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In 1773, the Regulating Act was passed, which affected the administration of Criminal justice under that Act a Governor General was appointed and he was to be assisted by four councilors. A Supreme Court of Judicature was established at For **William, Bengal.** This court took cognizance of all matters, civil, criminal admiralty and ecclesiastical. An appeal against the judgement of the Supreme Court lay to the King-in-council. All offences which were to be tried by the Supreme Court were to be tried by a jury of British subjects resident in Calcutta. Any crime committed either by the Governor-General, a Governor or a Judge of the Supreme Court was triable by the King's a Bench in England. The charter of Justice that laid the foundations of the Jurisdiction of the Supreme Court was dated march 26, 1774, and the justice administered in Calcutta remained so until the establishment of the High Court under the Act of 1861.

In 1781, an amending Act was passed to remedy the defects of the Regulating Act. This Act expressly laid down and defined the powers of the Governor General in Council to Constitute Provincial Courts of Justice and to appoint a committee to hear appeals thereform. The Governor General was empowered to frame regulations for the guidance of these Courts. Mahomedan Criminal Law was then applicable both to Hinuds and Mahomedans in Bengal.

In 1793, towards the close of Lord Cornwallis Governor-Generalship, fresh steps were taken to renew the company's charter. Accordingly the Act of 1793 which consolidated and repealed certain previous measures was passed. In the Mofussil towns in Bengal the law officers of the Zilla and city courts who were suder Ameens and

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Principal sudder Ameens were given limited powers in criminal cases. They used to decide petty theft cases and criminal offences they could fine up to Rs.50 and award imprisonments with or without labour for one month only. An appeal from their decision lay to the magistrate or joint magistrate offences for which severe punishment was prescribed were tried by magistrates who were empowered to inflict imprisonment extending to two years with or without hard labour. There were also Assistant magistrates and Deputy Magistrate but they had not full magisterial powers. Offences requiring behavior punishment were transferred to the sessions Judge. Death sentences and life imprisonment awarded by sessions Judges were subject to confirmation by the Nizamat Adalut. An appeal from the decisions of sessions Judges lay to the Nizamat Adalut. Such was the criminal administration in Bengal upto 1883.

In Madras District Munsiffs had limited criminal jurisdiction. they could fine up to Rs.200/- or award one month imprisonment by Regulation x of 1816 Magistrates were empowered to inflict imprisonment for one year. There were also sudder Ameens who tried trivial offences. Offences of heinous nature were forwarded for trial to the sessions Judge. Offences against the state were referred to the Fouzdari Adalut. The Fouzdari Adalut was the Chief Criminal Courts in the Madras Presidency and was vested with all powers that were given to the Nizamat Adalut in Bengal. The administration of Criminal Justice in Bombay was on the pattern of Bengal and Madras Presidencies with certain charges. The practice and procedure in Court in Bengal madras and Bombay were prescribed by Regulating Act which were passed from time to time.

In 1883 Macaulay moved the house of commons to codify the whole criminal law in India and bring about uniformity. He told the

house of commons that Mahomedans were governed by the Koran and in the Bombay presidency Hindus were governed by the institute of Manu. Pandits and Kazis were to be consulted on points of law and in certain respects the decision of Courts were arbitrary indeed, laws were often uncertain and differed widely from province to province. Thus the year 1833 is a great land mark in the history of codification in India. The Charter Act of 1833 introduced a single Legislation for the whole of British India. The Legislature had power to legislate for Hindus and mahomedans alike for presidency towns as well as for Mofussil areas.

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Accordingly the first Law Commission was constituted in 1834 under the charter Act of 1833 to investigate into the Jurisdiction, powers rules of existing Courts and police establishments and into the law in operation in British India and make reports thereon and suggest alteration having due regard to the distinction of castes, religions and opinion prevailing among different races and in different parts of the country. Mr. Macaulay was the president and Macleod, Anderson and Millet were the members of the commission. A Draft code was submitted to the Governor-General in council on October 14, 1837. It was circulated to the Judges and jurists. On April 26, 1845 another commission was appointed to revise the code. This commission submitted its report in two parts, one in 1846 and the other in 1847.

It superseded all Rules, Regulations and Orders of Criminal law in India and provide a uniform criminal law for all the people in the then British India irrespective of caste, creed or religion. It must be said to the credit of Lord Macaulay and his colleagues that in spite of tremendous difficulties, they firmly laid the foundations of Indian criminal law and did on excellent pioneering work. The Indian penal

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code has stood the test of more than a century and still largely meets the needs of present day society. In days when the concepts of individualization of punishment was totally unconceived. It defined offences and prescribed separate punishment for each. **The Santhanam Committee on prevention of Crime felt that the Indian Penal Code, though a very comprehensive compilation, does not full meet the requirements of our society after a country of its condifiction.** Thus anti-social acts which could be described as economic offences like profiteering black marketing hoarding, adulteration of food stuffs and drugs, trafficking in Licences and permits tax evasion usury, violation of rules regarding foreign exchange etc could be grouped together in one chapter of the Indian Penal Code under the heading of "Economic Offences". Similarly social vices like corruption, Casteism untouchability trafficking in women and children and a host of such other things could be grouped together under a single chapter entitled "Social Offences" in the Indian Penal Code itself.

Perhaps the most important of the functions of the state is that which it discharge as the guardian of law and order, preventing and punishing all injuries to itself and all disobedience is the rules which it has laid down for the common welfare.

The penal code is the substantive law and the criminal procedures code, the adjective law section 5 of the later code says". All offences under the Indian penal code shall be investigated inquired into tried and otherwise dealt with according to provisions of Indian Penal Code.

1.3. The Concept of Crime:

The law of crime has developed through the centuries by the scholarly contributions of legal commentators, Jurist and Judges like

the accretions of calcium deposits in the formation of coral roofs. Criminal law in its rudimentary form was found in the primitive societies as customs and labour. For any violation of such acts, the individual was penalized. This was followed by every organized society by forbidding certain acts commission or omission on pain of punishment. It has been well recognized that apart from liability for reparation or compensation, which everyone who wrongs another must incur and pay the wronged individual. The state also imposes certain penalties with the object of preserving peace and tranquility in the society.

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Generally speaking crime would mean act which is both forbidden by law and revolting to the sentiments of the society" Stephen's. General view of Criminal Law of England". Since the moral sentiments of a society are flexible, they change from time to time with the changes in public opinion and social necessities of the times. Hence the contents of crime changed from time to time and country to country. For example the act of adultery is a civil wrong today under the English Law but is a crime in the Indian Penal Code. The reason for this difference is that the act of adultery does not offend the moral sentiments of one society but it offends the other. A Crime of yesterday may be a virtue of tomorrow and so also virtue of yesterday may become a crime tomorrow. For example an attempt to suicide was a crime in England till 1961, when it was abrogated by the Suicide Act of 1961. Similarly polygamy was not a crime in India as the Personal Law of Hindus allowed it, but was brought under the provision of the Indian Penal Code, when the Hindu Marriage Act. 1955 prohibited polygamy and provided only monogamy. This versatile nature of the crime has made all attempt from time to time beginning with Sir Blackstone to Prof. Kenny to define it abortive-

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Russell in his book on crimes aptly observes that "to define a crime is a task which so far has not been satisfactorily accomplished by any writer. In fact, Criminal offences are basically the creation of criminal policies adopted from time to time by those sections of the community who are powerful or astute enough to safeguard their own security and comfort by causing the sovereign power in the state to repress conduct which they feel may endanger their position." Though a crime is difficult to define its nature can be understood by distinguishing it from the moral and civil wrongs.

1.4 Crime as a - public wrong- moral wrong- conventional wrong etc.,

Moral and Criminal Wrongs Crime and morality: In the past crime and morality were inseparably connected. It was morality which supplied the categories of crime to the secular courts. In the present day penal laws are by no means coextensive with moral laws. The Commission of an offence need not necessarily be treated as immoral and every immoral act need not necessarily be treated as a crime. There are innumerable offences created by modern statutes which do not carry with them any moral stigma (e.g. necessarily driving a motorcar without a licence). In modern days criminal law is used not only for prevention of wrongs but also for achievement of national policy, when the activities of state is rapidly increasing, the scope of criminal law is also enlarged (e.g. the regulation and conditions in factories, control traffic on road all these involve creation of new crimes)

In the case of moral lapses like ingratitude, hard heartedness avarice or pride, an individual is not punished as they refer to his mental attitude towards his fellow beings, but may be the subject of confession and penance. Society looks upon such acts with disapprobation but they are not harmful enough to attract legal notice.

On the other hand acts which result either in a physical or mental injury to an individual or injury to his property are serious enough to attract legal notice. Such acts are referred to as crimes. In a crime an overt act which causes a definite injury to any person involved. Some acts like murder arson robbery and theft are equally abhorred by criminal law and morality. Such acts are both moral and legal wrongs. But violations of traffic laws are only legal wrong as moral stigma attached to them. Thus it is seen that a criminal **wrong** is narrower in extent than a moral wrong.

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Crime as a Public wrong: Crime has been defined variably by renowned jurists. It is crystal clear from these definitions that crime is a subtle phenomenon which is elusive to any single comprehensive definition.

Sri William Blackstone in his classical work Commentaries on the Law of England, has defined crime as "a violation of the public rights and duties due to the whole community considered as a common unity". Stephen defined crime as a "violation of a right considered in reference to the evil tendency of such violation as regards the community at large.

These two definitions emphasizes the fact that crime is a harm or injury to the community, which agrees with the view of the Roman Jurists. Who referred to crimes as. Telicta Publica'. these definitions are inchoate as only one aspect of crime is stressed. Later Stephen, widened the scope of his definition by saying that "a crime is an act or commission in respect of which legal punishment may be inflicted on the person who in default either by acting or omitting to act".

Crime as a Procedural wrong:

The Most comprehensive definition is given by Prof. Kenny "Crimes are wrongs whose sanction is punitive and is in no way

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remissible by any private person but remissible by the Crown alone, if remissible at all". This definition is row considered to be outdated and unsatisfactory for two reasons. First, it laid too much emphasis on exceptional and not on normal feature. The object of prosecuting a criminal is not to pardon him but to punish him. Second, it lends too much stress on the punitive element. Modern Criminologists would like to treat criminal just as patient is treated by a doctor. Prof. Cecil Turner analyses the definition of Prof. Kenny and found the following characteristics in a crime (a) That, it is a harm brought about by human conduct, which the Sovereign power in the state desires to prevent (b) That, the method of prevention is the threat of punishment, (c) That, legal proceedings of a special kind are employed to decide whether the person accused did in fact cause the harm and is according to law, to be held legally punishable for doing so.

This analysis, makes it clear that any conduct which is endangering or destructive, of the interest stability or comfort of the individuals concerned, the state tries to repress it with severity in order to prevent the harm and punish the individual who is responsible for it.

Professor Keetton: "A crime is any undesirable act which the state finds it most convenient to correct by the institution of proceeding for the infliction of penalty instead of leaving the remedy to the discretion of some injured person".

Professor Goodhart: "Crime is an act punished by the state".

Bonger: "Crime is a serious anti-social action to which the state reacts consciously by inflicting pain (punishment)".

Sec. 40 of the I.P.C. defines an offence "as a thing made punishable by the code". This definition in the I.P.C. emphasizes the

fact that an act is crime only when it is prohibited and made punishable by a statute. If the crime is repealed the act loses its offensive character and ceases to be an offence.

1.5 Difference between the crime and torts

1. Crime is a criminal wrong against society while tort is a civil wrong arising from a breach of duty to a particular individual fixed by the law.
2. Regarding crime the presence of Mens Rea must be proved against the offender for punishing him, while in torts there is no such proof necessary against the defendant for claiming compensation.
3. The accused in a criminal case is given the benefits of doubt through he may be offended but in the case of torts the defendant is not entitled to such benefits of doubts.
4. In case of torts the parties are allowed to compromise in all cases while in crimes the offences can be compounded only in certain cases.
5. Crime are tried is criminal Courts which torts are tried in civil courts.
6. Crime is not generally a pardonable offence. It is pardoned under certain circumstances by the sovereign power only but in tort only the plaintiff can release the defendant by with drawing his claim or compromising with him.
7. In criminal cases, the Onus probadi burden of proof is always on the prosecution whereas in torts its shifts from plaintiff to defendant and vice versa depending on the nature of evidence.
8. The sanction for crime is punishment whereas the remedy for tort is damages (compensation is term of money)

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Check your progress

1. What were the reasons which led to the appointment of the First law commission in India?

2. Write a Critical notes on the development of Criminal law in India ?

3. Distinguish between the Crime and Torts?

4. Crime is a Moral Wrong – Discuss.

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9. State through police generally initiates action in crimes but in torts private party files the suit for remedy.

1.6 Summary

Crime is a Social phenomenon. Emile Durkhiem is his treatise "Crime as a normal Phenomenon". He argues that Crime is a necessary feature of every society as it is a fundamental condition of social organization. In our modern society use of Computer net work has given rise to cyber crimes and other computer related unlawful activities. These crimes differ from most traditional crimes i.e. Decoity, and Murder so the nature and concept of the crime is may be change time to time and depending upon the social disorganization.

An attempt to define a crime at once encounters a serious difficulty. Many attempts have been made to define crime but it has not been possible to discover the most scientific definition workable in all cases. Sir James Stephen has observed "Crime is an act which is both forbidden by law and revolting to the moral sentiments of the society. However Pr. Kenny's definition of Crime is more authoritative but it is not universal applicable one.

1.7 Answer to check your progress

Question No 1: Refer 1.1

Question No 2: Refer 1.2

Question No 3: Refer 1.5

Question No 4: Refer 1.4

1.8 Key words :

Charter –Declaration of English Kings or Queens

Magistrates – Judicial Officers to Proceeds on Criminal Law

Draft Code – Bill

Cyber Crime – The Crime relating to the Information Technologies

Dewani Adalat, Nizamat Adalat – Courts constituted under the Mohamadien Criminal Law.

Common Law – Unwritten legal or equitable in its origin which does not derive its authority from any express declaration of the will of the legislature.

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1.10 Model Questions

1. Trace the History of Criminal Law in India.
2. Write a note on the following:

    a) Lord Macaully b) Defects of Muslim Criminal Law

3. Write a short note on Crime and Morality.
4. "The Criminal Law is that Part of the law which relates to the definition and Punishment of acts (or) omissions" – Sir J.F.Stephen - Discuss
5. " No Punishment without Crime and No crime without punishment" – Discuss.
6. Distinguish between Crime and Torts.

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UNIT – 2
ELEMENTS OF CRIMES-STAGES OF CRIME

Introduction :

In this chapter we shall discuss about the elements of a crime. In Criminal law there are two essential elements necessary to constitute a crime namely

(i) Guilty intention (or) Mensrea

(ii)Illegal Act (or) Actus reus

The above elements are discussed in detail below. Secondly we critically analyze the various stages of the Crime. Conspiracy, instigation, an attempt-to commit the same whether they are really a part of the Crime or not? we discuss in detail the above steps of criminal Act.

Unit objectives :

- ❖ To understand the meaning of Elements of crimes
- ❖ To Analyse the Mental elements of crime and Physical elements of crime
- ❖ To learn about various stages of the Mental elements in various law system.
- ❖ To observe the various stages of crime
- ❖ To discuss the uncompleted crimes.

Unit Structure :

2.1 Mental elements in crime & physical elements in crime

2.2 Mens rea in English Criminal law

2.3 Mens rea in Indian Penal code

2.4 Mens rea in Statutory offences in India

2.5 Stages of Crime,

2.6 Preparation,

2.7Attempt

2.8 Summary

2.9 Answer to check your progress

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2.11 Model Questions

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2.1 Mental elements in crime & physical elements in crime

Mental elements in Crime (or) Mensrea

"Actus non facit reum nisi men sit rea" is a well know legal maxim of the common law which means that " the act itself does not constitute guilt unless done with a guilty intent"- simply "No means rea- no crime"

Generally mens rea- taken upon the account in two perspectives one is subjective and other is objective.

In **R –Vs- Prince-** Henry prince loved Annie Philips, an unmarried minor girl. He was tried for having unlawfully taken away, out of the lawful possession and against the will of her father under the belief that she was eighteen.

The accused contended that he was under the belief that she completed 18 years. Jury found upon evidence that before the defendant took her away, the girl had told him that she was eighteen. The accused also argued that the he had no mens rea.

Sixteen judges tried the case and all but one unanimously held the prince guilty. They were held that the prisoner's belief about the age of the girl was no defence. It was argued that the statute did not insist on

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this knowledge of the accused that the girl was under age 16 as necessary for conviction, the doctrine of mens rea, should nevertheless, be applied, and conviction be set aside in the absence of criminal intention.

The decision is very controversial and has been the subject 'mens rea' criticized by many jurists like Jerome Hall. The decision has been regarded as unsatisfactory by Russell, as it is in conflict with the established principles of criminal law.

R. Vs. Tolson (1889 23 QBD-168)

In this case Mrs. Tolson was married to Mr. Tolson in 1880 and after one year in 1881, she was deserted by her husband. She made all possible enquires about him and ultimately came to know that her husband had been destroyed in a ship bound for America. Therefore, supposing herself to be a widow, she married another man in 1887, without any secrecy.

In the meantime, Mr. Tolson suddenly reappeared; Mrs. Tolson was charged and tried under section 57 of the Offences against person Act 1861 for having committed the offences of bigamy. Under this section, it was an offence for a married person to contract a second marriage during the life time of the husband or wife.

In the trial court, she was convicted for one day imprisonment on the ground that a belief in good faith and on reasonable facts about the death of her husband is no defence to the charge of bigamy. Mr. Tolson approached the court of appeal; the question arises on the higher court, whether Mrs. Tolson had guilty intention in committing the offence of bigamy.

The court by majority setaside the conviction on the ground that bonafide belief about the death of the first husband at the time of second marriage is a good defence in an offence of bigamy. The court also laid down that the doctrine of mensrea would be applied in statutory offences also under the same is ruled out by the statute either expressly or by necessary implications. The observation of the court in the above case are not of universal application and Courts have refused to apply them **(R Vs. Wheat & Stock) (1921) 2KB 119.**

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The general rule applicable to criminal cases is 'actus non facit reum nisi men sit rea... It is of utmost importance for the protection of the liberty of the subject that a court should always bear in mind, that unless a statute either expressly or by necessary implication, rules out mensrea as a constituent part of the crime, the court should not fine a men guilty of an offence against the criminal law unless he has a guilty mind".

2.2 Mens rea in English Criminal law

The conception of mensrea has differed from time to time according to the changing underlying conception and objects of Criminal justice. Notion of mensrea in early primitive societies is non-existent and liability was absolute and offender was responsible whether he acted innocently or negligently. Before the 13th century, the doctrine of mensrea was almost non-existent. Even then it was not completely disregarded and was kept in view in awarding the punishment. In the 13th century Roman law, especially its conception of Dolus and Culpa influenced. The courts in England were also followed the common law which emphasized moral guilt. The notion of mens rea, as we understand it today was fully accepted in English system. On the end of

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seventeenth century and it was universally settled law that mens rea is an essential ingredient of crime. No criminal act or omission of the person was punishable unless the same is done with evil intent.

Mens rea and Statutory crimes in England: The maxim has been applied to all common law crimes in England. Its application to statutory offences was however, uncertain up to 1947. Application of this doctrine to statutory crimes is fully discussed in two leading case laws **i.e. Reg Vs Prince (1875 LR 2CCR 154) R. Vs. Tolson (1889) 23 QBD 168**

2.3 Mens rea in Indian Penal code

The word mens rea is a technical term, it is not directly used in the Indian Penal Code, but the idea underlying in it is seen in the entire offences except in certain provisions ie., waging war, sedition etc.

Mens rea takes on different colours in different offences as like chameleon. There is no single state of mind that must be present as a pre-requisite for all crimes. The draftman's alternatively use various terms for mens rea such as

-Intentionally	-voluntarily
-Fraudulently	-dishonestly
-maliciously	-wantonly
-knowingly	-wrongfully

For example:

Sec.300- "Except in the cases herein after excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death or

2nd ly – if it is done with the intention of causing death such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused or

Sec.341- whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month.

Sec.377- whoever voluntarily has carnal intercourse against the order of nature with any man, woman.....

Sec 378- who ever, intending to take dishonestly any moveable 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.

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2.4 Mens rea in Statutory Offence in India

In general, for imposing criminal liability, it has to be proved that the accused person had committed the crime with mens rea. In statutory offences, the offences have been defined precisely in statutes passed by the legislature.

In Srinivasa Mall Vs. Emperor (AIR 1947 PC)

The charge was under Rule 8(12) of the Defence of India Rules made under the Defence of India Act 1939. An order was made under this rule for controlling the price of salt and also providing punishment for any contravention of this order. The facts were that the second accused an employee of the first accused Srinivasa Mall, a salt agent, and sold salt in excess of the controlled price. The first accused was also charged for this violation as an abettor. The first accused placed lack of knowledge (mensrea) with regard to these infringement committed by the second accused. The High Court convicted the first accused, reversing the acquittal of the lower court disbelieving his contention. The case went to the privy council, which acquitted him by holding that the rule in question does not belong to the category of rules under which the offences can be commited without a guilty mind (mens rea).

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State of Maharashtra Vs. M.H. George AIR 1965 SC 722 The accused George was a passenger from Zurich to Munia on Board a plane which landed at Bombay for a few hours. In a search by the customs officers he was found to have on his person 34 kgs of gold without the necessary permission. He was charged for violation the **Foreign Exchange regulation Act. 1947** which restriction was later amended and was published in the gazette of India on Nov 8th. The accused could not possibly have knowledge of the amendment as he left Zurich on27th Nov. Hence he pleaded lack of knowledge to relieve himself from this liability. The Supreme Court by a majority found him guilty of the violations concerned. **Rajagopala Ayyangar.** J while delivering the majority judgment observed that We are clearly of the opinion that there is no scope for the invocation of the rule that besides the mere act of voluntarily bringing into India, any further mental condition is postulated as necessary to constitute an offence of this Act The Act is designed for safeguarding and conserving foreign ex-provisions have therefore to be stringent and so framed as to prevent unauthorized and unregulated transaction which might upset the scheme under lying the controls. In our opinion the very object and purpose of the Act and its effectiveness as an **Subba Rao J.** while dissenting from the majority opinion observed:- "It is a sound rule of construction adopted in England and accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded mens rea. But the mere fact that the objective of a statute is to promote welfare activities or to eradicate grave social evils is in itself not decisive of the question whether the element of guilty mind is excluded from the

ingredients of the offence". Inspite of the dissent the majority opinion prevailed and the accused's conviction in the lower court was confirmed but the sentence was reduced.

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Nathial Vs. State of Madhya Pradesh (AIR 1956 SC 34)

The accused a dealer in food grains applied for licence under the Madhya Pradesh Food Grains Dealers Licensing Order,1958. In order to hoard grain in his godowns. He also deposited the licensing fee. As there was no intimation to him that his application was rejected he purchased food grains from time to time and submitted returns to the licensing Authority. After some months as Inspector checked his godown and prosecuted him for storing food grains without a licence but under the bonafide impression that the licence was issued to him though not actually sent to him. The Supreme Court held by majority that he was not guilty and confirmed the acquittal of the lower Court.

It is interesting to note that the dissenting opinion of Subba Rao J in George's case has become the majority opinion in Nathulal's case. A dissenting opinion was expressed by **Shah.J** by pointing out that offence under **sec 7 of the Essential commodities Act,1955** involved mensrea, though the provisions are silent with regard to it, the accused in this case is responsible as he had contravened the provisions with the knowledge that he did not hold a license.

From the preceding discussion both the English and Indian decisions it is clear that it is not possible to formulate any general principle by which to decide to what extent mens rea is a constituent in statutory offences. But it can be said that the subject and the language of the statute should be examined carefully and on ordinary interpretation

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should be made. The object of the legislature in enacting such legislation and the nature of penalty which indicates the gravity of offence should also be considered in order to read in mens rea wherever the provisions are silent with regard to it.

2.5 Stage of Crime

Intention

There are four stages in the commission of a crime. They are: firstly, the stage of intention, secondly, the stage of preparation, thirdly the stage of attempt and fourthly, the stage of completion.

The first stage of intention is that of a contemplation to commit the offence. Under ancient English law the stage of intention was considered on the same footing as that of a completed deed. But under the present English law the mere thought to commit an offence is not punishable. In order to constitute an attempt to commit a crime there must be something more than an intent to commit it. The law regarding the first state i.e. the stage of intention is the same under the Indian Penal Code.

The obvious reason is that it is difficult to prove the mental state of an individual "as the devil himself knoweth not the though of man". Due to this difficulty a tribunal cannot punish an individual for an act which it cannot assess properly. In other words law does not take notice of more intention not followed by an over act.

2.6 Preparation:

The second stage is that of preparation. This stage consist of acts committed by the accused in procuring or devising means and arranging for the commission of the offence. In this stage also under certain circumstances it is not easy to assess whether the individual concerned is

making arrangements for the commission of a crime or not, for example, when an individual buys a pistol and loads it, it is not an indication that the person is making plans to commit the offence of murder as he might have bought the pistol for self defence. Due to this uncertainty preparations to commit offences are not punishable. In other words, if mere acts of preparation were punishable it would be impossible in the majority of cases to prove the object for which the preparations are made. Hence this stage is not punishable under the modern penal provisions and the Indian Penal Code.

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But there are exceptions to this general rule. In these exceptional cases a mere preparation to commit offence is punishable because it precludes the possibility of an innocent intention. Such preparations are signed out for punishment due to their serious nature as in the case of the offence of treason, dacoity etc. Under the Indian Penal Code the following preparations are punishable. Under Section 122, preparation to wage war against the State is made punishable. Section 126 provides for preparations for committing depredation on territories of any power which is in friendly alliance with the Government of India. Sections 233 to 235 deal with provisions for preparation with regard to offences concerning counterfeiting of coins, Sections 399 provides for preparation to commit dacoity.

2.7 Attempt

The third stage in the commission of the offence is that of an attempt. An attempt is a direct movement towards the commission of offence after the preparations are made. For example, an individual after procuring a loaded pistol pursues his victim but is unsuccessful in the commission of the offence of murder, then the act passes from

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the stage of preparation to the stage of attempt to murder. In the attempt the acts of individual have progressed to such an extent that it is possible to find out whether the accused had the required mens rea or not for the concerned offence. Hence the law takes notice of attempts and punishes the accused accordingly. But it has not always been easy to draw a line of demarcation between a preparation and an attempt.

Stephen defines attempt thus: "an attempt to commit a crime is an act done with intent to commit that crime and forming part of a series of acts, which would constitute its actual commission if it were not interrupted". Mayne defines an attempt in the following manner- "an attempt is the direct movement towards the commission of the offence after the preparation have been made". In Halsbury's Laws of England it is stated that "any overt act immediately connected with the commission of an offence and forming part of a series of acts which, if not interrupted or frustrated would end in the commission of the actual offence is, if done with a guilty intent, an attempt to commit offence."

These definitions point out that just like any crime, an act of criminal attempt also consists of the physical element – actus reus – and the mental element mens rea. **Kenny in his "Outlines of Criminal Law"** has aptly stated that it is true that the criminality of the attempt is in the intention, the mens rea but this mens rea must be evidenced by what the accused has actually done towards the attainment of his ultimate object. Thus the actus reus of attempt is reached in such an act of performance as first gives clear prima facie evidence of mens rea.

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It has been accepted that it is very difficult to decide at what stage in the preparation of an offence the actus reus of the offence of the attempt has been reached. This difficulty can be overcome by bearing in mind two fundamental points. **Firstly,** in an attempt the deed or act must be one performed in actual furtherance of the crime intended. **Secondly,** that the act must be such that it raises a presumption that the accused was aiming at the crime in question. **For example,** if a man buys a box of matches, he cannot be convicted of attempted arson as his intention to commit the crime is not clearly proved. But if he approaches a haystack, bends down near the stack and lights a match stick which he extinguishes on perceiving that he is being watched, he may be guilty of an attempt to burn it. This was the ruling in the case of **R.Vs. Taylor (1859).**

Means rent in an attempt does not present much difficulty as it is politely a matter another. As every attempt is based on specific intention it must be proved by the prosecution in order to fix the liability on the accused.

From the stage of preparation, the act passes on to the stage of attempt by a further development and this presents difficulties in distinguish-ing the stage at which preparation has ended and attempt has begun. In order to make this determination easier three tests have been suggested. The first test is known as proximate to the crime attempted. The second test is that it need not be capable of brining about the crime intended i.e., the crime intended need not be possible. The third test is founded on whether the accused was "on the job".

A. Proximity rule: Among the series of acts committed towards the commission of an offences, the act of attempt should be penultimate

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fact to the final act. The act attempted must be close proximates. In space and time to the final act for the completion of the offence. The decision in the case of **R.Vs. Taylor** may of be given as an example. Where there has been merely the procuring of the means for the commission of the offence and there is a gap between his procuring and the commencement of the act either by the accused himself or by the accused being arrested at that stage then the procuring of the means is not punishable as an attempt. The obvious reason being that the offender on his own free will may desist from by contemplated attempt and leave of a committing the offence at the stage to preparation itself. For example, if A purchases a gun, loads it and threatens to kill B, the act is still, at the stage of preparation, but if he pernts the loaded pistol towards B with the intention of shooting him and is presents from pulling the trigger by C, the offence of murder is interrupted and stop at the stage of an attempt. In this illustration if there had been no intention the offence of murder would have been completed. Thus are act which would lead to the commission of an offence, into the act of attempt to commit the offence.

This principle is embodied in the latin maxim **Cogitations poenem nemo patitus** which means that no man can be safely punished for his guilty purposes, save for as they have manifested themselves in over acts which themselves proclaim his guilty.

The application of the proximity rule was clearly illustrated in **R.Vs. Robinson (1915 11 Cr. App R.124).** The accused a jeweler had insured his stock against burglary and theft. Later he bundled some jewels and hid them under his safe. After a few days at night

he bound himself with cords and called for assistance to be rescued from the atrocities of a robber. A Police-officer on his night rounds heard the cries and came to his help unboud him and took him to the police station for giving a complaint. While the accused was at the police station giving the complaint the police officer sent two of his policemen to search the premises of the accused as he suspected the behaviour of the accused. The policemen discovered the jewels bundled together under the safe and came back with them. When questioned about this the jeweler confessed that the robbery of his complain was a 'made up one' and that his intention had been to obtain the insured money from the insurance company. The accused was charged with attempting to obtain money by false pretences and was convicted for the same by the lower Court. But on appeal, his conviction was quashed by the court of Criminal Appeal on the ground that his acts of preparation had not yet reached the stage of attempt which the law required. It was pointed out by the court that there was still room for the accused to desist from his crime, as he could have simply kept quiet after making all these arrangements. But if in this case the accused had filled in a claim for the insured amount and had sent it to the insurance company, then his act could have reached the stage of attempt as his act would have clearly raised a prima facie presumption of his mens rea.

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Similarly in **Hope Vs. Brown (1954 I All E.R.33)** the accused a butcher was found to have labels of excessive price, than the permitted maximum. The meat packets in the refrigerator had only label of permitted price. The other labels were found in a drawer. The accused also admitted that he had instructed his servants to attach

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the labels with excessive price and then deliver to his customers. Held that he was still in preparation. It would have reached the stage of attempts if he had attached the excessive labels to the meat packets. Thus before an accused is made responsible for an attempt, it is to be seen whether the act is proximate or not.

B. The second test focuses attention on the "possibility or impossibility' of the act. It has been accepted that even when a crime is impossible, the accused can be made responsible for its attempt. But in the old English law, impossible attempts were not treated as punishable as they were considered to be mere preparations. Thus in **R.Vs.Macpherson**, it was held that a person could not be convicted of breaking and entering a building and attempting to steal goods which were not there. Since the absence of goods made it an impossibility to steal, there can be no attempt of theft in such cases. Similarly, in **R.Vs.Collins**, it was held that as offender tried to pick an empty pocket though with the intention of stealing he cannot be made responsible for an attempt of it.

But gradually this view was regarded as a mistaken one and it is established that impossibility of performance does not per se render the attempt guiltless. The decision in **R.Vs.Collins and R.Vs.Mc. Pherson,** were overruled in **R.Vs.Ring (1891).** In this case the accused was convicted for an attempt to steal from the pocket of woman, though the pocket was empty. No reasoning was advanced by Lord Coleridge C.J. in R.Vs.Ring for overruling the former decisions. But'er J pointed out the absurdity in following the view taken in R.Vs.Collins by remarking that "It would be a novel and starting proposition that a known pickpocket might pass around a

crowd in full view of a policemen, an even in the room of a police station and thrust his hand into the pockets of those present, with intent to steal and yet not liable to arrest or punishment until the policeman has first ascertained that there was, in fact, money or valuables in some one of the pockets".

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This view was followed in the case of **R.Vs.Goodall.** The accused administered a noxious substance to cause miscarriage to a woman. But it turned out later that the woman was not pregnant at all. The guilty intent would make an act innocent in itself, criminal. The act of the accused was considered to be an attempt. Wharton's example that if A shoots at a show, sufficiently near to another person as to put that person in peril. A is guilty of attempt, supports the accepted view.

C. The third test is to find out whether the accused is "on the job" or not. A person on the job means one who is at it i.e. doing the set of attempt with intention of committing the offence. To illustrate, A shoots B whose back is turned to him. The shooting does not harm B as he is beyond the pistol range of A. But A is held guilty of an attempt to murder. Though no harm is caused yet the accused is held guilty of an attempt as he was on the job with the intention of committing the offensive act. In the same illustration if A had only been practicing shooting and he also know that B was out of range, then A is not guilty as there is no mens rea marks even an innocent actus reus into a culpable one and the door of it is held responsible.

This view was accepted by **Rowaltt J in R.Vs. Osbora (1919 84 JP. 63).** The accused after being repeatedly asked by a pregnant woman, sent some innocuous pills in order to satisfy her. She took

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them thinking that the pills would cause an abortion. But no harm was caused as the pills were harmless ones. The accused was tried for attempting to administer a noxious thing to a pregnant woman. Accused was held to be not guilty as he had attempted noting. **Rowlatt. J.observed** "if you try to burst open the very best kind of steel safe with a wholly insufficient instrument you are still guilty of attempt, although you never could have completed it, because you are at the very thing and trying to do it. But where the man is never on the thing itself at all, it is not a question of the impossibility, he is not on the job, if he tires his gun at a stump of a tree thinking it is his enemy and his enemy is miles away and there is nobody in the field at all he is not near enough to the job to attempt it".

To illustrate this view if B puts a sweetening tablet in A's tea thinking it is a lethal dose of aspirin, he is not liable for an attempt as the act is innocent and harms no one though it is the actus reus for an attempt in murder. But in contrast to this it was held in **R.Vs. White (1910 2K.B. 124)** that when the accused put two grains of potassium cyanide in his mother's nector in order to kill her, that he was guilty of attempt even though the quantity was insufficient to kill her. Insufficiency by itself does not relieve the accused of his liability for an attempt.

Thus one of the three tests are used to find out whether the act of the accused has reached the stage of attempt or not. Provisions with regard to attempts have been provided in three ways in the Indian Penal Code. Firstly, the attempt to commit the offence and the completed offence are provided in the same section. The punishment given for both is the same. **For example,** using false evidence or attempting to do it

are provided in section 196. Similarly aggravated forms of extortion and the attempts to such acts are provided in the same sections 387 and 389. Secondly, the attempts of grave offences are provided separately in separate sections with the maximum punishment. Section 307 provides for an attempt to murder and Section 308 deals with an attempt to commit culpable homicide. Thirdly, the essentials for an attempt in general is provided in section 511 of the Indian Penal Code. The language of section 511 makes it clear that the provisions are entirely based on the English principles with regard to attempts.

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The section 511 of the Indian Penal Code points out that the acts of attempt should be a proximate one to the act which complete the offence as otherwise the act would be still in the preparation state. This was illustrated by the decision in **R.Vs. Rasat Ali,** the accused printed and had in his possession forms similar to those used by the Bengal Coal Company and while he was correcting the second proof, he was arrested. The charge was for attempting to make a false document under section 464. The court held that the stage of attempt thus not been reached as the forms were still bland without being filled. The court pointed out that the stage of attempt would be reached only when the forms are filled and the seal or signature of the Bengal Coal Company was affixed to the document.

The law regarding attempt was discussed by **Ramaswamy J.** and **Ananthanarayanan J.in Velu's case.** The accused Velu and his wife Lakshmi jumped into a well with their one month old baby to commit suicide because of their poverty striken condition. A passer by rescued them but the baby slipped into the well and died. The accused were charged for attempt to commit suicide and for the

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murder of the baby and sentenced them to imprisonment. For attempt to commit suicide, the accused were sentenced to six months rigorous imprisonment and the sentences to run concurrently. The accused appealed, **Ananthanarayanan J,** while delivering the judgement observed that the court accepted the confession of the accused and that the offence committed in this case was attempt to murder. His Lordship pertinently pointed out that most cases of attempts were cases in which the objects of the offender was not successfully accomplished otherwise the attempt would merge in the crime and would no longer retain its essential character of an inchoate offence. In this case by an intervention the attempt was not successful, still by an accident the desired effect was brought bout. Hence their Lordships altered the conviction for murder to an attempt to murder and confirmed the conviction for an attempt to commit suicide. **Ramaswamy J.** pointed out that the law relating to attempt is practically the same in England, America and India. Attempt is an inchoate crime (i.e.incomplete) injurious rather in tendency than in effect. These acts are classified as crimes in the interests of social security and well being.

The section also provides that the act must be done with the required mens rea for the offence concerned and should be evidenced by an overt act. Attempts of offences which are punishable with life imprisonment or terms of imprisonment alone came under the purview of this section. This provision does not apply for attempts of offences which have been provided separately in the Indian Penal Code. The illustration to this section deals with impossible attempts as in English law under the Indian Penal Code also, this section specifically points out that the impossibility

in committing the offence does not affect the offender's liability. In other words, he is responsible for an impossible attempts also.

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A few cases can now be discussed under the Indian penal Code for attempts. **In Padala Venkataswami's case** the accused, considered with order persons for making a false document and in pursuance of it prepared a draft. The accused for this purpose asked an individual to supply the Telugu data corresponding to a particular English date, on the document. The individual complained to the police and the accused was arrested. The court held that the act was still in the preparation stage and that the accused could not be made responsible for the attempt to forgery as noting was yet written on the stamped paper.

In Bashribhal Mohamdahi Vs. State of Bombay (1930) the accused represented to the complainant that he had powers to duplicate currency notes. The complainant gave information to the police and pretended to believe the statement of the accused and handed over the currency notes. The accused was arrested red-handed by 420/511 of the Indian Penal Code. The Supreme Court rejected the contention for offence of cheating.

There were controversial views with regard to the scope of sections 307 and 511 in their application to the offence of attempt to murder. These views were discussed in the case of **Francis Cassidy (1867) 4 B.H.C.17) and Niddha (1861) 14 All. Pg 38).** The accused Francis Cassidy pointed an uncapped rifle at his Major thinking it to be capped. While pulling the trigger he was prevented by another individual. The Bombay High Court held that the accused could only be convicted under section 511 and not 307. In order to constitute the offence of attempt the murder under section 307, the act committed by

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Check your Progress

1. The Essential ingredients of a crime are

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2. maximum actus non facit reum nisi mensrea has no application to the offence under the Indian Penal Code in its purely technical sense because the definition of various offences contain propositions as to the statement of offences (True / false)

3. Distinguish the attempt and preparation.

4. what are the essential of the attempt

the offender must be an act capable of causing death in the natural and or ordinary course of events. Since from the facts of the case it is obvious that the attempted offence would not have caused death in the natural course of events the case should only be dealt with in section 511.

But a contrary view was taken by the Allahabad High Court in **Niddha's case.** During an altercation between the police and the accused for the apprehension and arrest of the accused, the accused Niddha shot at a policeman. The cap exploded but the charge did go off. Niddha was charged under Section 299 and 307/511 and convicted him to undergo a sentence of five years. On appeal, the High Court discussed the relevancy of section 307 and 511 in this context and pointed out, that the general section of attempts i.e., 511 does not apply to this case, as the attempt to murder has been separately provided for in section 307. Further section 511 specifically states that it has no application for attempts of offences punishable with death. Hence there is no necessity for a court to resort to the provisions in section 511. The charge was realtered to sect: 307 and the sentence of 5 years was confirmed.

Later the Bombay High Court changed its view and followed the decision in **Niddha's case in Vasudev Balwant Gogte v. Emperor I.L.R.56 Bom. 434).** The accused fired two shots from a revolver at point blank range at Sir Erues Hotson, Governor of Bombay. The bullet failed to take effect due to intervention of a leather wallet. The High Court held the accused responsible under sec.307.

Similarly in the case of **Om Prakash Vs. State of Punjab (1982),** the Supreme Court held that a person to commit the offence under Sec. 307, when he has an intention to commit murder and in pursuance of that

intention does an act towards its commission irrespective of the fact whether the act is penultimate act or not. Thus the controversy had been settled and the law of attempt in the context has been well established.

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The last stage in the commission of the offence is that of the completion of the specific offence concerned.

2.8 Summary

As we have already noticed, two elements are always necessary to constitute a crime namely mensrea and actus reus. The principle of mens rea brings in several other states of mind, i.e, will, intention, motive, etc. Criminal law does not punish a mere criminal intention; because the courts were not possessed of facilities for investigation the working of a human beings mind and were uncertain as to the possibility of ascertaining it accurately.

The guilty mind and the act must both concur to constitute a crime. Emphasing this **Stephen** – stated that "the full definition of every crime contains expressly or by implication a proposition as to a state of mind". Sir James Stephen further said that expression itself is unmeaning.

As we have stated above that generally speaking a human being having on criminal intent alone will not be punishable by criminal law. However, there are exceptions where intention alone may be punishable, but there are cases where grievous harm may be caused to my society. If such criminal intentions are not crubbed in the initial stages.

There are broadly speaking two classes of inchoate or preliminary crimes which proceed fare enou 38 e singled out for punishment. They are (A) attempt (B) Abetment. Abetment takes three forms namely

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a) Instigation or Incitement b) Aiding c) conspiracy. We shall discuss about that matters detailed in unit four of this Book.

Criminal law takes notice of attempt as a punishable wrong and awards punishment more or less severe according to the nature of the act attempt. An attempt commit a crime must be distinguished from an intention to commits it as also from the preparation that precedes it. Then we come to preparation it consists in devising or arranging means or measures necessary for the commission of the crime.

2.9 Answer to check your progress :

Question No 1: Refer 2.1
Question No 2: True
Question No3: Refer2.6 & 2.7
Question No4: Refer2.7

2.10 Key words :

Proximity – nearness in place (or) time

Fraudulently – The Act of deceit

Attempt – Endeavour to get.

2.11 Model Questions :

1. "Actus non facit reum nisi mensit rea" – Discuss this maximum with English case law.

2. With the help of decided cases explain how for Mens rea is required for statutory offences.

3. Discuss – the doctrine of 'Mens rea' under the Indian penal code.

4. Discuss the law relating to inchoate crimes with decided case laws

5. What are the stages involved in the commission of a crime explain them in detail

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UNIT- 3

GENERAL EXCEPTIONS & JUSTIFIED DEFENCES

Introduction :

In this part we shall discuss about the General exceptions and justified defences, which may be pleaded by the accused to claim immunity from punishment All these defences have been collected together in chapter IV of the Indian Penal code entitled " General Exceptions", in thirty one sections, namely Section 76 to 106, both inclusive. These sections are the most important one's from the point of view of criminal responsibility and that is why the Penal code has devoted considerable space to this chapter.

Unit objective :

- To analyse the General exceptions, and justified defences.
- To understand the meaning of private defence.
- To learn the various General exceptions under the Indian Criminal Law.
- To observe the extent of private defence.
- To discuss the incapacitation and their responsibility of the accused.

Unit Structure :

3.1 General exceptions

3.2 Mistake

3.3 Accident

3.4 The Defence of infancy

3.5 The Defence of insanity

3.6 The Defence of intoxication

3.7 Necessity

3.8 Compulsion

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3.1 General exceptions

The Provisions of the Indian Penal Code make an individual responsible for the harmful consequences of his act, if the act is done with the required actus reus and mens rea. But then the act done under certain special circumstances it is found that either the act of the individual is done under conditions that are incompatible with the existence of mens rea or the conditions surrounding the commission of the act amount to a legal justification or excuse which relieve him of his criminal responsibility. These special circumstances which relieve the offender of his liability are referred to as the General Exceptions or Defences and are provided in Chapter IV of the Indian Penal Code.

The object of this chapter has been explained in the following manner by the authors of the Indian Penal Code: "this chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations. Some limitations related only to a single provision or to a very small clause of provision. Every such exception evidently ought to be appended to the rule which it is intended to modify. But there are other exceptions which are common to all the penal clauses of the code or to a variety of clauses dispersed over many chapters. Such are exceptions in favour of infants, lunatics, idiots, persons under the influence of delirium; exceptions in favour of acts done by the direction of law, of

acts done in the exercise of the right of self-defence of acts done by the consent of the party harmed by them. It would obviously be inconvenient to repeat these exceptions several times in every page. We have, therefore, placed them in a separate chapter and we have provided that every definition of an offence, every penal provision, and illustration of a definition or penal provision shall be construed subject to the provisions contained in that chapter".

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The provisions relating to chapter IV of the code are applicable not only to offences under I.P.C. but also to offences under special or local laws. The special circumstances which exempt a person from criminal liability can be classified into the following categories: a) Cases of absence of mens rea; b)Cases of justifications; c) Cases of excusable acts.

3.2 Mistake

Mistake as a defence at Common Law is based on the Latin maxim **"ignoratia facti excusat; ignorantia juris non-excusat"**- "ignorance of fact excuses, ignorance of law does not excuse". This maxim point out that there are two types of mistakes which could be committed, one being factual and the other legal. The factual mistake can be pleaded as a defence but not the legal mistake. When an individual is ignorant of the existence of certain relevant facts and is mistaken as to them, and his conduct results is harmful which he did not intend he can relieve his liability by pleading this defence. In such cases, the accused could plead that he had acted under mistake and that his conduct had not really been voluntary. Hale has aptly remarked in some cases ignorantia facti both excuse for such ignorance many times makes the act itself morally involuntary.

Mistake negative the existence of a particular intent or of that foresight which the law requires to make the accused liable. **Russel**

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observes "mistake can be admitted as a defence provided (1) that the state of things believed to exist would if true, have justified the act done, (2) that the mistake must be reasonable, and (3) that the mistake must relate to fact and not to law".

The first proposition deals with cases where an individual has done the harmful acts based on an honest belief that the acts were different from what has been established. Law takes into consideration his mistaken belief and proceeds on the legal fiction that the facts were as he supposed them to be and not on the true facts. The **gist** of the defence is pertinently pointed out by Russel **C.J. in Sanford Vs Bea (1899)** as "Mistake of fact is a slip made not by designs, but by mischance". For example, a person violently prevents another and harms him mistakenly from committing a burglary. If the supposed circumstances due to the mistake had been real i.e. preventing a burglar, the accused's actus is not reus, since it is permissible in law to harm a person while preventing an individual engaged in the felony of burglary.

Since a circumstance is illustrated by the case **Commonwealth Vs. Presby.** The accused a constable was charged with arresting an individual for no justifiable reason. The individual was found lying unconscious on the road. The accused went close to see what was wrong and the individual smelt of a strong odour whisky. This made the accused presume that individual was drunk and was a public nuisance. The accused police constable arrested him for public nuisance and took him to the police station. After an enquiry at the police station it was found that the individual had fallen down in a pit and that his friends after an unsuccessful attempt to revive him by administering whisky, had gone to seek medical help leaving him alone on the road. The court while

acquitting the accused constable observed that the fact the individual smelt of whisky would afford a reasonable ground for supposing his insensibility to be due to intoxication.

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Sir Michael Foster gives an appropriate example in this connection. An individual took a discharged gun while attending a dinner with his wife in his friend's home. Before the dinner he left the gun in a private place. On their return the wife brought back the empty gun, and left it in her room. The individual taking the gun, touched the trigger and the gun went off killing his wife. It appeared that someone in his friend's house had taken the empty gun, loaded it and had taken it out for shooting. After the shooting spree he had placed it in its former place. When the individual was charged for the offence of murder he successfully pleaded the defence of mistake as he mistook a loaded gun for an unloaded one. This defence can be successfully pleaded in case where the accused individual is hidden and is killed by this bullet. Though the shot was fired intentionally, if the supposed circumstances are taken as a real the liability of the accused is set aside. But the argument does not apply to the following case. If a burglar planning to commit a burglary in house No.5 mistakes and commits it in house No.6 he cannot avail of this defence and even if the supposed circumstances taken as real, the act of the accused is still an offence.

The second proposition is that the mistake of fact should be based on an honest belief on reasonable ground. The onus of proof is on the accused to prove that the mistake is reasonable one as it would mislead an ordinary reasonable man. In other words the mistake should be bonafide mistake i.e., a mistake in which the accused believed in good faith. This requirement eschews the cases where reasonable inquiry which would have elicited true facts is not made

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by the accused and the mistaken belief is based on the carelessness of the accused. The behaviour of the accused, prince in R.v.Prince and accused Mrs. Tolson in R.v.Tolson are good examples. The accused Prince did not make reasonable inquiries to find out the exact age of the girl whom he was abducting but on the other hand Mrs. Tolson made sure of the fact of her husband's death before she got married for the second time. (Refer to the facts of the cases of **R.V.Prince and R.Vs.Tolson in the topic of men rea).**

Since mistake, for it to be a defence should be a reasonable one, it excludes superstitious beliefs. The reason being that such beliefs have no rational foundation. An old Irish case illustrates this aspect. An old woman placed a naked deformed child in a hot shovel in the honest belief that it was a fairy sent as a substitute for the real child and that by this treatment the changeling would go away, leaving the real child. The old woman was convicted for causing the death of the child, by burning inspite of the defence of mistakes as it was not a reasonable one. This third proposition confines the defence of mistakes to that of facts and not of law. The accused can avail of this defence only if the honest mistaken belief is with regard to facts involved in the case.

The second part of the maxim read Ignorance of law is no excuse. The non-acceptance of mistake of law as a defence is based on the rule that ignorance of those things which one is bound to know does not excuse. **Austin** gives two reasons and explanation for this rule thus, (1) If ignorance of law were admitted as a ground of exemption, the courts will be involved in questions which it were scarcely possible to solve, and which would render the administration of justice next to impracticable. (2) If ignorance of law were admitted as a ground of exception,

ignorance of law would always be alleged by the party, and the country in every case would be bound to decide the point whether the party was really ignorant of the law and was so ignorant of the law that he had no surmise of its provisions, which could scarcely be determined by any evidence accessible to other. Austin's reasoning focuses on the endless complications which would arise when an inquiry is made with regard to the accused's cognizance of the law.

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The denial of this defence lead to injustice under certain circumstances. **Holmes** aptly observes the true explanation of the rule is the same as that which accounts for the law's indifference to a man's peculiar temperament, faculties and so forth. Public policy sacrifices the individual to the general good. To admit the excuse at all would be to encourage ignorance when the law maker has determined to make men know and obey, and justice to the individual is rightly out weighted by the larger interests on the other side of the scales".

Inspite of these criticisms mistake of law is not accepted as a defence as observed in the following decisions. In R.Vs. Bailey (1800) the accused captain of the ship Langley was charged for an act committed on 27th June 1799, which was made an offence by an enactment passed on May 10th 1799. At the time when the act was committed the ship was on African coast and it was not possible for the accused to know the passing of such an enactment within a month. The accused was held guilty of the offence as his defence of ignorance of law was rejected. This it is clear that a rigorous application of this rule causes considerable hardship in hard cases. But as a justification to it, it has been said that such a course of action compels the citizens and foreigners to know the law of the land. All these principles are equally applicable to Indian law also.

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Indian Law (S. 76 & S.79) : The defence of mistake under the Indian Penal Code has been provided in sections 76 and 79. The wording of section 76 makes it clear that mistake is accented as a defence only in case where it is factual and not when it is legal. The section also provides that the individual must mistakenly believe that he is bound in law to do it. The two illustrations to section 76 bring out the nature of the defence clearly. The first illustration reads that "A, Soldier fires on a bow by the order of his superior in conformity with the commands of the law. A has committed no offence." The **case of Chamanlal** is a good example of this illustration. The accused was the Deputy Superintendent of a prison. Four convicts disobeyed him and refused to work. He ordered a good whipping to the unruly prisoners. This provoked four other convicts and they went on a hunger strike. The accused ordered these four also to be beaten up. By this beating two convicts was died. The accused, for a charge under section 325 of the Indian Penal Code pleaded mistake of fact as a defence. The defence was rejected and he was convicted and sentenced to one year Rigorous Imprisonment. On appeal the High Court observed that when an officer in control of the prisoners tortures them, he cannot plead factual mistake as a defence as the act itself is an unlawful act and that he should be punished severely as he was engaged in an unlawful act. The other illustration is similar to the facts of the case of **E.V. Gopalia Kallaiva. Gopalia** was a head constable and was ordered to arrest one Giria under a warrant at Bombay. The accused came to Bombay and after due enquires arrested one Sheshappa inspite of his protests. Later it was found that Sheshappa was wrongly arrested and offence of wrongful confinement. The trial court

convicted the accused and fined him Rs.100/-. On appeal, the appellate court pointed out that the facts did not prove that the accused deliberately arrested the complainants as there was no cause or reason for it and nothing to show that it was not an honest mistaken belief. Basing on this ground their Lordships set aside the convictions.

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The work good faith has been used with regard to the mistaken belief in this section. This term is defined in section 52 of the Indian Penal Code. The definition is a negative one as it explained what is not good faith. The **Section reads,** "Nothing is said to be done or believed in good faith which is done or believed without due care and attention". Thus good faith according to this section does not require logical infallibility but due care and caution which must in each case be considered with reference to general circumstances the capacity and intelligence of the individual whose conduct is in question. The standard of due care and caution is not that of a reasonable, man; but is the standard of the accused who is on trial. The standard would vary with the competence, education and skill of the accused. The "due care and caution" depends on the following three factors, namely the nature of the act done by the accused, the magnitude and importance of the act", and the facility a person has for the exercise of the case and caution. Sukarao **Konuirajis Case (14 Cal.566)** emphasizes this essential of care and caution. The accused is a quick doctor without any medical training operated a man for internal piles with an ordinary knife and due to internal hemorrhage the patient died. For a charge of negligently causing death he pleaded mistake of fact as a defence, pointing out that he mistook the consequences. The Court while convicting him rejected his defence on the ground that the act was not in good faith i.e., with proper care and caution.

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Section 79 of the Indian Penal Code brings under its purview cases of mistake where there is legal justification. The section states, "Nothing is an offence which is done by any person who is justified by law, or who by reason of mistake of fact and not by reason of mistake of law in good faith believe himself to be justified by law in doing it." The acts that are justified by law are those that are given to citizens to prevent the commission of serious offences to assist the police officers in apprehending the offenders and to protect themselves and their property from the harmful activities of others. The illustration to this section makes the provision clear. A sees Z commit what appears to A to be a murder. A in the exercise of the best of his judgement, exerted in good faith of the power which the law gives to all persons apprehending murders in the act, seizes X 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.

The difference between the provisions in sections 76 and79 is that in the former the mistake is committed by an individual who believes that he is under a legal duty to commit it i.e. a public servant or any one who is substituted for a public servant whereas in the latter case he believes, he is justified in law to commit it and it applies to anyone. But for this difference, the language used in both the sections is similar, thereby making the provisions also similar.

Judicial and executive acts. The second type of justifiable defence deals with judicial and Executive Acts. This defence concerns itself with the immunity of judicial and executive officers from criminal liability. We shall discuss the English and Indian provisions together to make the study brief and complete.

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This immunity is provided under Sections 77 and 78 on the Indian Penal Code, section 77 states that a judge is not criminally responsible of harmful consequences of his act while acting judicially believing in good faith that he has authority. The provision in this section is equivalent to the immunity from civil liability of judges or judicial officers in England as provided in the **Judicial Officers Protection Act, 1850.**

The term 'judge' used in this section is defined in section 16 of the Indian Penal Code. The section reads, "the word judge denote 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 judgement, or a judgement which is appealed against would be definitive or a judgment which is confined 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 judgement." Thus the section points out that not only those appointed as judges but also those designate as judges and pronounce a definitive judgement confers the judicial powers on the person who pronounces it. The illustration to the section includes a Collector, a magistrate and member of a panchayat within the term of a judge . But a committa magistrates are not a judge as he does not give a definitive, judgement. For example in the case of **Ramachandra Modak,** the accused was a committing magistrate and it was held that he does not come under the immunity given by this section.

The other section i.e. section 78 deals with the protection of the ministerial or executive officers. This protection is a follow-up of the protection provided in section 77 as the immunity of the judge is continued to his executive officers. The two requirements of this section are, **firstly,** the act must be done in good faith and **secondly** a

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belief in the legality of the order. If a ministerial office believes in good faith that the court whose order he is carrying out had jurisdiction he would be exempted from liability even if the order of the judge is ultra vires as the officer is not required to assess the legality of the judicial order. Thus it appears that the immunity of the ministerial officers is wider than that of judges.

3.3 ACCIDENT (S.80)

It is an instance of absence of mens rea. The object of criminal law, is to punish only serious infractions of the rules of society and hence it follows that it cannot punish a man for a mistake, misfortune or accident. The word accident does not denote a mere chance but means an unintentional and an unexpected act. In other words the act was not only unintentional but was so little expected that it came as a surprise. **Stephen** defines, an effect is said to be accidental when the act by which it is caused is not done with the intention of causing it and when it is caused is not done with the intention of causing it and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done to take reasonable precaution against it."

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

Essential conditions of the plea in accident: (1) The act should be proved to be an accident or misfortune. In common parlance an accident means an event that happens without one's foresight or expectation and legally also it substantially means the same. An accident is an extraordinary occurrence which no man of ordinary

prudence could anticipate and provide against. Hence it would be unjustifiable and cruel to punish an act that no human forethought or care could prevent. When a consequence is caused by an accidental act, it is not possible to impute any guilty intent to the doer, because, such an act is not his act at all. He does not voluntarily do it and hence cannot be made responsible for the consequences. Misfortune is only an accident with attendant evil consequences. **For example,** an accident occurs when a workman throws after from the roof, where he is working after giving a proper warning. A passerby heedlessly walks by and is killed. The workman is not responsible for the death caused.

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(2) The act done was not accompanied by any criminal intention or knowledge. Illustration to Sec. 80 makes this aspect of the defence clear. **The illustration reads,** "A is at work with a hatchet: the head flies of and kills a man who is standing by. Here, if there is no want of proper caution on the part of A his act is excusable and not an offence".

(3) That, the act was done with proper care and caution.

(4) The harmful consequence must be the outcome of (a) Lawful act; (b) done in a lawful manner, (c) by lawful means, then it is an accident which relieves the accused of his liability. **Mecaulay pertinently remarks;** "It will be admitted that when an act is in itself innocent, to punish the person who does it, because of bad consequences which no human wisdom could have foreseen, have followed from it would be in the highest degree barbarous and absurd". To strengthen his view he gives the following **illustration;** A pilot is navigating in the Hoogly with the utmost care and skill. He directs the vessel against a sand bank which has been recently formed, and the existence of which was altogether unknown till the

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disaster. Several of his passengers were consequently dropped. To charge the pilot as a murderer on account of the misfortune would be universally allowed to be an act of atrocious injustice".

The reason for relieving him of his liability is that he had done a lawful act, in a lawful manner by lawful means. This illustration can be differentiated by the following one by Macaulay. Hundreds of men in big cities are in the habit of picking pockets and they know that they are guilty of an offence. But, it has never occurred to them that they are guilty of an offence which endangers life. Unhappily one of these hundreds attempts to take the purse of a gentlemen who has a loaded pistol in his pocket, the thief touches the trigger, the pistol goes off, the gentlemen is shot deed. To treat this case of pick pocket different from others unless similar circumstances with exactly the same intention, with no less risk of causing death, with no greater care to avoid causing death, " to send him to the house of correction as thieves and then to the gallows as a murderer appears to be an unreasonable course". The act of this offender is different from the previous illustration in that it is an unlawful act which is not covered by the defence. Still Macaulay points that he should only suffer the punishment for his offence without any additional punishment for the death caused.

The reason being that the death is due to an accidental act and not an intentional one though unlawful. The same reasoning formed the basis of the decision in the case of **State Vs.Rengaswamy (A.I.R.1952 Nag.268)** A and B went to hunt wild rats. They planned to lay in wait in different directions. After sometime when A heard a rustle he shot in that direction expecting it to be a rat. Unfortunately the shot hit B and caused his death. A pleaded the defence of accident successfully.

Even if he had used an unlicensed gun, that alone would not preclude A from claiming the defence of accident. In these cases though the Acts are unlawful the offenders could plead the defence of accident successfully as the casual connection between the unlawful act and the consequent death is too remote. But for example A intending to poison B, lays bait for B which his friend C partakes and dies. In this case C's death is accidental but has been the result of A's intention to kill B; which makes the casual connection not remote. The resultant effect is an anticipated one but the victim is a different individual and this makes the acts done throughout as illegal. In such cases i.e., A's malice (intention) to kill B is transferred to C.

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Jasgher's Case: This case illustrates the condition of lawful act. In this case, the accused was beating a person with his lists when the latter's wife with a baby on her shoulder interfered. Accused hit at the woman, but the blow accidentally struck at the baby as a result of which it died. It was held that although the child was hit by accident, the accused was not at the time doing a lawful act. Thus the unexpectedness the legality of the act and the lawful
manner in which it is done became important factors in the defence of accident.

Section 80 Applicability of Absence of Care and Caution Where the accused shot at close range without proper care and caution an unfortunately incident, the provision is not applicable. **Bhupendrasinh A. Chudasama Vs. State of Gujarat 1997 (bScale 643.**

Section 80 and 302murder by gun shot Defence of accident Where the defence plea of accused that gunshot fired accidentally was inconsistent with circumstance and also with physical features of gun then the order of conviction is liable to be sustained,

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Atmendra Vs. state of Karnataka, AIR 1998 SC 1985.

3.4 THE DEFENCE OF INFANCY (Ss. 82 and 83)

It has been agreed by jurists and especially by **Blackstone Coke and Hawing that** "infancy is a defect if the understanding and infants under the age of discretion ought not to be punished by any criminal prosecution whatsoever". Under English Common Law infants less than seven years of age were not considered to be criminally responsible for the harmful results of their acts as there was a conclusive presumption of law that he was a doli incapx i.e. "incapable of understanding". The object of this presumption is to protect children of tender years from the penal consequences of their acts and at the same time the society must be protected from their irresponsible behaviour. The age of complete immunity has been raised from the seven years under English law to eight years by the Children and Young Persons Act, 1933. This age has been further increased to ten years by the Children and **Young persons Act, 1963.** The age of complete immunity differs from country to country. The age of America it varies from nine to sixteen years in the different States. The age of complete immunity under the Indian Penal Code is seven years according to Sec. 82. The section provides "Nothing is an offence which is done by a child under seven years of age." The age is rather low to other countries.

Between the age of ten and fourteen the infant is still presumed to be doli incapax. But the presumption is a rebuttable one under English law. The mental maturity to distinguish between right and wrong was decided by the application of the test known as "Lubeck appeal proof". For this test a child who has been charged with murder is offered an apple and a penny and asked to choose one of the two. If he chooses the penny, capacity to understand the

consequences of his act was established and he can be convicted of the offence. In a few cases children between seven or eight or ten and fourteen have been held responsible. In 1629 a boy of eight was hanged for burning two barns with malice revenge, or craft.

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Qualified immunity has been provided in Sec. 83 of the Indian Penal Code. The age provided is between seven and twelve years. The higher age in England indicates the earlier precocity of children in the East. In the case of **Uilah Vs. The King (A.I.R. 1945 Orissa 251)** the accused a boy of eleven threatened to murder the victim with a knife and actually did so. The court held that this was a case where the juvenile offender knew the consequences of his act and hence was found guilty of murder. But in **the case of Marimuthu** the juvenile offender, a girl often was charged with committing theft of a silver button for having picked up the button and gave it to her mother. This behaviour of the girl disclosed the immaturity of her understanding and hence she was acquitted of the charge.

In cases of qualified immunity the following three factors are considered in order to assess the criminal liability of the juvenile offender concerned. Firstly, the nature of the act done; secondly, his subsequent conduct and thirdly, his demeanour and appearance in Court. Above fourteen years, though the juvenile offenders come under life imprisonment could not be awarded to a person under the age of eighteen as it has been prohibited by Sec. 9 of the Homicide Act. 1957 in England.

Difference between English and Indian Law: (1) In the IPC absolute immunity is granted till 7 years. In the English law it is upto 10 years (2) In the code Children between 7 and 12 are criminally liable, if they have attained sufficient maturity of understanding (3) In the code children between 7 and 12 and presumed to be doli in capax

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and capable of understating the nature and consequence of their conduct. In English law, children between 10 and 14 are presumed to be doli in capax (4) In England a boy under 14 cannot be convicted of rape.

3.5 The Defence of Insanity (S.84)

English Law: The term insanity is not clearly defined either in medical or legal literature. Sanity is said to exist when the brain and the nervous system are in their normal condition and mental functions of feeling and knowing can be performed in their usual manner. Insanity is an abnormal state when one or more of the mental functions is not performed at all, due to some defect or diseases of mind. Mental disease prevents a man from controlling his own conduct and from passing a rational judgement on the nature and consequence of his act. A mad man has no will and not conscious of what he is doing. Therefore unsoundness of mind is a ground or exemption from criminal liability both in England and India. But it is not every type of insanity that is exempted from liability. This is because the purpose of criminal law is to control the actions of sane and insane persons also as far as possible. Therefore a distinction is drawn between legal insanity and medical insanity. The numerous degree of insanity according to medical jurisprudence is rejected by law. it is only the unsoundness of mind which materially impaires the cognitive faculties of mind that forms the ground of exemption. Whether the Accused was insane or not at the time of doing the act is an issue to be dicided by the judge and the jury and not by medical experts however eminent they may be. The legal test of insanity was laid down in **McNaughten Rules** in England and section 84 of the Code is substantial reproduction of English law Common law.

There were two sensational cases in the first half of the 19th century in England, which created a good deal of discontent regarding the law relating to the defence of insanity. The first was **Hapfield Case (1800).** This was an extraordinary case of a religious maniac who developed a peculiar delusion that the world was coming to end that he was specially ordained by God to save mankind by sacrificing his own life. Since suicide was wicked he, deliberately shot at King George III to kill him with the hope that he would be tried for treason and hanged. But he was acquitted by the jury on the ground of his act and also that it was contrary to law. But he though that he was morally justified.

Forty three years later came the famous case of **Mc Naughten (1843).** In this case the court established the **'delusion test'** laid down in **Hapfield's case.** The Prisoner in this case is a respectable individual leading a normal life. His friends had a very good opinion about him and least expected the abnormal behaviour which followed. Unknown to his friends, he was under an insane delusion that his enemies of whom Sir Robert Peel, the Prime Minister was one were in consequence he bore an unjustified grudge against Sir Robert and planned to come to London to kill Sir Robert. To accomplish his plan, he went to Sir Robert's residence with a pistol. he shot the first person he encountered in the belief that he was Mr.Drummond, Sir Rober's secretary. At the trial the jury had to consider whether the accused had the competent use of his understanding to know the nature and quality of his act and to appreciate what he was doing was wrong. The medical evidence proved that his mind was affected by morbid uncontrollable delusion which deprived him of perception of right and wrong. Considering the evidence, the jury came to the

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conclusion that he could not be held responsible as he had no knowledge of the nature and quality of his act also that it was wrong. **Hence they acquitted him.**

The agitation of the public against this decision of acquittal was so overwhelming that the House of Lords was compelled to convene a panel of fifteen judges to give their learned opinion regarding the defence of insanity. The judges were asked to give their advisory opinion in the form of answers to five questions asked by the House of Lords. The answers given by this panel of judges summed up in the following five propositions.

The McNaughthen Rules: Every man is presumed to be sane and to posses a sufficient degree of reason to be responsible for his crimes, until the contrary is proved to the satisfaction of the Court.

As to the legal test of insanity the rules are summed in the form of three question and three answers. They are (1) At the time of committing the act did the accused know the nature and quality of his act? If he did not know, he is insane. (2) If the accused did know the nature and quality of his act, did he know that it was wrong? If he did not know that it was wrong, he is insane. (3) If he knew the nature and quality of his act and knew that it was wrong was he under a delusion in some other respect? If he was under such a delusion, he is in the same situation as to responsibility as if the facts had been as he imagined. This is "partial delusion"

Meaning of the word "wrong":- From the very beginning courts felt difficult in the application of the rule contained in question (2) as to the meaning of the word "wrong". Till 1952, English courts in the majority of cases interpreted the word as meaning both moral and legal wrong. That is, if an accused wanted to escape criminal responsibility for his act on the ground of insanity, viz. either (1) that

he did not know the nature and quality of his act or (2) Even if he did know that he did not know that it was both morally and legally wrong.

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In R.Vs. Windle (1952) court of Appeal held that the word 'wrong' only meant "contrary to law". The appellant accused Mr. Windle, administered a large quantity of aspirin tablets to his wife and killed her, thingking that it was beneficial to her. Though the motive was good, the intention was criminal. The medical evidence clearly proved that he knew perfectly well that he was committing an illegal act. The accused's contention was that since the consequences of his acts were beneficial to the victim he should be exonerated from punishment. The Court of Appeal rejected this argument and affirmed his conviction. It is obvious from this decision that the morality of an act is irrelevant where the accused knew the act to be legally wrong. **Lord Goddard C.J.** observed that in McNaughten Rules "wrong" means "contrary to law" and "wrong" according to the moral opinion of the individual.

Thus after this case the accused has two alternatives under the McNaghten formula. He can show (1) that he did not know the nature and quality of his act; or (2) if he did not know it, he did not know it, he did not know that it was contrary to law.

The various interpretations of the McNaughten Rules have created more confusion than the interpretation of any other legal formula. The main difficulty is due to the verbal exactitudes of the Rules. **Stephen** condemns it as unsatisfactory " as the question or in a general form." Thus the rules are the target of critics. The main criticism leveled against the Rules is that they completely ignore the psychiatric concepts of insanity.

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In 1923, the **Atkin Committee** recommended to accept "irresistible impulses" as a criterion in the defence. Accordingly an attempt was made to give legislative effect. So the recommendation of the committee by introducing the **Criminal Responsibility Bill in 1924** which the house of Lords refused a second reading of the bill as it was opposed by the majority of judges in the King's Bench Division. The **Royal Commission of capital punishment (1949-53)** after thorough evolution of the McNaughten Rules came to the conclusion that the Rules were inadequate as they did not cover the case of irresistible impulse and other case of mental abnormality. The committee proposed the alternative solution of either abolishing the Rules or to extend them so as to cover all cases of mental aberrations objections were raised against leaving the intricate issue of insanity in the hands of lay jury. Though the recommendations of the Royal Commission are replete with practical advantages, they have not yet received legislative assent and the **McNaughten Rules still form the bedrock for the defence of insanity in English criminal law.**

But in 1957, a profound change has been introduced by the Legislature for the crime of murder by providing for the partial defence of **Diminished Responsibility" in the Homicide Act 1957, in England**

This change lessened the rigour of the provision with regard to the offence of murder by supplementing the McNaughten Rule and permits the courts in a trial of murder to take into account evidence of irresistible impulse in deciding the mental responsibility of the accused. English courts have not fully accepted the principle of irresistible impulse inspite of the provision of diminished responsibility.

Braty Vs Attorney General of Northern Ireland (1960) and in R.Vs. Podola (1956), the English courts emphatically rejected the principle of irresistible impulse and also refused to substitute the doctrine of diminished responsibility to reduce the offence of murder to that of manslaughter. But in **R.Vs.Byrne (1960)** the Court of Appeal allowed the application of the doctrine of diminished responsibility. The Trial court convicted him for murder but the appellate court reduced the offence to manslaughter by bringing the case under the purview of diminished responsibility.

In the United states also, the McNaughten rules and the criticism against them has attracted the attention of jurists, sociologists and psychiatrists, as they were applied in twenty eight States. As the rules were found inadequate in cases of mental disorder due to lack of self control, Some jurisdictions extended exemption to cases where conduct is the product of irresistible impulse and to conduct produced by insane propulsions accompanied by brooding or reflection. After all this discussion one is surprised to find that the good old McNaughten Rules have with stood the scathing attacks for more rather a century and still hold the position of prestige.

Indian law: The defence of insanity is provided in Sec. 84 of Indian Penal Code. The provision embodies the requirements stated in the McNaughten Rules. The Section reads "nothing is in offence which is done by a person who at the time of doing it, by reasons 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'. In interpreting this provisions the judges emphasized its substantial identity with McNaughten Rules. But the ambiguity regarding, the word "wrong" has been removed. It has been clearly distinguished between legal and moral wrong by using the word 'wrong' and the

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phrase "contrary to law" separately. Thus in India, unlike the English law, an accused has three alternatives. That he was incapable of knowing the nature of his act, or that he was incapable of knowing that it was morally wrong, or, that, he was incapable of knowing that it is contrary to law.

Even though the section is clear, there was conflict of opinion as to the meaning of the word "wrong". ***Geron Ali Vs. Emperor (1940):*** The accused was a disciple of a "pir" who had a mistress. Both were very unpopular in the neighbourhood owning their intimacy. The accused was loyal to them and was enraged by the criticism leveled against them. He complained of it to the "pir" and his mistress who suggested that he should offer the head of the next critic as a sacrifice. The crazy man promptly went and cut off the head of one of the villagers and also that of his own daughter and offered them to the "pir" and his mistress saying 'you asked for one human head I present you with two". The accused knew the nature of his act. But he did not know that what he was doing was wrong, because he though & honestly. It was a sacred act which qualified him to heaven. He also did not know that was contrary to law because he did not conceal his crime. He was therefore rightly acquitted. But the court made an observation to the effect that an accused is entitled to protection under section 84 only if he was incapable of knowing that it was both morally and legally wrong.

Ashirrudin Alumed Vs. The King (1949) This was also a case of religious manis. The accused a muslim was in the habit of making animal sacrifices. One day he dreamt that God had commanded him to sacrifice his own son as animal sacrifice alone was not sufficient. The next day quietly he sacrificed his five year old boy in the mosque and reported the mater to a relative. The

accused knew the nature of his act and also knew that it was contrary to law because he reported the matter to a relative. But he did not know that it was contrary to law because he reported the matter to a relative. But he did not know that it was morally wrong. According to Geron Ali's case, the accused is guilty. But the accused was acquitted on the ground that he was incapable of knowing that his act was morally wrong. The court held that under Section 84 the accused had three alternatives. Thus it is clear that the observations made by the court in Geron Ali's case is wrong. The first requirement under the section is that the accused be incapable due to unsoundness of mind to understand the nature and quality of the act. In other words the individual should be incapacitated by his mental abnormality from knowing the nature and quality of his act. Absence of such knowledge is relevant in determining the insane mental conditions of the accused. **Lakshman Dogu's case** illustrates this aspect of the defence. The accused who was laid up with fever, killed his two children when they annoyed him by crying. When charged for murder the defence contention was that the fever had made him irritable and sensitive to sound. But it did not appear from the evidence that he was delirious at the time of his perpetrating the crime as not to know the nature and quality of his act. The court rejected the defence of a sudden irresistible homicidal impulse, because the cognitive faculties of the man was sound.

Another illustrative case is that of **Kolandai Thevar**. The accused has been starving for some days and was in a mentally agitated condition. While he was walking along the road, a passer by a friend of his, enquired about his welfare. This irritated him and he went home and brought a dagger. He ran with dagger and killed four children who were playing on the road. Shortly after he regained his

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senses, he surrendered himself to the police authorities. He pleaded insanity as a defence. The evidence clearly proved that he knew the nature and quality of his act. Hence he was convicted for murder. **In Kalicharan v. Emperor (1948)** the accused committed a series of murders and pleaded insanity for defence. The courts while convicting him observed that "a crime is not excused by its own atrocity". From the fact that the accused killed four person in succession without any motive, an inference can be drawn that his reason must have been affected by insanity temporarily. One must look outside the act itself for the evidence as to how much the accused knew about it. It is very clear from these cases that irresistible impulse as such is no defence under Sec.84 of the Indian Penal Code.

Similarly in **Bhikari Vs. The state of Uttar Pradesh (1966)** the Supreme Court observed that for the defence of insanity the accused must produce evidence with regard to his mental abnormality or otherwise he would be presumed to be sane as to know the nature and quality of his act.

The Case of **Navior Marolle (1970)** is illustrative of the essentials required for the defence of insanity. The facts were that the accused a discharged ex-service man was suffering from achizophrenia which was evident by his indifference to his surroundings. The medical evidence also pointed out that he was a schizophrenia. The Court further held that to invoke an application of Sec. 84 it should not only be proved that the individual was of unsound of such insanity, he was incapable of knowing the nature and quality of his act. The conviction of the lower Court was set aside.

A common test to determine whether a person knows the nature of his act or that he is doing a wrongful act to ascertain whether he

would have committed the act if a policeman would have been at his elbow. The section covers only organic incapacity and not erroneous belief which might be the consequences of perverted potentiality. When an individual is ignorant of the consequences of his act and brings into play external agencies, then he is said to be incapable of knowing the nature and quality of his act.

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The second alternative requirement under Sec. 84 is that he did not know what he was doing was wrong or contrary to law. Cases of delusion also come under the provisions of Sec. 84 as the accused does not realize the nature and consequences of his act. **Kazhi Buslu's** case illustrates this point. The accused was charged with the murder of M.Davis the District Magistrate and Collector of Chittagong. There was evidence that the accused was labouring under the delusion that he was a person of extraordinary ability and qualification and hence wanted to complete his equation in England. To accomplish his object he wrote lucid letters to Mr. Davis and fixed up an appointment with him. On the appointed day he met Mr.Davis and killed him with a knife. He resisted arrest and tried to escape when he was overpowered. This fact unmistakably proved that the accused knew that he had committed a criminal act. He pleaded insanity based on his delusion. The court pointed out that the delusion did not render him unconscious of what he was doing as to make him ignorant of the fact that he was committing a wrongful act. Hence he was convicted and sentenced to death. **On appeal the conviction was upheld but the sentence was reduced to transportation for life.**

Erroneous beliefs are not regarded as exceptions. So an accused is not exonerated from his liability even if he commits the illegal act in consequence of a wrong belief. Similarly

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somnambulism is good ground for exemption if it is to be proved to constitute that unsoundness of mind which falls within the exceptive provision of Sec. 84. This aspect of law clarified in **Pappathi Ammal's case.** The accused after her confinement was in a depressed and disturbed state. On the night of occurrence, the accused drowned herself with her baby in a wall. She was rescued but the baby died. Hence she was charged for murder of the baby and attempting to commit suicide. Her defence was that the offence was committed during the phase of somnambulism, which could be brought under the view of Sec. 84, and the accused was convicted and sentenced to life imprisonment. This sentence was confirmed on appeal also.

The defence of insanity when pleaded successfully results in consequences different from other defences. Generally when the accused succeeds in his defences he is acquitted of his criminal liability, his relief from criminal liability is followed by an adjudication that he is an insance individual and that he should be confined in a mental asylum in accordance with the procedure prescribed exchange the mental asylum for the prison. Due to this paradox the defence counsel are very cautious in availing the defence and it is resorted to only in cases where confinement in a mental asylum is preferred to the hangman's noose.

3.6 THE DEFENCE OF INTOXICATION (SECTIONS 85 AND 86)

Popularly 'intoxication is used synonymously with 'drunkenness' but it is not necessarily so because an individual may be intoxicated not only by liquors, but by drugs or herbal or chemical concoctions. The intoxicant inflames his passions, increases his audacity and reduces his self control.

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As an intoxicated individual lacks reasoning power, he will consequently lack the necessary to commit an offence. In such a case the question is whether an intoxicated individual should be held liable or not for the offences he commits in and intoxicated state. **English criminal law,** intoxication was considered as an aggravating circumstance for inflicting severe punishment on the accused. " He who sins when drunk, let him be punished when sober" Jurists classified intoxication as voluntary or involuntary intoxication. Involuntary intoxication is considered to be a defence against criminal responsibility but voluntary intoxication is not so.

When an individual is intoxicated against his will or consent or without his knowledge or due to fraud, and in this intoxicated state if be commits an offence, he can successfully plead the defence and relieve his liability. But in the case of voluntary intoxication, though it is not a defence, there were different views with regard to crimes which required a specific intention or knowledge. This aspect of the defence was discussed in the two important English cases of **R.Vs.Mead (1909).** And **D.P.P.Vs. Beard (1920).** In R.Vs.Mead, the accused brutally attacked his wife with his fists and killed her. The accused was convicted for murder as his defence of voluntary intoxication, for the offence which required a specific intention, was rejected. On appeal the appellate court observed that the offence could be reduced to manslaughter only if the accused was so drunk as not to know that what he was doing was dangerous. Since this was not so, the appellate court affirmed his conviction and sentence.

In **D.P.P.Vs. Beard**, the accused a mill gate watchman finding a girl of thirteen passing by, caught her and attempted to rape her. She struggled to escape but Beard shut her mouth with one of his hands and pressed the thumb of the other hand on her throat which

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resulted in her death. His defence for the charge of murder was that he was not in position to form the specific intention of the offence of murder as he was voluntarily intoxicated. The trial court convicted him for murder and rejected his defence. On an appeal by the accused the court of criminal Appeal pointed out that the intention was only to commit rape, and not murder and murder was negligently committed in furtherance of rape. This was considered to be a mitigating factor and the appellate court reduced the manslaughter. The prosecution appealed to the House of Lords which restored the conviction of murder. **Lord Birkenhead** in deciding the case has laid down four proposition on the law of intoxication.

Firstly, merely to establish that a man's mind was so affected by drunk that he more readily gave way to some violent passion forms no excuse.

Secondly, if actual insanity, in fact, supervenes as the result of alcoholic excess, it furnishes a complete answer to a criminal charge.

Thirdly in case of accused's intoxication the test for exemption is more stringent that in cases of insanity.

Fourthly, evidence of such drunkenness as renders the accused incapable to forming the specific intent, essential to constitute the crime, should be taken into consideration, with the other facts proved in order to determine whether or not he had this intent.

The law regarding voluntary intoxication was discussed elaborately in Attorney General for Northern Ireland Vs. Gallagher (1961). The accused Gallagher was indicted for the murder of his wife Rose. The accused had frequent quarrels with his wife when he was intoxicated and on those occasions he used violence towards her. She obtained a separation order in 1957 after about sixteen years of married life. But he came back and lived with

her again from 1959. in 1960 after a serious quarrel he was persuaded by his doctor to go for treatment in a mental asylum. After sometime he was discharged as he was found to be normal and cheerful. The accused came home and was staying with his wife. On the day of occurrence the accused formed the intention of killing his wife and in furtherance of it bought a knife and a bottle of whisky. After about two hours, his neighbours heard some noise and that he had killed his wife because she gave him a hell of life for the past few years. For a charge of murder he pleaded not guilty and the defence relied on was that by reason of drink he was incapable of forming the intent necessary to constitute murder and that the act could only be the lesser offence of manslaughter. The plea was rejected as it was found that, he formed the intention before he was intoxicated. The **House of Lords** convicted him for murder affirming the lower court's decision. **Lord Denning** while summing up the law observed that the case falls to be decided by the general principles of English law that subject to two exceptions drunkenness is no defence to a criminal charges nor is a defect of reason produced by drunkenness. **The two exception are:** (1) if a man is charged with an offence in which a specific intention is essential (as in murder though not in manslaughter), then evidence of drunkenness which renders him incapable of forming that intent, is an answer. This degree of drunkenness is reached when the man is rendered so stupid by drink the he does not know what he is doing.

(2) If a man by drinking brings on a distinct disease of the mind such as delirium tremens so that he is temporarily insane within the McNaughten Rules i.e., he does not at the time know what he is doing is wrong, then he has a defence on the ground of insanity. His Lordship concluded by pointing out that a man whilst sane and sober

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forms an intention to kill and makes preparations for it, knowing it is a wrong thing to do and then gets himself drunk so as to give much courage to do the killing and whilst drunk carries out his intention, he cannot rely on the self-induced drunkenness as a defence to charge of murder not even as reducing it to manslaughter.

Thus under English law intoxication is considered as a defence only when it is involuntary. Voluntary intoxication mitigates the liability in cases of offences which require specific intention but in other cases it to liability at all.

Indian law:- Sections 85 deals with defence of intoxication under the Indian Penal Code. Sec.85 provides for a complete exemption in cases of involuntary intoxication. The section provided that when the thing which intoxicated is administered against the will or without knowledge of the accused and he does not know the nature and quality of his act due to this intoxicated state, he is not responsible for the harmful consequences of his offensive act.

Section 86 deals with offence which requires a specific intent or knowledge. This section reads "where as 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."

Thus while Sec.85 deals with involuntary intoxication, Sec.86 deals with voluntary intoxication. These sections provide for presumption with regard to knowledge but not to intention. In other words voluntary intoxication under Sec.86 does not afford a defence, that the knowledge required to complete an offence was wanting, though it may be used to show that any intent if required

was absent. It must be noted that though the section refers to offence which require a specific intent or knowledge, the presumption is with regard to knowledge. The omission of the presumption is only with regard to intention which has led to controversial discussions among jurists. This controversy can be illustrated by decisions among jurists. This controversy can be illustrated by decisions. **In Baluswamis Case (1952)** the accused was on inimical terms with the complainant over the purchase of a land. One evening when the complainant and his sister were sitting in front of their shop, the accused came there staggering in an intoxicated state and attempted to stab the complainant with a dagger. Complainant's sister intervened and was stabbed to death. The accused pleaded the defence of voluntary intoxication under section 86 and pointed our that since the offence required a specific intent, he was neither in a state to form the necessary intent nor can intent be presumed and hence he should be exempted from liability or atleast the offence should be reduced to culpable homicide. The trial court convicted him for murder and sentenced him to life imprisonment observing that the facts did not prove the absence of intention. On appeal the majority confirmed the lower court sentence. **The decision makes it clear that defence of voluntary intoxication under Indian law is more restricted than English law as it does not allow even a mitigation.**

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The Supreme Court considered the provision under Sec. 86 In case of **Basudev Vs. State of Pepsu (A.I.R. 1956, S.C.148).** The accused a retired military Jamador was charged for the offence of murdering a boy of sixteen who had accompanied him to a wedding party while they were going to take their lunch in a nearby bungalow; the accused asked the boy to give him a convenient seat in the Jeep. But the boy refused to do so immediately the accused whipped out a

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pistol and shot the boy dead. The accused was found to be voluntarily intoxicated at that time. Hence the accused pleaded his defence under Sec. 86. Their Lordships while confirming the conviction for the offence of murder and the sentence of life observed "as far as knowledge is concerned we must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as the intent or intention is concerned we must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Therefore, the presumption that every man is presumed to intent the natural and probable consequences of his act, applied to the accused. Since he had the necessary intent, the Supreme Court refused to reduce the offence from murder to culpable homicide.

Director of public prosecution Vs Beard: A girl of thirteen years was going to market and the accused was a watchman on duty. When the girl passed by, he attempted to commit rape, but the girl struggled. In an effort to close her mouth, he unintentionally killed her. The accused was convicted for murder though he was drunk at that time.

Principles laid down from the above case

1. If a person is so drunk that he is incapable of forming, the intention required to commit the particular crime then he cannot be convicted of that crime unless his intention was proved. This does not mean that drunkenness is in itself an excuse.
2. Insanity whether produced by drunkenness or otherwise is a defence to the crime charged.
3. In order to determine whether the accused had the intention essential to constitute the crime, evidence of drunkenness which reders the accused incapable of forming the specific intention must be considered.

4. If the accused merely given way to violent passion under drunk. It is no defence and the person is presumed to intend the natural consequences of his act.

The defences of Necessity, Consent, Compulsion and Triviality are classified as excusable defenses.

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3.7 Necessity

It is rather difficult to definitely point out the circumstances covered by the defence of necessity. In English law the defence is based on the Latin maxim "**Quod necessitas non habit iegem" i.e.,** "Necessity knows no law". As a defense to criminal act, it generally means some unavoidable circumstances, or condition or an act which leaves no choice of action. Lord **Mansfield** observed (in an old case) that, 'wherever necessity forces a man to do an illegal act, forces him to do it, justifies him, because no man can be guilty of a crime without the will and intention of the mind, whenever the accused has no other alternative but to commit a harmful act in order to prevent a greater harm, he can benefit by the defence of necessity. **Stephen** in his **"Digest of Criminal Law"** has cautiously justified the defence in the following manner "an act which would otherwise be a crime may in some cases be excused if the person accused can show that it was done only in order to avoid consequences which could not otherwise be avoided, and which if, they had followed, would have inflicted upon him or upon others whom he was bound to protect, inevitably and irreparable evil, that no more was done that reasonably necessary for that man and that the evil inflicted by it was not disproportionate to the evil avoided". The defence of Necessity was discussed in the renowned case of **R.Vs. Dudley and Stephen (1884),** The facts were that seaman Dudley, Stephen and Brooks were in a life-oat with the cabin boy Parker, after a shipwreck of the Yacht Mignoanette. There

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was no food or water in the life-boat. After about eighteen days of starvation the accused suggested to Brooks that one of them should be sacrificed to save the rest. Brooks disagreed with this idea of the accused. Two days later Dudley with the consent of Stephen killed the boy Parker. Dudley and Stephen appeased their hunger. Three days later they were rescued by a passing ship. It was evident that, had not the men fed upon the body they would not have survived to be rescued by the ship. When they reached the nearest port, they were charged for the murder of the boy. The defence contention was that the circumstances were unavoidable that it left no other choice of action to them to save their lives. The court pointed out that assuming necessity to kill anyone three was no greater necessity for killing the boy than any of the other there men. Hence there was no proof of any such necessity as could justify the accused in killing the boy and therefore they were found guilty and convicted for murder.

Commonwealth Holmes and American case, was a parallel one to this. William Brown an American ship carrying a crew of seventeen and sixty-five emigrants struck on iceberg and was wrecked. After the wreck thirty two passengers and nine of the crew got into a life boat. It was found that the load was too much for the life boat and some men among the passengers were thrown over board by the crew. Later they were sighted by the ship Crescent and were rescued. Holmes a member of the crew was tried for manslaughter of the men thrown overboard. The defence advanced was that of necessity to preserve life of the survivors. **Baldwin J.** observed that the passengers must be favoured over the crew and the passengers must have been chosen by lot, though not prescribed by law, is the fairest method of choice. Therefore the accused was convicted for man slaughter and sentenced to six months

imprisonment. This decision was criticized by **Stephen** indicating that it was rather odd to expect men on a life-boat to cost lot leisurely to decide who should; be thrown overboard. Stephen cites the following instances as proper circumstances where necessity could be pleaded as a defence. (1) A Captain of ship runs down a boat as the only means of avoiding a shipwreck (2) A and B swimming in the sea after a shipwreck, got hold of a plank not large enough to support both, A pushes off B, who is drowned. Stephen states that this is not a crime on the part of A as he has not directly caused bodily harm to B so as to cause his death. On the other hand he leaves him the chance of getting hold of another plank. Blackstone also justifies his pushing off on the ground of a natural instinct in men to save themselves by an innocent attempt.

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Indian Law: Under the Indian Penal Code section 81 provides for the defence of necessity. **Mayne** remarks "that section 81 intended to give legislative sanction to the principle that where on a sudden and extreme emergency, one or other of the two evils is inevitable, it is lawful so to direct events the smaller only shall occur. "Thus it is found that the basis of the defence is similar to that in English law as the accused is given an opportunity to choose between the evils when he is faced with two dangerous circumstances".

Section 81 reads "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". From the wording of the section it is clear that the right to choose between the two harms materializes to the accused, only when the act is done in good faith without any intention to inflict harm on the victim or his property but only to prevent greater harm. It should

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be noted that the section allows the act to be committed with the knowledge that harm is likely to be inflicted on the victim or his property by the commission of the lesser harm for his own personal benefit:. The explanation appended to the section provides that the gravity of the harm to be prevented should be assessed from the circumstances of each case.

The provision under section 81, roughly applies to three types of circumstances. (1) cases in which injury is inflicted to one individual or few individuals in order to prevent greater injury to others. Illustration (a) of section 81 deals with such a circumstance. 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 sown a boat B with twenty passengers on board, unless he changes the course of the vessel by which he must incur the risk of running son a boat C with only two passengers on board. Under such a circumstance the captain is placed on the horns of dilemma to choose between the two alternatives. If the captain decides to alter his course towards the boat C but without any intention to run down C and in good faith only for the purpose of avoiding greater harm of running sown twenty passengers he is not responsible for the harm inflicted on the two passengers on board C even if he runs their boat down, though he know that he is likely to inflict harm on the passengers. So also if injury is caused by A to Z while playing fairly, A commits no offence.

Section 88 provides for cases of surgical operations by surgeons, chastisement by parent, guardians and teachers. Good faith and benefit for patient or child concerned are the important elements of the section. The only restriction imposed is that the act should not be committed with the intention to cause death i.e., it can be, any

harm short of death. **The decision in the case of Sukaroo Kaviraj** referred to already in the defence of mistake is a good example. The illustration also gives a similar example with regard to the right of chastisement by the teachers. **The case of Natesan (1962)** illustrates the point. The accused a school teaches gave beating to a student for his misrepresentation with regard to the thumb impression of his mother in the progress report. For the simple hurt caused, the school teacher was tried and sentenced to pay a fine. On appeal the High Court acquitted the accused and observed that to deny the authority of chastisement for the teacher, would amount to a denial of all that is desirable and necessary for the welfare, discipline and education to the student concerned. It further pointed out that when a parent entrusts a child to a teacher, he, on his behalf impliedly consents for the teacher to exercisse over the pupil such authority, required for discipline. This qualities the authority, as the harm inflicted should not be unreasonable or immoderate. If son the teacher would lose the benefit of this section. The section does not specify any age limit but the general limit of 12 years provided in section 90 can be applied here. Section 89 extends the provisions of section 88 in the case of abnormal persons like infants and lunatics. The provision specifically empowers the guardian to give consent under such circumstances.

The wording of section 91 excludes the application of the provisions of sections 87,88, and 89 when the acts committed are offences by themselves i.e., **mala in Se.** Consent does not condone certain offences which are offences independently of and harm which they may cause or intended to cause or known to be likely to cause to the person giving consent as they are considered to be offences against the society. The illustration to the section gives an appropriate example. Causing miscarriage is an offence

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independently of any harm which it may cause or intended to be caused to the victim i.e., the women concerned. Hence in this case consent of the woman neither justifies nor condones the criminal liability for the offence. Huda aptly observed "the principle is clear, consent may wipe off an injury to the person consenting party but if the grave men of the offence is not injury to the consenting party but something else, the consent can have no effect on the offence.

One more reason for making this offence mala in se is that the act is mainly the unborn child in the womb and hence the woman cannot give her consent for the harm caused. The offences of bigamy and unnatural offences are also cited examples of mala in se.

In case of emergency which necessitates either a surgical operation or risky treatment, the doctor or the surgeon need not wait for the consent of the individual concerned or the consent of a guardian in other cases, as consent is presumed on the theory of temporary guardianship. Emergency justifies the action as it is done in good faith and for the benefit of the sufferer. For example, a meets with serious accident and is immediately taken to a hospital in an unconscious condition. It is found necessary that one of his limbs must be amputated for his benefit, but he is not conscious to give his consent. The surgeon amputates the limb and for this he is not held criminally liable as he has done it only for the benefits of the patient. Illustration (a) brings out the scope of the section very clearly. **illustration** "Z is thrown from his horse and is insensible". 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 recover his power of judging for himself. A has committed no offence. The act of the accused is brought under the defence by constructive consent. Consent in these cases is either referred to as

implied consent or constructive consent. In these cases also the intentional harm should be short of causing death.

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Doctors are particularly protected by section 93 for communication made to patients in good faith and for his benefit. When the results turn out to be harmful. **For example,** a doctor tells his patient that he will live only for a few more hours and that he can make the necessary arrangements with regard to his property affairs. This communication shocks the patient and he dies. The doctor lis relieved of his liability for death caused as the communication was made for the benefit of the patient, (Refer to the illustration).

3.8 Compulsion: According to **Prof. Kenny** compulsion under English law can be considered under three heads, namely duress perminas martial coercion and obedience to orders. Duress perminas and coercion are the synonyms used compulsion in legal parlance.

Duress Perminas: The scope of this defence is not clear and is restricted very much. It is based on the principle that an individual should not be held criminally responsible for his involuntary acts. Stephen observes that the rarity of the defence is due to the fact that criminal law itself there is a system of compulsion on a wide scale. A penal law or a penal code is itself a system of compulsion on a wide scale as is a collection of threats of injury to life, liberty an property, if people do commit crimes. These threats cannot be withdrawn under the clock of a defence against threats of private person is graver in nature than that provided by law, the threatened individual would at once do the bidding of his aggressor.

The general view which accords with Stephen's view is the compulsion by threats is in no case admitted as a defence for a crime. But an exception is made in the case of threat of instant death. The reason being that a threat of instant death overrides any legal threat

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for a normal person. Hence compulsion is recognized as a defence in crimes other than murder or treason. Murder and treason have been excluded because the punishment for these two affiances is a death penalty. The gravity of the punishment is equal to the gravity of instant threat of death. In **R.Vs. Mac Growther (1746)** the accused was threatened that his property would be destroyed if he did not join the rebellion. Fearing this threat the accused joined the rebellion. After the rebellion was put down the accused was prosecuted fro treason. He pleaded the defence of compulsion. The court held that as the threat was not against life the accused cannot benefit by the defence.

The Indian Penal Code provides a similar provision in section 94. **The essentials of this section are:** (1) the accused must have committed the cat under the influence of threats which cause a reason able apprehension of instant death to himself (2) Even under the influence of such threats, murder and offences against the State cannot be committed, (3) the accused should not voluntarily place himself in a situation in which such threats of instant death are possible or could be advanced against him.

The first two essentials conform to the requirements under English law and are purely questions of fact. The third essential is clarified by illustration to the section. If the accused voluntarily places himself under such circumstances he cannot protect himself by pleading this defence.

Obedience to orders of superior officers rarely affords a defence both under English and Indian criminal laws. An inferior officer, if the circumstance permit, can only plead mistake of fact as a defence but not compulsion the officers are expected to assess the legality of the order given by a superior officer before executing it.

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3.9 Triviality Act : The defence of Triviality is based on the common law maxim deminimis non curat lex, **"the law does not care about trifles".** The authors of the Indian Penal Code gave the following reason for the inclusion of this defence. "As our definitions are framed, it is theft to dip a pen into another man's ink, mischief to crumble one of his waters, an assault to cover him with a cloud of dust by riding past him and hurt to incommode him by pressing him in getting into a carriage. There are innumerable acts without performing which men cannot live in society..... and these acts ought not to be treated as crimes".

The common law maxim is embodied in Section 95 of the Code. The section reads that "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 or temper would complain of such harm".

For the application of this section it is necessary that the act complained of must be an offence and also that no person of ordinary sense and temper would complain of it. To illustrate, in the case of **Sadananda V.Shibakali Hazara (A.I.R.1954 Cal.288)** the complainant charged the accused under section 506 of Indian Penal Code for telling a lie. While acquitting the accused by Chander J. He observed "one of the first principles of law is deminimis non curat lex. This has found expression in section 95, of Indian Penal Code. Intercourse in civilized society will come to an end if for certain words uttered a person found himself exposed to all the trouble and worry of a criminal trial".

If an individual plucks some flowers to offer them to deity without the permission of the owner of the garden, it may technically

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amount to theft but courts would exempt him from criminal liability by the application of this defence.

The scope of section 95 was discussed elaborately by the Supreme Court in **Mrs. Veeda Menexers Vs. Mr. Yusuf Khan and another (A.I.R. 1966 S.C. 1973)** Mrs. Menzes, the land-lord, had an altercation with Mrs. Yusuf Khan, the tenant. During the wordy quarrel their husbands joined them. Mr.Yusuf Khan losing his temper threw a file at Mr.Menxes which missed him and hit Mrs. Menze causing a scratch. Mrs. Menzes, charge Mr. Yusuf Khan for the offence of simple but and house trespass in order to commit an offence punishable with imprisonment. The accused pleaded the defence of triviality. The trial court, finding that there was no ground for the offence of house trespass and acquitted him of it. The Supreme Court after a thorough perusal of facts and evidence, concurred with the lower courts. While confirming the acquittal, the Supreme Court explained the scope of section 95 thus: "It is intended to prevent penalization of negligible wrongs or offences of trivial character. Whether an act which amounts to an offence is trivial would depend upon the nature of the injury, the position of the parties, relation between them, situation in which they are placed, the knowledge or intention with which the offending act is done and other related circumstances. It can be judged solely by the measure of physical or other injury the act causes. A soldier assaulting his colonel, a policeman assaulting his superintendent, a pupil beating his teacher commit offences the heinousness of which cannot be determined merely by the actual injury suffered by the officer or the teacher for the assault would be wholly subversive of discipline". **As Mayne** observed :it is a novel but a useful section".

3.10 RIGHT OF PRIVATE DEFENCE

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This is another instance of justifiable defence. The act committed by the accused fulfils all the requirements for the concerned offence but it is deemed to be justifiable because it is done for the purpose of repelling unlawful aggression. The defence is based on the natural instinct in man to save himself, his kin and his property. **Donovan J.** pertinently pointed out that "Reason has taught this law to learned men, and necessity to barbarians and custom to all nations, and nature to wild beasts, that they are at all time to repel violence by whatever means they can without deciding that all men may fall by the weapons of their enemies".

However organized and resourceful the society may be, it is impossible for it to extend its help to all persons at all times and in all cases. This incapacity of the State to afford protection of life and property led the State to sanction within certain limits the right of every person to resist or repel violence by violence under circumstances when State help could not be obtained. **Mayne** in his book " **Criminal Law**" has stated "the whole law of self defence rest on these propositions: 1) that society undertakes and in the great majority of cases is able to protect persons against unlawful attacks upon their person and property; 2) that, where its aid can be obtained, it must be resorted to; 3) that, where its aid cannot be obtained, the individual may do everything that is necessary to protect himself, 4) but the violence used must be in proportion to the injury to be averted".

The Indian Penal Code has provided for this defence elaborately from sections 96 to 106. these eleven sections deal with every aspect of this right of self defence and it can be studied under

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three headings namely the nature of the defence, the limit to the defence and the extent of the defence.

The nature of the defence: Section 96 provides in general the right of private defence. It states "Nothing is an offence which is done in the exercise of the right of private defence". Section 97 defines the defence as **firstly,** a right every person has to defend his own body or the body of any person against any offence affecting the body; **secondly** to defend the property, whether movable or immovable of himself or any other person against any offence affecting the property. This definition gives a wider scope to the defence than the provision under English Law. **English Law** this right can be exercised only when the unlawful aggression is against his person or against his near relatives but this section extends the right to unlawful aggression against strangers also. The section also makes it clear that the right is available both for offences against body and property for every person. It should be noted that the right is only a defensive one i.e., to protect oneself against unlawful aggression and not an offensive one.

This right of private defence can be exercised even against juveniles, lunatics, intoxicated individuals and individuals who act under a misconception. The first illustration reads "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. This provision is based on the principle that as the right is only that of preservation, the defender cannot allow a lunatic, or a juvenile or a like person to harm him in any way without exercising the right of private defence. In other words, it can be exercised against any aggressor whether competent or incompetent as it does not depend upon their mental state.

Limits to the right of private defence: Section 99 deals with four limitations to this right. The four limitations are, **firstly,** there is no right of private defence against the acts of a public servant so long as he acts legally in his official capacity. **Secondly** the right is not available against acts done by third persons under the directions and authority of public servants; **thirdly,** there is no right of private defence in circumstances where there is time to have recourse to the protection of public authorities and finaly, the harm inflicted on the aggressor should be proportionate to the harm anticipated from him.

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The first limitation deals with acts of public servants. This limitation rests on the probabilities as the acts of the public servants are lawful, resistance to them would become unlawful and also that it is for the good of the society that public servants should be protected in the execution of their official duties. This clause also states that the act though not strictly justified by law must be done in good faith under the colour of his office. This provision extends the protection even in cases where the public servants may be in error.

The availability of the right of private defence with regard to the acts of public servants may be discussed in the following circumstances. When the authority given is legal but there is procedural irregularity, which can be rectified the protection continues and the accused loses his right of private defence. **Example** in **Janaki Prasad's Case** resistance was of feared by the accused against the execution of a warrant of arrest which was initiated instead of being signed by the magistrate concerned. The defence contention was that the warrant being an irregular one the policeman lost his cloak of protection and that the accused's right of private defence was revived. Held that the error was a procedural one and could be rectified as it was not in violation of the legal provisions

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and that the accused's right of private defence did not revive. It was also pointed out that the act was done in good faith ad under the colour of office by the concerned policeman.

But in **Debi Singh's** case the court held that the accused's right of private defence revived as the arrest warrant lost its authority due to the error with regard to the accused's father's name.

In **Varky v. State of Kerala (1964)** the accused was an apprehended offender. When the police party went to his hideout to attest him a fight ensued and a plain clothed policeman was shot down by the accused. For a charge of murder the defence contention was that the accused could avail the right of private defence as the deceased was not a public servant. There was evidence to prove that a duly signed arrest warrant was shown to the accused and that he was also told that the plain clothed individual was a policeman. Hence the court rejected the defence contention and convicted the accused under section 302 for the offence of murder. This decision indicates that the public servant does not lose his protective cloak when the accused knows about it.

The second limitation is similar to the first one and the only difference is that the complainant here is not a public servant; but an individual acting under the direction and authority of a public servant. The private individual also comes into the folds of the protective cloak as he is substituted in the place of the public servant.

A person does not lose his right of private defence unless he knows or has reason to believe that the other is a public servant. Similarly, if anyone is acting under the direction of a public servant there must be knowledge or reason to believe that he is so acting or he must state the authority under which he acts or if he has written authority he must produce such authority, if demanded.

The third limitation deals with the circumstances when the individual has time to have recourse to public authorities before during or after the unlawful aggression. When help can be obtained from the authorities concerned individual loses his right of private defence.

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The decisions is **Jogeshwar Rai Vs. Emperor** and **Amjadkhan Vs.** The State, illustrate this limitation clearly. In the former case after a dispute over land, crops were damaged by the aggressors. The accused tried to prevent the damage by fighting with the aggressors. The accused where charged for rioting and were convicted by the trial Court as it felt that there was time to have recourse to the police authorities and that the accused should not have taken the law into their hands. On appeal the High Court pointed out that there was very little time to go for police help and had not the accused taken the law into their hands their property would have been damaged. Hence the accused acquitted.

Similarly in **Amjadkhan Vs. The State (1962)** communal riot broke out between the sindhis and local Muslims. A mob tried to loot the shop of the accused by beating on the doors of his shop. The accused tried two shots through holes i.e., the window in order to prevent the looting. A sindhi was killed by these shots and the accused was charged for murder. Though the lower Courts convicted him the Supreme Court acquitted him by observing that it is evident that appellant had no time to have recourse to authorities. It is also evident that the appellant had reasonable grounds for apprehending that either death or grievous hurt would be caused either to himself or to his family.

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Section 96 Right of Private defence

Where it was established that son in order to save wife of his father son caused gun shot injuries to deceased at the time when complainant party fired his father and trial court recorded the findings of acquittal which was set aside by high Court, it was held that High Court was not justified in interfering with findings of trial court and hence, finding of trial Court was regarded maintainable. Refer to **Bhagwan Swaroop Vs. State of M.P.1992 Cr.L.J.777.**

In **Satnatain Dos's Case** a riot took place after a dispute over land and crops. While the parties were fighting, a chowkidar interfered and requested the parties to wait till the police come as word had been sent to them. But the parties did not heed the request but fought with each other and the accused inflicted injuries to the victim. He and his party were charged for grevious hurt and rioting. The accused definded by pleading the right of private defence and that they did not have time to go for police help. The lower Courts rejected the defence and convicted them.

The Second appellate Court confirmed the conviction and observed that "the important considerations which arise in order to determine whether the action of the accused is covered by the right of private defence are: 1. What is the nature of the apprehended danger and 2. Whether there was time to have recourse to the police officers always remembering that when both the parties are determined to fight and go up to the land fully armed in full expectation of an armed conflict in order to have a trial of strength the right of private defence disappears". Similar views were taken in Queen Emperor Vs. Narsong Pattaghi and others and in **G.V.S.Subrayanana Vs. State of Andhra Pradesh.**

The Fourth limitation is that the quantum of harm inflicted by the accused should be proportionate to the harm anticipated and if the harm is in excess, the right of private defence disappears. This limitation brings out the defensive characteristics of this right. In the case of **Cockroft Vs. Smith, Cockroft** in a scuffle ran his finger towards Smith's eyes. At once Smith caught hold of Cockroft's hand and bit off his finger. His Lordship convicted the accused for grievous hurt.

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In **Deo Narain Vs. State of Uttar Pradesh (1978)** the accused in return to lathi blow, gave a forcible thrust with spear on the chest of the aggressor and caused his death. The High Court rejected the plea of private defence pointing out that it was in excess of the harm anticipated. On appeal the Supreme Court observed; " the threat, however, must reasonably given rise to present and imminent and not remote or distant danger" and acquitted the accused pointing not that the harm was justifiable and that it cannot be weighted in golden scale [Refer - Ram B Narain & others Vs. State of Uttar Pradesh A.I.R. 1972, and Mohammed Khan and others. Vs. State of Madhya Pradesh (1973 II S.C.J. 236].

In **Hukum Singh's Case** the Court pointed out that the accused must first of all prove that the right of private defence is available to them, in order to reduce their offence from murder to culpable homicide.

RAM BILASYADAV AND OTHERS VS STATE BIHAR AIR 2002 SC 530.

In case of Private defence, Aggressor, Accused party armed with deadly weapons prosecution party not armed with any weapons. Accused sustained some minor injuries but causing serious injuries to prosecution party resulting one death Accused party not entitled to right of self defence. It can be said that accused party was aggressor.

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Thus the right of private defence can be pleaded by the accusec subject to the limitation discussed above.

Extent of right of private defence.

Sections 100, 101, 103, 104 deal with this aspect of the right both for offences against person and property.

Section 100 provides acts against which the right of private defence of the body extends to the causing of death to the aggressor: 1) Such an assault as may reasonably cause the apprehension that death will otherwise be the consequences of such assault. 2) Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence. 3) an assault with the intention of committing rape. 4) An assault with the intention of gratifying unnatural lust. 5) An assault with the intention of kidnapping or abducting. 6) 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.

In the first two clauses there must be a reasonable apprehension of death, or grievous hurt to justify the exercise of the right to the extent of causing death. For example, if A attacks B it must be clear by the manner of assault the weapon used and the other circumstances attending the assault that the life of B is in imminent danger, then B is justified in killing A to protect himself. In Phili v State of Rajasthan (1952) an assault with clubs, dangs and lathis was considered to be a circumstance covered by the first two clauses of section 100. But if it is only an assault with first and hands it is no covered by this section.

Clauses 3 and 4 deal with cases of rape and unnatural lust wher the right can be exercised to cause the death of the aggressor. Clause

5 extends this right in the case of kidnapping or abduction. The meaning and the definition of the word abduction led to controversial discussion under this clause. The Supreme Court has interpreted the word to mean abduction simpliciter and defined in section 362 in the case of Viswanath v. State of Uttar Pradesh (1960). The facts were that the accused's sister married to Gopal, the deceased, was living with her husband. On the day of occurance Gopal came to his father-in-law's home and tried to drag his wife away The accused in preventing his, brother-in-law from dragging his sister took a knife and stabbed him to death. When charged for murder the accused pleaded that his right of private defence extend to causing the death of the aggressor. Is the act of aggressor was that of abduction under clause (5) of section 100. Clause (6) does not point out whether an abduction simpliciter or abduction followed by an offence. The act committed by the deceased aggressor was only abduction simpliciter. The Trial court following the earlier decision in Ram Saiy v. Emperor (1948) and Badri (1957) (ehre the facts were similar) held negativing the right of private defence that the term abduction meant abduction followed by an offence and convicted him. On appeal the Supreme Court while acquitting the accused held that the appellant had the right of private defence of the body of his sister against an assault by her husband with the intention of abducting her by force and that the right extended to the causing of death. The Court added that the word abduction should be interpreted to mean abduction simpliciter also, since the word is used without any qualification. Thus, the Supreme Court overruled the earlier decision in Badi and Ram Saiya's cases.

The sixth clause deals with assault to commit wrongful confinement. This clause extends the right to cause the death of the

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aggressor when he reasonably apprehends after his confinement that he would be unable to have recourse with the public authorities.

Section 101 provides for circumstances when the harm is short of death i.e., it is not covered by the six clauses in section 100. The section extendsthe right to inflict any harm on the aggressor other than death. Both under sections 100 and 101 the accused's extended right, is subject to the limitations provided under section 11.

The right of private defence of body commences as soon as a reasonable apprehension of danger to the body arises from an attempt to commit the offence or threst to commit the offence, though the offence may not have been committed and it continues as long as such apprehension or danger to the body continues (S.102). The right to private defence of body even permits the causing of harm to innocent person such as children in effectively exercising this right (S.106 and illustration).

Private defence of property: Similar to these two sections, sections 103 and 104 deal with extension of the right with regard to property offences. Section 104 like section 100 innumerates the offences for which the right can be extended to cause the death of the aggressor. These offences are robbery, housebreaking by night, mischief by fire committed on any building, tent or vessel, which building, tent or vessel issued as a human dwelling, or a place for the custody of property, and 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. It is obvious that the provision enumerates the violent offences which are likely to cause much damage to property as well as to its owner or possessor. **Mayne** gives reason for the singling out of these offences. In the following statement "violence is

the essence of robbery and is the aggravating circumstance which under clause (4) enlarge the right of defence, when added to offences which could not otherwise be resisted to the extent of death.

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House breaking by night is always considered an offence of special enormity, as being an invasion of a men's houses at a time when he is specially defenceless. Mischief by fire is not only peculiarly dangerous but requires to be stopped at once by the most summary and effective means". It is interesting to note that clause 4)provides for the extension of this right in the cause of a less serious offence like theft, when it is aggravated. The case of **State of Bihar v. Nathu Panday (1970),** illustrates this aspect. The accused with his friends when trying to prevent theft of fruits by the armed aggressors, from their orchard caused grievous injuries to aggressors which resulted in the death of one of them. For a charge of murder, in spite of the plea or right of private defence under clause (4) section 103, the trial court convicted him rejecting the plea. On appeal the High Court acquitted him by holding that the accused had his right of private defence as the aggressors were armed and there was reasonable apprehension that death or grievous hurt would be the consequence. On an appeal by State to the Supreme Court, it was observed that the object of the accused was to prevent the commission of the offence of theft by exercising their right of private defence and that the object was not an unlawful one i.e., to kill the deceased. Hence, the Supreme Court confirmed the acquittal of the High Court and dismissed the appeal.

Section 104 similar to section 101 provides for other offences against property where violence short of death can be inflicted in the exercise of the right of private defence. In these cases voluntarly causing of death is prohibited.

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The commencement and duration of the right also plays an important role as the right exists only as long as long as the threat exists. The commencement and duration of the right with regard to offences against body has been provided in section 102 and that of property in Section 105. Section 102 states that the right commences and continues as long as the apprehension of the danger to the body lasts. Such an apprehension of the danger may arise not only from an attempt to commit the offence but also a threat to commit it. This right does not commence at the preparation stage as the activities of the aggressor are not certain. For example, an accused who is attacked by an individual having a pistol is justified in killing him by pointing out that there is a charge of the individual using the pistol, he is having. The moment the pistol is drawn out the right commences to the accused and continues till the threat continues. The statndard of gravity of apprehension for an accused to exercise his right of private defence varies according to the circumstances. **Broom** in his **"Legal Maxims"** bring out this aspect clearly by stating " a person who is traveling by night on uprotected road, is justified in acting upon apprehension of danger would be insufficient if he was dwelling in all the security of civilized town." Not only does it depend on the circumstances but also the nature of the threat. The apprehension must be a reasonable one and should present a circumstance of imminent danger. But the apprehension may be mistaken and ill founded **(Refer to Jaiden v. State of Punjab, A.I.R. 1963 S.C. 613).**

Section 105 provides for the commencement and duration in the case of offences against property. Generally as in the former case the duration is as long as the apprehension continues. But with regard to the offence of theft, the provision gives three alternatives, firstly, the right continues till the offender has effected his retreat with

property, secondly, till the assistance of public authorities is obtained and thirdly, till the property has been recovered. The first and the third alternatives overlap each other and create confusion. **For example,** if A runs away with B's watch, B may chase him until he effects his treat but the right does not end with his escape. If B finds A the next month or the next year, the right again revives and he can recover the watch with necessary force. Does this mean the right continues for long term or does it mean that the right ends as soon as the aggressor retreats with the property. In **Mir Dod's Case** – the High Court expressed the view that the first and third clauses should be considered alternatively depending on the circumstances. In this case the accused tried to retrieve their property from the aggressors after their final retreat. Hence the court observed that the accused cannot avail the right of private defence as it had ended with the final retreat of the aggressor and cannot be continued till the property is recovered.

In State v. Sidh Nath Rai (1959) a dispute over the ownership of bulls caused a rioting in the altercation between the accused's party and the aggressor's party. The accused caused the death of one of the opposite party. For a charge of murder, hurt and rioting the accused pleaded his right of private defence under Sub-clause (3) of clause (1) of section 105. The tiral Court convicted the accused for culpable homicide instead of murder. The plea of self defence was not accepted because excess harm was inflicted. On appeal the appellate court pointed out that the transaction was continuing and that the righ under these circumstances comes under sub-clause (1) of section 105 i.e. the right continued till the aggressor retreated finally.

The other clauses of section 105 deal with the offences of robbery, criminal trespass, mischief and house-breaking by night. For

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Check your Progress

1. Write a Short notes on Mistake.

2. What are the essentials defence of Accident.

3. Define under Section 84 is available to a person if
(a) He is insane
(b) He is insane, at the doing the act.
(c) He is insane, before, after or at the time of doing the act.
(d) None of the above

4. Which one of the following statement is true?

(a) Right of Private Defence is not available to an aggressor.
(b) Right of Private defence must be exercised in good faith.
(c) Both of the above
(d) None of the above

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these offences the commencement and duration of the right is as soon as the apprehension appears and continues.

The special provision under section 106 extents the right of self defence to the causing of harm to innocent persons who form the mob which is threatening to kill the accused. As the innocent persons (i.e., woman and children) are mixed with the aggressors is the group which is threatening the accused, the accused need not hesitate to shoot at the mob though it may cause harm to the woman and children present. Generally the right of private defence can be exercised only against the acts of the aggressor but this provision makes it wider and allows its exercise even against innocent persons.

Thus the valuable right of private defence has been precisely provided for in the Indian Penal Code.

3.11 Summary

Chapter IV of the Indian Penal Code has consolidated the Principles which were to found floating under criminal Law at many places. This chapter, therefore may be said to state the facts which negative or reduce criminality and in a sense elaboration of the principle, " No criminality without guilty intention."

In this chapter we shall discuss about the another part the justifiable defence. In such a defence the act committed by the person is an offence but it is deemed to be justifiable, because it is done for the purpose of repealing unlawful aggression or other circumstances. There are eleven Sections in the Penal Code which codified the rules and limitations on the Right of Private defense which are found floating under Criminal Law.

3.12 Answer to check your progress

Question No 1 : Refer 3.2

Question No 2 : Refer 3.3

Question No 3: Refer Answer b

Question No 4 : Refer Answer b.

3.13 Key words :

Accident- unexpected or unintentional Act

Necessity – one type of compulsion

Compulsion - Duress

Intoxication – Drunkenness

Insanity – mentally suffered stage

3.14 Model Questions :

1. General Exceptions (Chapter IV of the IPC) has been framed in order to obviate the necessity of repeating in every Penal Clause a number of limitations" Elucidate. Explain attest two exceptions known to you.

2. Ignorantia facit doth excuse- Explain the maxim with illustration.

3. Write a short notes on:

   a) Necessity knows no law b) Acts done under compulsion

   c) Acts done by consent d) Drunkenness

4. The McNaughten's rules are still received in the Courts as the binding authority on the Defendce of insanity Examine this Statement.

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UNIT-4

CRIMINAL LIABILITY

AND

ABETMENT - CONSPIRACY

Introduction :

When a crime is committed either by a single act or by a series of acts by a single individual, it is easy to assess his liability for punishing him. But when it is committed by two or more, or by a group of individuals, then the assessment of the extent of their participation becomes difficult. For such an assessment four categories of guilty association are recognized in English law. They are: the principals in the first degree, the principals in the second degree, an accessory before the act and an accessory after the act.

Similar to English Law, the Indian Penal Code also provides for the classification of offenders into the four categories. The assessment of the criminal liability of the accused becomes difficult when a crime is committed by a group of persons participating in different grades. This problem is solved by the provisions for group liability in sections 34 to 38, 141 to 145, 149,150. 107 to 120 A and 120 B.

Unit Objectives :

- To study the common intention and joint liability
- To understand the Vicarious liability & Strict liability
- To know the nature person & legal personality, and the liability in crime
- To discuss the preliminary crimes like abatement, criminal conspiracy

Unit Structure :

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4.1 Joint criminal liability and common intention

Section 34 to 38 and 141 to 145, 149, 150 provides the principles to be applied for making the accused jointly or constructively liable for the offensive activities of the group.

Joint liability under **section 34 to 38 :** Section 34 provide that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for the act in the same manner as if it were done by him alone. Thus, the section gives statutory recognition of the common sense principle that if several persons unite with a common intention to effect any criminal object, all those who assist in the accomplishment of that object are equally guilty, though some may be at a distance from the spot where the crime is committed. **The essential ingredients of this section** (i) a criminal act done. (ii) jointly by more than one person, and (iii) a common intention animating them in furtherance of which the criminal act is committed. These essentials point out that when a group of accused go

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with a common purpose to execute a common object, each and every one becomes responsible for the act of each and every other in execution and furtherance of their common purpose. As the purpose is common so must be there responsibility. Under these circumstances the participation of each one of the accused is that of the principals in the first degree.

In **Barendra Kumar Ghosh v. Emperor (1925);** the appellant accused was charged for murder under section 302 read with section 34. when a sub postmaster was counting money at his table a group of men came inside and demanded him to give up the money. While he was hesitating, they fired at him. He was hit in two places and died instantaneously. The sound of the guns attracted the assistants in the Post Office and they rushed a way to help the postmaster. Assistants chased the assailants who were running away and caught one of them (i.e.,) the appellant. The appellant was charged for the murder of the postmaster under section 302 read with section 34. There was evidence to prove that three of the assailants fired at the Postmaster and that the appellant was one of them as the bullet taken from the deceased fitted the rejected shell of the pistol carried by the accused. The accused's contention was that he was only standing outside and has not fired at the deceased as only he was standing outside and not fired at the deceased as he had no intention of killing him. Rejecting this defence contention, the trial court convicted and sentenced the accused to death. On appeal, the **Calcutta High Court** and the **privy Council,** held that upon the true construction of section 34 of the Code the decision of the lower court was correct and that the appellant was guilty of the murder of Postmaster.

In **Mahboob Shah Vs. Emperor (1945)** deceased with some of his friends went by a boat for cutting reeds on the banks of river Indus. On their way down stream, they met Md. Shah, father of Wali Shah, one of the accused. Md.Shah, warned them from collecting reeds from land belonging to him. Ignoring his warning, the deceased and his friends collected about sixteen bundles of reeds. While returning, they were scolded by the nephew of Md. Sheh, who forcibly tried to take away the bundles of reeds. This enraged the deceased and he took a bamboo pole and struck Md.Shah's nephew. Md. Shah's nephew shouted for help. Hearing his cries Wali Shah and Mahboo. Shah came to his rescue with loaded guns. On seeing them deceased and his friends tried to run away, but were prevented from doing so by the firing of Wali Shah and Mahboob Shah fired at deceased's friend causing him injuries. Wali Shah absconded but Mahboob Shah was arrested and was charged for the offence of murder under section 302 read with section 34. The trial court sentenced the accused to seven years imprisonment for attempt to murder and relieved him under section 302. On an appeal by the prosecution, the **Lahore High Court** convicted the accused under section 302 read with section 34 and sentenced him to death. On an appeal by the accused to the **Privy Council,** their Lordships allowed his appeal on the ground that evidence fell short of showing that Mahboob Sharh and Wali Shah ever entered into a premeditated concert to bring about the murder of deceased. **Sir Madhavan Nair,** who delivered the judgment observed, "to invoke the aid of section 34 successfully it must be shown that the criminal act complained against was done by one of the accused persons in furtherance of the common intention of all. If this is so, then

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liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear that intention within the meaning of the section implies a prearranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan".

Their Lordship of the Madras High Court in **Nachimuthu Goundan's case (1947)** pointed out that there is a possibility of the common intention, developing in the course of event though it might not have been present to start with. In this case, the associates of the accused Nachimuthu while preventing a police constable from arresting the accused brutally attacked him and killed him. There was evidence to the effect that during the course of the attack one of the accused shouted "finish him" which clearly indicated the common intention that had suddenly sprung up in their minds. Hence, the accused were convicted for murder under s. 302 read with section 34.

Section 302 and 34 IPC common intention prearranged plan Deceased called on plea of discussion. No Participation in actual assault from his earlier act common intention established.

Mohd. Musa Miea. Vs. State of West Bengal 1993 Supp (3) SCC 67.

Kripal singh and others v. The State of Uttar Pradesh is a leading decision of the Supreme Court with regard to the applicability of section 34. the facts were that the three accused appellants Bhopal, Kripal and Sheoraj While working in a well, asked two labourers who engaged by one. Jiraj, the accused abused them and began to beat them. Juraj arrived at the spot and asked the accused to stop beating. Sheoraj turned to Jiraj, hit him on the legs with his lathi and he fell

down. Kripal stabbed him with his spear near the ear. Bhopal stabbed him on the lower job with his spear and while he was extracting the spear Jiraj died. The trial court and the first appellate court convicted the three appellant for murder under section 303 read with section 34. But on a further appeal to the Supreme Court their Lordships observed that from the facts the only common intention that could be attributed to the appellants was to beat Jiraj with their weapons which was likely to produce grievous injuries. Therefore, the three appellants would be jointly liable only in respect of the assault and inflictionof grievous injuries under section 326, while Bhopal alone would be guilty of the offence of murder under section 302. hence their Lordships set the conviction of Kripal and Sheoraj under section 302.

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Though participation by all the accused is an essential ingredient of liability under sec ı 34, it was held by the Supreme Court in **Jai Krishnadas Monohardas Desai and another Vs. State of Bombay (1960)** that the physical presence could be dispensed with for offences against property. The facts were that the Textile Commissioner of Bombay entrusted with the two accused –Jai Krishnadas the first accused, the Managing Director and the second accused the Technical director respectively of the Parikh Dyeingand Printing Mills Ltd, Bombay –with some yards of cloth for dyeing and printing. The second accused, the Technical Director returned a few yards and pleaded that the rest was eaten away by white ants and moths. Hence Textile Commissioner charged the two accused for the offence of Criminal Breach of Trust under section 409 read with section 34. at the trial the above said plea of the appellants was rejected and they were convicted under the said charge. On appeal to the Supreme Court, the

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contention of the first accused was that he was not physically present when the offence was committed at Bombay and hence he should be relived of his liability. The Supreme Court rejected this contention on the ground that actual physical participation in the crime is not essential to fix liability under section 34 of the Indian Penal Code.

Sections 35,36,37 and 38 supplement the principle of joint liability provided under section 34. section 35 provides that for a crime which requires a particular intention or knowledge every member of the group must assist in the actual commission of the acts with some intention or knowledge to make each one of the members jointly responsible under section 34. **Example,** when A is charged with the offence of causing grievous hurt to B, with intent to murder, and C of assisting him, C also can be made responsible for attempt to murder only if it is proved that C knew A's intention and shared it with him while assisting him in his action. This would prove the common intention of A and C bring them within the purview of section 34.

Section 38 of Indian Penal Code provides that when an act is done by a group of persons with different types of means rea, the punishment for the offenders will differ accordingly. A good example of this is given in the illustration. A attacks Z under a grave and sudden provocation and kills him by the instigation of B. A's liability for murder is reduced to culpable homicide not amounting to murder by the presence of grave and sudden provocation. But B's liability for murder is reduced offence of murder as he has not done the act under the special circumstances.

Section 36 of Indian Penal Code makes the offenders liable even when the offence is committed partly by acts and partly by

commissions. Under certain circumstances, for the commission of an offence the accused intent occasionally co-operate with each other.

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Section 37 provides for such circumstances, basing liability on intentional co-operation by presupposing an absence of common intention. The illustrations to the section are good examples of intentional co-operation.

Illustration (a) says, "A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer 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 then does an act by which the death is caused they are both guilty of the offence though their acts are separate".

Illustration (c) reads as follows: 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.

Section 149 of Indian Penal Code constructive liability. The section reads that 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 know to be likely to be committed in prosecution of that object, every person who, at the

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time of committing that offence is a member of the same assembly, is guilty of that offence. Thus, the **essentials of the section** are **firstly,** the offenders must belong to an unlawful assembly; **secondly** the offence must be committed in prosecution of the common object of the assembly and **thirdly,** the common object must be one that is specified in section 141.

Common Intention – Common Object.

A distinction should be made between section 34 and 149 as both provide for constructive liability under the Indian Panel Code. The Supreme Court has discussed the distinction between these two sections in **Nanak Chand and others Vs. State of Punjab 1955.** the facts were that over a land dispute there was an altercation between the accused and deceased parties. The accused were charged for the offences of rioting with deadly weapons and murder under sections 148 and 302 read with section 149. Among the six accused, the evidence substantiated, the charge under section 302 read with is 149 only against three accused. Hence the trial court altered the charge to section 34, as the minimum number of accused required for an unlawful assembly i.e., 5 accused was not fulfilled, convicted the accused and passed a death sentence. On appeal, the High Court found that even the requirements of section 34 were not fulfilled against the three accused and so altered the charge again under section 302 against the accused Nanak Chand alone, and confirmed the sentence of death on him. On a further appeal to the **Supreme Court,** it was pointed out that the alteration of charges were irregular and did not conform to the procedure provided under Criminal Procedure Code and son a retrial was ordered. Their Lordships while ordering a retrial, discussed the

distinction between section 34 and 149 thus, "the principal element in section 34 is the common intention to commit a crime. In furtherance of the common intention several acts may be done by several persons resulting in the commission of that crime. In such a situation section 34 provides that each one of them would be liable for that crime in the same manner as if all the acts resulting in that crime had been done by him alone. There is no question of common intention in section 149. an offence may be committed by a member of an unlawful assembly and the others will be liable for that offence although there was no common intention between the person and the other members of the unlawful assembly to commit that offence provided the conditions laid down in the section are fulfilled. Thus, if the object of the unlawful assembly or such of the members of that assembly knew to be committed in prosecution of the common object every member of the unlawful assembly would be guilty of that offence.

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The main differences between the two sections depend on the numerical strength of the accused in the group (i.e.,) whether they are two or more for Sec. 149 and whether the act is done in furtherance of a common intention or in the prosecution of the common object.

Chikkarange Gowda Vs. State of Mysore 1956. in this case two brothers were sleeping in the house of a concubine. A mob of more than hundred persons attacked and set fire to the house. The two brothers were killed as a result of fatal injuries inflicted by certain members of the unlawful assembly. The Court convicted under s. 392 read with s. 149 and s. 34 the accused and other members including the appellants who did not take part in causing the fatal injury.

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Mahan singh v.State Punjab (1963) Held, that if a prosecution is taken against five under s. 149 and two of them are acquitted there is nothing opposed in principle to sustain the conviction against others under s. 149. So also prosecution against three is maintainable under s. 149 if it is proved that including the unidentified, the number of persons were five or more.

Section 396 and 400 of the Indian Penal Code and constructive liability. When five or more persons are conjointly committing dacoit, and one among the effused commits murder, then each one of the accused is made responsible constructively for the offence of murder in addition to the offence of dacoit under section 396. the joint liability in this section is based on the conjoint action of all the accused in the group.

Section 460 I.P.C and Joint liability makes accused jointly liable when a group of accused are involved in lurking house-trespass of house breaking by night and one of them causes death of inflicts grievous hurt to the victim. The object of bringing the liability of accused in this section under the purview of the principle of constructive liability is different.

Principal in the first degree: The individual actually commits the act i.e., the actual offender is the principal in the first degree. But occasionally an individual may commit a crime by the hand of an innocent agent who is incapable of incurring criminal liability for the act done. Under such circumstances the individual who instigates is the real offender as his was the last means rea that proceeded the crime. For example, if an individual gives a poisonous tablet to a child of six and asks the child to give it to the victim, the child not knowing the

nature of the tablet give it to the victim and the victim dies by partaking it. The murderous individual and not the innocent child is the principal in the first degree. There may also be more than one principal in the first degree when a group of individuals join together to commit a crime. In **R.Vs.Jackson (1857) Branwell B.,** stated that when one man holds the victim in order that another may cut his throat, then both of them are principals in the first degree. In **R.Vs.Searamanga (1963)** the court observed two or more principals can be prosecuted jointly when there is evidence to establish that they were in fact acting together.

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Principal in the second degree: A principal in the second degree is one by whom the actual perpetrator of the crime is aided at the time when it is committed. **For example,** a car owner sitting beside the driver who kills a pedestrian by his rash and negligent driving or a bigamist's second spouse if he or she knows the true facts. This subordinate principal may be rendering aid by keeping watch and ward near at hand or may be aiding by distracting someone's attention for facilitating the commission of the crime by the principal in the first degree. Thus it follows that the principal in the first degree and the aid must have a common purpose for the commission of the crime. But this does not mean that there should be an actual agreement between them.

Accessories before the fact: Hale stated that "an accessory before the fact is a person who being absent at the time of the felony committed, do the yet procure, counsel command or abet to commit a felony". According to the old authorities the following were the essential elements which made an individual an accessory before the fact:

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firstly, he must have known the particular deed contemplated, secondly, his must have either assented to it or approved of it. Thirdly, his view of it; was expressed in some form of encouragement to the principal to perform the deed and lastly, the first three elements came into existence before the offence was committed.

Apart from mere knowledge, there must be evidence of intentional encouragement to make an individual liable as an aider. This aspect of the liability, was discussed in **R.Vs.Taylot (1875).** The accused held the stakes for a prize-fight in course of which one of the pugilists, was killed, **Cockburn C.J.** Observed "I do not think that mere consent to hold the stake, can be said to be such a participation as it necessary to support the conviction". In **R.Vs.Bullock (1955)** the accused was convicted as accessory before the fact for supplying the burglars with a car in order to effect a burglary.

If the crime is committed in manner different from that which the accessory had advised will not relieve him from the liability for it. To illustrate when A incites B to poison C, instead B shoots C to death, nevertheless A is liable as an accessory before the fact to G's murder. Under certain circumstances the crime committed may not come within the terms of the incitement so as to make the inciter legally responsible **R.Vs.Saunders and Archer (1516)** is an illustrative case. Saunders, the principal offender consulted his friend archer for the ways and means to kill his wife. Archer advised him to poison an apple and give it to his wife. Saunders did so, but the wife after taking a bite gave it to their child, who ate it and died. Saunders could not prevent the tragic end to his child though he dearly loved it. Saunders was convicted for murder but Archer was not made liable as an a bettor as the

consequences were different from those which he anticipated from his advice.

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Accessories after the fact: An accessory of this type is an individual who knowing that a crime has been committed by the principal in the first degree shelters and protects him to elude justice. In other words he intentionally conceals a fugitive murderer of helps a convicted murderer of escape. A wife is exempted from such a liability when she shelters her husband, as it is her duty to aid her husband. But the husband does not enjoy such an exemption.

4.2 VICARIOUS LIABILITY

It is a cardinal principle of justice that an individual should only made responsible for the harmful consequences which are the result of acts committed by him. As commonly found this principle also has its exceptions. The two exceptions are vicarious liability.

Under exceptional surroundings in the olden days, when the actual wrong-doer was absconding the whole society or village was made to under go the punishment. This was known as collective punishment. **Even today** such collective punishments are resorted to in Malaya, Kenya, and Cyprus. The object of this rule was that the whole community should co-operate in informing and arresting the individual who had committed the offensive act.

This collective liability paved the way from the principle of vicarious liability. In this principle of liability, another individual who has not done the offensive act is made responsible for the harmful consequences of an act done by the offender. **To illustrate:** A is liable for the act of B committed against C though A is not a party to the act. The liability of a master for the torts of his servant is a good example,

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of vicarious liability. This principle is a well established one in the law of tort and the result of civil action is only an order to pay monetary compensation or damages. But this doctrine does not have much application in criminal law except in cases of express authorization, as the liability depends not only on the wrongful acts and their consequences but also on the mental attitude of the offender.

The common law rule with regard to the non-application of the principle of vicarious liability was enunciated in the case of **Ru.Huggins (1730).** Huggins was Warden and Barnes the Deputy Warden of a prison. Barnes confined a prisoner in a filthy cell. The filth and unhygienic conditions in the cell caused the death of the prisoner. Huggins pleaded that he was not responsible for the harmful consequences of the act committed by the Barnes, as he did not authorize Barnes to do it. The court accepted his defence and held Huggins not guilty of the offence of murder. Their Lordships observed though he was a warden, yet it being found, that there was a deputy he is not as a warden, guilty of acts committed under the authority of the deputy. He shall answer as superior for his deputy, civilly and not criminally. He is only criminally punishable who immediately does the act or permits it to be done. So that if an act is done by an under officer unless it is done by the command or direction or with the consent of the principal, the principal is not criminally punishable for it. Thus it is an accepted principle of common law that no individual is criminally liable for the act of another unless he has previously authorized the commission of the act or assented to it.

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Three exceptions to this common law principle. Firstly a master or a superior was held responsible, for the libel published by his subordinate or servant. This rule was enunciated mainly to make the News-paper Proprietors responsible for the acts of their subordinates. Later it was modified by Sec. 7 of the Libel Act. 1843.

Secondly, a master was and it still vicariously responsible for acts of public nuisance committed by his servant. A public nuisance is an act which causes obstruction or inconvenience or damage to the general public. The matter cannot defend himself by pleading that he expressly for bade the act. The owners of property have a duty not to injure the neighbours of the general public while using their property. For any breach of this duty the master is held responsible and he cannot relieve himself of this liability by delegating his authority to his subordinates or servants. For example in R.Vs.STEPHENS(1866) the accused on old and sick owner, was managing his quarry through a manager. He had instructed the manager not to dump rubbish from the quarry into the river nearby. Inspite of his instruction the rubbish was dumped into the river. The owner was held responsible for the offence of public nuisance by the Court which pointed out that the object of the prosecution was not to punish the accused but to prevent the nuisance from being continued.

This common law exception has not been incorporated in the definition of public nuisance in the Indian Penal Code in Sec. 268.

Thirdly, contempt of Court has been recognized as an exception. The rigour of this exception has been modified by the Administration of justice Act, 1960 in England.

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Under Indian law also vicarious liability is imposed on the master for the acts done by servants. (i.e.,) Under the Defence of India, Rules, the Indian Arms Act and the NDPS Act .

The Indian Penal Code and Vicarious liability: The definition of offences in the Indian Penal Code specifically provide that actus reus should be done by the offender himself to make him responsible for the violation. Thus for majority of offences under the Indian Penal Code, the principle of vicarious liability does not apply. But to this general rule there are three exceptions. They are Secs. 154, 155 and 156.

1) Sec. 154 makes the owner of a land responsible for the offence of rioting when he knows either by himself or through his agent or manager that rioting is being committed or has been committed on his land and does not report the matter to the police authorities, though he does not participate in the said rioting in any capacity. The object of this provision is that as the landholders possess the power to prevent the gatherings he should take steps to prevent the commission of the offence of rioting.

2) Sec. 155 provides for case where rioting is committed for the benefit of the landholder. This section is directed against individuals who encourage or connive at a riot. The offence is completed only when the riot is actually committed. Sec. 155 is wider than Sec. 154 as it includes an individual who claims any interest in the land or is a party to any dispute connected with that land. In the case of R.v. Prayaa (1810) rioting took place on the land of the accused and an individual was killed. The accused was charged and convicted under Sec. 154.

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3) Sec. 156 makes the agents and the managers responsible for the act mentioned in previous sections, in the absence of their masters.

The application of the doctrine of vicarious liability in criminal law has been much criticized. The jurists point out that the application of this doctrine may be described as actuated by necessity rather than desirability. The sole justification for the application of this doctrine is public policy. The reason being that masters and superiors are made to supervise property over their servants and subordinates respectively.

Modern legislation has to a large extent made the doctrine of vicarious liability a necessity in criminal law. But the spreading of this adious principle is curbed by the present tendency to use the general actus and mens rea provision in assessing the criminal liabilities of the offender.

4.3 STRICT LIABILITY

Crimes of strict liability are those in which the necessity of mens Rea is wholly excluded. The person is held responsible for his act even though he has no intention to do the act and there is no negligence on his part. The following are the instances.

- Offences against the state like "waging was against Govt of India" (Sec.121)
- Sedition (Section. 124A)
- Assaulting high officer (Sec. 125)
- Counterfeiting Indian Coin (Sec.232)
- Abduction (Sec.362)

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- ❖ Kidnapping (Sec. 359)
- ❖ Offences under the Food Adulteration Act Essential Commodities Act foreign Exchange Act, Customs Act etc.,

Cases of Absence of Mens Rea

Special circumstances relieve the offender from criminal liability. They favour infants Lunatics and person under the influence of delirium. In all these cases the element of mens Rea is absent.

- Accident (Section80)
- Necessity (Sec. 81)
- Infancy (Sec. 82 & 83)
- Insanity (Sec. 84)
- Intoxication against will (Sec. 85)

Under the Offences **Against Persons Act, 1861,** for the offences of kidnapping and bigamy; the liability is a strict one as the provisions are silent with regard to mens rea is required. (Refer to the cases of Prince Vs. Tolson, Wheat & stocks case discussed in Unit No:1). Strict liability is noticed in the case of public welfare. Offences provided in the Food Adulteration Act, Drugs Act, Road Traffic Act and Licensing Acts.

In the Indian Penal Code also the liability is strict in the case of offences against the State, offences involving counterfeiting and the offence of Kidnapping. Similarly the liability is strict one in the **Food Adulteration Act, Essential Commodities Act, 1955, Foreign Exchange Act, 1947,** and some provision in the Customs Act, 1961 etc.,(Refer to Indian Cases discussed, under statutory mens rea).

The reason for recognizing the principle of strict liability in public welfare offences are firstly, that these offences are

comparatively unimportant as they involve only fine, Secondly it would be difficult to procure adequate proof of guilty knowledge in such offences; thirdly, the special purpose behind the statute should be given effect to and fourthly, the offences are petty in nature and do not require mens rea.

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Recently, jurists have criticized the recognition of the principle of strict liability in criminal law. **Jerome Hall** in his essays in Criminal Science (1961) has aptly brought out the majority view by observing that "It is becoming increasingly recognized that strict liability has no place whatever in criminal law; indeed smacks of barbarism to punish the people despite the fact there is no reason for blaming them at all....May I add that I have never seen any evidence which supports the rationalizations made in support of such liability in penal law, specially that it raises standards and protects the public".

4.4 CRIMINAL LIABILITY OF CORPORATION.

Salmond defines a corporation thus; "a corporation is a group or series of persons which by a legal fiction is regarded and treated as a person". Thus in law, a corporation is fictitious and a separate person quite distinct from its members. Due to its artificial personality a corporation cannot but act through the agency of some representatives like the directors or the managers and give rise to doubts regarding the criminal liability of corporation.

The earlier view under English law was that a corporation cannot be made criminally liable for the following reasons. Firstly, the presence of the accused during a criminal trial being one of the cardinal requirements under the English Criminal procedure the corporation not having the a physical body could not fulfil this

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requirement. Secondly, corporal punishment also could not be inflicted on it for the same reason. Thirdly, one of the essential elements of a crime i.e., the mens rea could not be assessed as it does not have a mind at all. In addition to these reasons the prohibition for "an appearance by the attorney" instead of the accused himself also made it practically impossible to make the corporation liable criminally. These difficulties made an advocate to remark in 1682, "whether a court could have the common seal for punishing the corporation concerned".

Later, due to industrial and commercial development, it was felt that there would be grave public danger continuing to permit corporation to enjoy this immunity. Gradually courts disregarded the procedural difficulties and made the corporations liable for offences punishable with a fine. To begin with a railway was held liable for omitting to repair a road i.e.for a non – feasance, in **R.Vs.Birmingham** and **Gloucester Railway Co's Case (1840).** In 1886 an English Court held a railway corporation liable for obstructing a highway i.e. for misfeasance in **R.Vs.Great North of England Railway Co., (1886-9Q B.315).**

To get over the procedural difficulties of the artificial personality of a corporation the **Interpretation Act of 1889** was passed by the Parliament which provide that the word "person" in any enactment included a body corporate unless a contrary intention appeared. For an easy assessment of a liability of corporations Viscount Haldance enunciate a theory in the case of **Lennord's Carrying Co. Ltd. v. Asiatic Petroleum Co.Ltd., (1915).** The Asiatic Petroleum Co. Ltd., the Plaintiffs-respondents were the endorsees of the bill of lading for cargo sent by a ship, belonging to Lennard's Carrying Co. The cargo

was damaged by a fire in the ship. For the loss incurred the Asiatic Petroleum Co. sued the Lennard's carrying Co. The lower Court awarded damages to the Plaintiff which was confirmed by the Appellate Court. While delivering the judgement **viscount Haldance.J** observed " a corporation is an abstraction. It has no mind of its own any more than it has a body of its own, its active and directing will must consequently be sought in the person of somebody who for some purpose may be called an agent but who is really the directing mind and the will of the corporation. The Board of Directors are the brain of the company which is the body and the company can and does act only through them." Thus his Lordship enunciated his **organic theory.**

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By this doctrine the personality or the ego of the corporation is altered to that of the governing body of corporation and the will and intention of the corporation are taken to be that of the natural persons who are held responsible for the criminal act done in the name of the corporation.

The provision in the Interpretation Act of 1889 and the **doctrine of alter ego** were further supplemented by the provision of the Criminal Justice Act, 1925 which permitted corporation to be represented by representatives. Though these provisions brought about a change in the Judicial attitude towards the liability of the corporations still the predominant view is that a corporation could only be made criminally responsible for offences punishable with fines and not for offences punishable with corporal punishments. This view was emphasized in R.Vs.Cory Bros. & Co. 1926). In this case an indictment was preferred against the company which was a corporation for the offence of manslaughter. The facts were that the company

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authorized the errection of an electric fence to fence its landed property in order to ward off straying cattle but unfortunately a child playing close to the fence was electrocuted. It was held that the company could not be held liable as the offence of manslaughter is punishable with imprisonment. The decisions in **I.C.K. Haulage Ltd. (1944) and Director of Public Prosecutions v. Keamind Sussex Contractors. (1944)** have supported the above said view by pointing out that corporations could be made liable for acts of deception and defrauding for which financial penalties could be awarded.

Due to its fictitious personality a corporation cannot be made liable for offences like bigamy and perjury. In spite of these decisions the law regarding the criminal liability of corporations is not well defined in England.

Indian law also is not very clear with regard to the criminal liability of the corporation. Under the Code Section II in its definition of the word 'person' includes a company, or association or a body of persons incorporated or not. **The Madras High Court in Vadivelu Arsathiar Vs.R. (1943)** has held that a juristic person like Lord Venkatachalapathi is included in the definition of a person in the Indian Penal Code and the corporation is also a juristic person.

4.5 ABETMENT

The participation of a group of accused under section 34 and 149 is that of principal in the first degree. The chapter on abetment (sections 107 to 120) provides for the liability of principal in the second degree and accessory before the fact. The definition of abetment under section 107 provides the following three ways of committing 1) by instigation, 2) by conspiracy, and 3) by intentional aiding.

Abetment by Instigation: To instigate means to urge to goad, to incite, to provoke or to encourage an individual to do an act. Thus when the accused incites another accused to commit an illegal act, his act is that of abetment in the commission of an offence. Mere indifference does not amount to an incitement. For example, A tells B that he is going to murder C and B retors by saying that he can do whatever he likes. Later if A murders C, B is not liable as an abettor as the act was not done at the instigation of B, but if an individual silently assents to the at of the principal in the first degree he is responsible as an abettor. This line of reasoning was accepted in the case. **R.V.Mohit.** In this case a widow prepared herself for sati and was following the funeral procession of her husband. The accused also followed her and stood by her repeating 'Ram; Ram' and thereby actively connived in her act. The court held that the accused was encouraging i.e., inciting the widow to commit attempt to suicide and hence was liable as an abettor Instigation may be by misrepresentation also as provided in the illustration. Instigation may be made by means of a letter or telephonic massage also. As soon as the addressee reads the letter of listens to telephonic talk the instigation is complete. Thus the abettor should actively suggest or stimulate the principal in the first degree to do the act by any means or language either directly or indirectly. Instigation implies knowledge or the criminality of an act. In the case of **Gurba chan Singh, V.S.Salpal Singh.** The husband quarreled with his wife every day demanding more dowry. One day when the wife said that death would have been a relief for her, he had said that if she died that day it would be better. She committed suicide fire. The husband was guilty of abetment of suicide by instigation.

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2) Abetment by Conspiracy: Can be discussed under the topic of criminal conspiracy.

3) Abetment by intentional aid: Intentional aid can either be by and act or by illegal omission or by doing an act in order to facilitate the commission of the offence by the principal in the degree. A and B plan to murder V by poisoning. A procures the poison and hands it over to B, so that he can position. V.B in pursuance of the plot, administers the position to V in A's absence and causes his death " B is responsible as a principal in the first degree for the murder of V and A as an abettor.

When a public servant omits to do his duty and thereby aids in the commission of the offence, it amounts aiding by an illegal omission. **In Kali Charana's Case** the accused, a head constable, perceiving his subordinates were about to torture a suspect left the place so as not to be a witness of what took place. The court held that the accused being a public servant should have prevented the torture but instead omitted to do his duty and thereby intentionally aided the other by his duty and thereby intentionally aided the other by his omission.

Intentional aid may be by affording facility for the commission of the offence. In **Lingman V.Ramanna** the accused helped a gang of dacoits by providing them with food. Later this gang of dacoits committed dacoit in a nearby village. Held that the act of the accused could not be considered as affording facility for the offence of dacoity committed after some days. (Refer ot **Emperor V.Faiyaz Hossain).** The facility given must be either prior to or at the time of commission of an offence. In other words facility must be essential for the offence.

Section 180 defines an abettor. The section provides that an individual abets when he makes a person who is capable by law (i.e., capable of forming the necessary criminal intent or knowledge) of committing an offence, to commit an offence, or an act which would be an offence, with the same intention or knowledge which he has.

There are five explanations to this section which elucidate the liability of an abettor under various circumstances. **The first explanation** provides that when a private individual abets a public servant to commit an illegal omission, the act amounts to an abetment although the abettor may not himself be found to do that act for example when a policeman omits to arrest a person under a warrant by the instigation of a private person, the policeman is guilty of an illegal omission and the private person is guilty of abetting the policeman in his illegal omission although he is not bound to do that act.

The second explanation states that it is not necessary for the liability of the abettor that the abetted act should be committed by the principal offender. The offence of abetment depends only on the instigation being completed by the abettor and not on the consequences of the abetment. Hence the commission of the offence by the principal offender is not necessary for the assessment of the liability of the abettor. Illustration (a) is a good example for this explanation. It provides that the abettor is responsible for this abetment of the offence of murder though the principal offender refuses to commit it.

Explanation three points out that it is not necessary that the abetted person. i.e., the principal offender may be an innocent agent such as a child or a lunatic. Such an innocent principal offender is

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merely a tool and abettor is considered to be the real principal offender. The illustration make the provision in the explanation very clear.

The fourth explanation provides that as an abetment is an offence, an abetment of an abetment is also an offence. A good example of such a case is provided by the illustration to the Section. A abets B to abet C to murder Z. B accordingly instigates C to murder Z and C murders Z. Both A and B are responsible as abettors, as in consequence of their instigation the murder was committed by C and C is responsible as the principal offender. Even if the second is ineffective. A and B are liable as abettors.

[Explanation five will be discussed under the topic of criminal conspiracy]

Section 109 provides for the punishment in cases of successful abetment. When the abetted offences is committed by the principal offender, the abetment is referred to as a successful abetment. According to this section the abettor is punished with the punishment provided for the offence if no other express provision is made by the code. Thus the section makes it clear that the abettor is punished with the same punishment which is awarded to the offender. Though the participation of the abettor and the principal offender is different in a crime the punishment is the same.

Sections 110 to 113 provides for the variations in the liability of the abettor. Section 110 states that even though the act abetted is done with a different intention or knowledge by the principal offender, the liability of the abettor is based on his own intention or knowledge. To illustrate; if A asks a railway porter B to remove a certain luggage from the train, and the porter removes it believing it to be A's but

which in fact A intended to steal, A is undoubtedly liable for the abetment of theft though B being an innocent agent is not liable for his own act. This section should be read with Explanation 111 to section 108.

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Difficulties arise in the assessment of the abettor when he abets one act and another act is actually committed by the principal offender. Section 111 solves this problem for us. It states that the abettor is responsible for the resulting harm if the act is a probable consequence of the abetment and is done in the same manner and to the same extent. The act must have been done under the influence of the incitement or with the aid or in pursuance of the conspiracy which constituted the abetment. But if the principal offender commits another unconnected act to the one abetted then the abettor is liable only for the abetted act and not for the other.

Illustration (b) to Section III makes this point clear. 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 theft for theft was distinct and not probable consequence of burning. Illustration (c) to section 111 gives an example, where the abettor is liable for the other act as it is a probable consequence of the abetted act refer to ill, (c) to section 111 section 112 gives the punishment for the abetment under section 111. it makes the abettor punishable for each one of the offences committed by the principal offender.

Section 113 of I.P.C this section deals with cases where the act done ;by the principal offender is the same as that abetted but it causes a different effect than that intended by the abettor. Under such

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circumstances the section provides that the abettor is liable for the effect caused in the same manner and to the same extent, if he knew that the act abetted is likely to cause that effect. The illustration to section 113 clarifies this point by providing that when A instigates B to cause grievous hurt to Z, B inflicts grievous hurt as abetted and Z dies in consequence. A is liable for the offence of murder As he knew that the grievous hurt abetted was likely to cause death. The constructive liability of the abettor under section 111 depends upon the probability of the consequence of the abetment where as under section 113 it depends upon knowledge of the likelihood of the effect. An act may be precable without the abettor knowing it to be likely, but on the other hand the abettor may know it is likely and the effect may not be probable. Knowledge is subjective while probability is objective. Gour shows by the following illustration that the essentials of sections 111 and 113 may be present in a single case. A instigates B to take a loaded gun a waylay C armed with a sword and rot him. A also cautions B not to kill C on any account unless to save himself B attacks C where upon C draws his sword, B then fires and kills C and robs him. A is liable under section 111 as well as section 113, i.e., in as much as he knew that C's murder was probable and also that it was likely that B would kill C if resisted.

Section 114 deals with the liability of the principal in the second degree under the Indian Penal Code. After the abetment if the abettor is present in order to assist the commission of the offence by the principal in the first degree his participation is that of a principal in the second degree. The two essential requirements of this section are (1) a prior abetment and (2) the presence of the abettor at the scene of

commission of the offence. When those requirements are fulfilled, the abettor is deemed to have committed the offence constructively though it was actually committed by the principal in the first degree. Thus section 114 is another example of **joint or constructive liability.** The application of section 114 was discussed in **the case of Krishna Swami Naidu and another (1929).** After a wordy quarrel Krishna Swami Naidu the second accused asked his son the first accused to teach a good lesson to the him. The first accused brought an aruval and taught a good lesson by inflicting grievous injuries. The first accused was tried and convicted. Under section 326 for grievous injury. The second accused was charged under section 326 read with section 114, as he was an abetto, was present when the principal offender committed the offence. The trial court convicted him self under the above said sections and sentenced him to 4 months rigorous imprisonment. On appeal the appellate court pointed out that there was no evidence of prior abetment to bring the liability of the accused under the purview of section 114.

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The constructive liability under suction 114 should be distinguished from that of section 34 and 142. The charactrastic feature of section 34 the presence of common intention among the accused where as under section 149 it is the common object among them. Prior abetment becomes the distinguishing feature of the constructive liability under section 114.

If the principal offender does not commit the offence abeted then the abetment is referred to as an unsuccessful abetment. The punishment for unsuccessful abetments are provided under sections 115 and 116. **Section 115 of IPC** deals with cases where the offence

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abetted is punishable with death or imprisonment for life i.e., serious offences. The punishment provided for such an unsuccessful abetment is imprisonment of either description for a maximum term of seven years and also liable for fine. The latter part of this section enhance the punishment to a maximum of fourteen years if bodily injury is caused to the victim.

Section 116 of IPC provides for the less serious offences. The abettor is punished with one fourth of the maximum punishment provided for that offence and also fine. The second paragraph of this section deals with cases where public servants are either abettors or principal offenders and the punishment provided is half of the longest term of punishment of the offence concerned.

When an abettor abets a group of more than ten persons, his abetment comes under the purview of section 117. This section focuses it attention on the number of persons abetted and not the kind of offences abetted. The light punishment of three years maximum provided by this section makes it inapplicable in cases of serious offences like murder, robbery, dacoity etc.

Section 118, 119 and 120 deal with abetment committed by concealment of the offensive activities of the principal offenders. When an individual voluntarily conceals by an act or by illegal commission the existence of a design to commit such an offence, or a design in order to facilitate the commission of such and offence, he is liable for an abetment under these sections. Section 118 deals with abetment of offences punishable with death or imprisonment for life. When the offence is committed the punishment is a maximum of seven

years imprisonment and fine. If the offence is not committed the punishment is maximum of three years and fine.

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Section 120 deals with such abetment of offences punishable with imprisonment less serious offence if the offence is committed the punishment is one fourth maximum punishment provided for the offence concerned. If not committed the punishment is one eight of the maximum punishment given for the offence. Section 119 provides for similar abetments committed by public servants. If the offence is punishable with death or imprisonment for life, the punishment is a maximum of ten years. Where the offence is punishable with imprisonment alone half of the maximum punishment or both. If the offence is not committed one fourth of the maximum imprisonment is given for the offence. The punishment for public servants in enhanced because it is their duty to prevent the commission of offence. Such concealments are referred to as 'Misprison' under English law.

Section 108 A was added by an Criminal law Amendment Act, 1898 in order to provide for the abetment of an offence outside India. The section reads "a person abets an offence within the meaning of this Code, who in India abets the commission of any act without and beyond India which constitute an offence if committed in India". Thus this provision brings under the Indian Penal Code, offences committed beyond the territorial and extraterritorial limits of India when the abettor is found within the limits of India. The illustration clarifies this aspect of the law but the word 'Goa' should be substituted with any other foreign country.

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4.6 CRIMINAL CONSPIRACY

Criminal conspiracy is defined as an agreement between two or more persons to do, or cause to be done anything illegal or to do a legal act by illegal means on section 120 A of the Indian Penal Code. This definition has been adopted from the observations made by **Willes. J. in Mulchay V.R. (1868).** Willes.J. observed a 'conspiracy consists not merely in th intention of two or more but in the agreement of two or more to do an lawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable.

The provision under section 120A was inserted by the Amending Act of 1913. Till this amendment conspiracy was provided in a supplementary manner is sections 21A and 107 cl. (b) i.e., in the case of offence against the State and abetment. Except in respect of the offences particularized, conspiracy per se was not an offence under the Indian Penal Code.

The ingredients of the offences of criminal conspiracy 1) an agreement between two or more persons; 2) to do an illegal act; 3) to do a legal act by illegal means; 4) an overt act done in pursuance of the conspiracy.

These ingredients were accepted as the essential ingredients by the House of Lords in the case of **Board of Trade Vs. Owen, [1957] the first essential** requirement is that there must be two persons to constitute conspiracy as the word conspire means to breathe together. Therefore it necessarily follows that if two are tried for conspire act and one is acquitted, then the other also must be acquitted. In **Dharmasena Vs.R. (1951)** recent **English case,** it was observed "it is a well established law that if two persons are accused of conspiracy and one is

acquitted the other must also escape condemnation. Two persons atleast are required to commit the crime of conspiracy, one alone cannot do so". This essential emphasizes the fact that unless one individual agree with the other he cannot be convicted on the basis that he come to an agreement.

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The second essential is that there must be an agreement between the accused to commit the illegal act. In **Mukerji V. Emperor** the court held that the essential ingredient of the offence is the agreement to commit the offence. In **Famnoth Madho Prasad and other v. State of Madhya Pradesh (1963)** the Supreme Court expressed a similar view. The accused were charged and convicted under section 302 read with sec.120B, and 34 for murdering the deceased by shooting. The Supreme Court pointed out that as there was no evidence of any premeditated plan or pre arranged plan by the accused in murdering the deceased, the liability cannot be brought under section 84 for constructive liability. Further, the mere fact that all the accused were seen at the time of firing could not be held sufficient to prove an agreement to make them all liable for conspiracy. Hence the liability in this case was considered to be individual liability. [Refer to **Prasad Rao and other Vs. State of Andhra Pradesh (1970).**

The third and the fourth essentials can be discussed together. The evidence of an overt act is not necessary if the agreement is to commit an illegal act as the agreement itself will prove the guilt of the accused. But an agreement to commit a legal act by illegal means must be proved by an overt act as otherwise the agreement would be only for a legal act which is not prohibited by the Indian penal code.

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In **Swamirathnam V. State of Madras (1957)** the Supreme Court observed that all the conspirators would be liable for criminal conspiracy to cheat though it has been spread over several years as it would be considered a single transaction.

Where the accused husband harboured main accused persons after coming to know about their involvement in offence that itself is not sufficient to conclude that he was member of conspiracy.

(Rajiv Gandhi Murder Case) Refer:- Gandhi Murder Case.

The association of accused with one of main accused or even his knowledge about conspiracy would not make him conspirator as the agreement in sine qua non of offence of conspiracy. Refer to **State of Tamil Nadu Vs. Nalini Supreme Court 1999 Cr. L.J.3124 (SC)**

Sections 120B provides for the punishment of criminal conspiracy. If the conspiracy is for an offence punishable by death or imprisonment for life or for a term of two years and above, the conspirators are punished as abettor in other cases the maximum term of imprisonment is six months or a fine or both.

Assassination of Mrs. Indira Gandhi case

One of the 2 actual killers and 2 conspirators were tried one of the conspirators away from the scene of the crime was acquitted as his movements showed that there was no agreement between him and the other accused. But the other conspirators were associated with the actual crime and were planning something secret. This constituted prima facie evidence of conspiracy. All of them were punished for the crime.

Apart from this provision for criminal conspiracy, Section 107 cl (b) provides for conspiracy by abetment. For an offence under this

clause the essentials of the offence of criminal conspiracy must be pleaded by an abetment. The presence of prior abetment distinguishes the provision under section 107 cl. (b) from section 120A. explanation V under section 108 makes it clear that for an offence under section 107 cl. (b) it is not necessary that the whole conspiracy must be known to all conspirators involved in the conspiracy. In Brasay and others (1961) the Supreme Court observed that for criminal conspiracy also it is not necessary that all the conspirators must know each other or that all of them should have committed the individual offensive acts.

120B Conviction of a Single Conspirator

When act of a conspiracy of many conspirators are involved and one except all are acquitted, then one and only conspirator cannot be punishable, **Fakhruddin Vs. State of M.P., AIR 1967 SC 1326, 1967 Cr. L.J.1197.**

Tapandas Vs State of Bombay AIR 1956 SC 33, 1956 Cr. L.J. 138, 1956 SC 186. Section 120-B and 420 criminal conspiracy scheme by State Government.

Where the report of State official was based on surmises and conjectures and runs counter to expert evidence there it was clearly unreliable and inadequate to establish charges against accused. Hence acquittal of accused need not to interfered with state of **Himachal Pradesh Vs. Jailal 1999 Cr. L.J. 4294 SC.**

Thus the provision for the offence of criminal conspiracy also is a good example of joint liability.

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Check your progress

1. Different between the English Law and Indian Law in joint liability.

2. Common intention to murder-Discuss.

3. Short notes on Abetment by Conspiracy.

4. Define Strict liability.

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4.7 Summary

Under the English Law persons connected with the commission of crime are divided in two categories (i) those who participate in actual commission of the crime, called principal and (ii) those who in any way assist the execution, called accessories. The Principals are discussed in Sections 34 to 38 and accessories in Sections 107 to 120. Here no person can say that he is responsible only for what he himself did but his responsibility will be for those consequences that are direct results of the criminal intention or object of the group.

Sections 120-A & 120-B were added to the Indian Penal Code by the Criminal Law Amendment Act, 1913 to fill the gap in Section 107 dealing with abetment. The amendment of 1913 was, therefore, designed to assimilate Indian law to English law with additional safeguards that in the case of conspiracy other than a criminal conspiracy some overt act is necessary to bring the conspiracy within the purview of the criminal law.

4.8 Answer to check your progress :

Question No 1: Refer 4.1.

Question No 2: Refer 4:1.

Question No 3: Refer 4.5.

Question No 4: Refer 4.3.

4.9 Key Words :

Vicarious liability – done or suffered by one for another man Act.

Conviction – the convicting of a person for an offence.

Assassination – the Act of murdering for political reasons.

Plot – conspiracy

Abettor – one who abets

Abet – incite or help

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4.10 Model Questions :

1. Distinguish between the common intention and common object.
2. What is the abetment? What are its different forms?
3. Define Criminal conspiracy. What are its ingredients?
4. Who is an abettor?

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Unit-5

JURISDICTION- PUNISHMENT

Introduction :

In this chapter we discuss about the operative jurisdiction of the Indian Penal Code. Secohdly we observe the importance of the interpretation of the Criminal Law and precedence, it is very useful for the understanding the real criminal law. Extradition is a proceeding, relating to the criminal law territorial Jurisdiction.

"No Punishment, No Crime" that is a general Principle of the Penal Laws. So we discuss about the sentencing system under the Indian Criminal Law, History of Punishment and theories of punishment. Finally one of the major parts of the punishment, Capital punishment namely death penalty, broadly discussed with Indian Case Laws.

Unit objective :

- ❖ To understand the territorial Jurisdiction of the Indian Penal Code.
- ❖ To observe the Immunity against the Indian Penal Code.
- ❖ To study the extraterritorial jurisdiction.
- ❖ To know the system of punishment under the Indian Penal Code.
- ❖ To discuss the death penalty in India.

Unit Structure :

5.1 General Principles of Criminal Jurisdiction

5.2 Interpretation of Criminal law

5.3 Extradition

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5.1 General Principles of Criminal Jurisdiction

Jurisdiction is the extent or limit within which a State can exercise its legal authority. According to the Principle of International law, generally, a state exercises jurisdiction over such person and property as are within its territory and rarely beyond its territorial limits. Thus, the Jurisdiction of a State is territorial as well as extra territorial.

Territorial Jurisdiction: Criminal offences are tried by the courts within whose jurisdiction the offence is committed. The Privy Council has emphasized this aspect in Sirdar Gurdhal Singh Vs. Raja of Feridkot (1894) by observing that "All crimes is local the jurisdiction over crimes belongs to the country where be commits the crime."

Section 1 of the Indian Penal Code provides that it extends over the whole of the landed territory of India except the State of Jammu and Kashmir. The term "India" is defined under Section 18 of the code to mean the territory of India excluding the State of Jammu and Kashmir. Article I of the Constitution of India lays down that the territory of India shall comprise a) the territories of the States b) Union territories specified in the First Schedule and c) such other territories as may be acquired section 2 of the code enacts that "every person shall be liable

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to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof which he shall be guilty within India". These provisions make it clear that every person is liable to punishment for offences punishable under the code committed within the said territories of India. The phrase every person, points out that the offender may or may not be a citizen of India. He may be a subject of a foreign State like England, United States, Russia or Pakistan. In this respect, the Code makes no distinction between an Indian subject and a foreigner who enters Indian Territory. The phrase "every person" was interpreted in the following manner by the Supreme Court in **Mobarak Ali v. State of Bombay, 1957.** The facts were that the accused a Pakistani national residing at Karachi made false representations to the complainant at Bombay by letters, telegrams and telephonic talks and as a result of which the complainant parted with money to the tune of over five lakhs to the agent of the accused at Bombay. By Extradition proceedings the accused who was found in England was brought to Bombay and was tried and convicted for the offence of cheating under section 420 of the Code. On appeal the High Court confirmed the conviction. On a second appeal to the Supreme Court the main defence was that the trial was not legal as the Indian courts had no jurisdiction over the accused, he being a foreigner who was beyond the territory of India at the time of commission of the offence. The Supreme Court pointed out that the entire offence under Section 420 had been committed by the accused at Bombay though he was not corporally present. In India at the time of its commission and once the presence of the accused in India at the time of its commission and once the presence of the accused in India is legally secured, the

trial Court at Bombay had jurisdiction over him. Hence the Supreme Court confirmed the conviction of the accused by the lower Court.

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The plain meaning of the phrase 'every person' is that it comprehends all person without limitation and irrespective of nationality allegiance, rank, status, caste, colour or creed. But this provision has a few special exemptions by virtue of Article 361 (2) of the Indian constitution and some well recognized principles of International law. Such exempted individuals are 1) The President of India or the Governor of a State. 2) The Chief Justice and other judge of the Supreme Court and the High Courts 3) Foreign Sovereign and Ambassadors 4) Warships of Foreign States 5) Alien Enemies 6) Former Rulers of States.

1) The President of India or a Governor of a State: The immunity given to the President and Governors by Articles 61 of the Indian Constitution is based on the quoted English principle that the "King can do no wrong". Blackstone in his Commentaries ascribed the King's unquestionable immunity to an imaginary perfection in his will, which rendered the sovereign incapable of mens rea. But the legal basis is that the King or the head of a State is immune from punishment because no court can have jurisdiction over him as he himself is the superior trial authority.

2) The Chief Justice of the Supreme Court, the Chief Justice and Judges of the High Courts: The chief justices and Judges also enjoy immunity from criminal trials before the ordinary criminal courts in order to safeguard the independence of the Judiciary. But this immunity is a qualified one as their liability can be tried and determined by a Special procedure provided in section 306 of the

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Government of India Act, 1935 and is continued at present by relevant provision under the Indian Constitution. Such a special treatment is obviously dictated by high policy.

3) Foreign Sovereigns and Ambassadors: A Foreign Sovereign is treated on an equal basis with the local Sovereign, hence the same immunity is extended to him. Such an immunity of the Foreign Sovereign is extended to his Ambassador who is accredited to their Foreign country and diplomatic agents as the representative of their independent and sovereign State. The immunities of an Ambassador and diplomatic agents are enjoyed by their families, secretaries, messengers and servants.

4) Warships of foreign States: Warships of foreign States are exempt from the Jurisdiction of the State within whose territorial water they are. The domestic courts, in accordance with principles of International law, will accord to the ship and its crew certain Immunities.

5) Alien Enemies: All aliens whether friendly or hostile come under the purview of the domestic jurisdiction. But in respect of acts of war, alien enemies cannot be tried by the local criminal courts. Similarly foreign armies also are exempted from local jurisdiction.

6) Former Rulers of States: The former rulers of princely States were exempted from the jurisdiction of criminal courts by the relevant privileges of the old Criminal Procedure Code of 1893. But those privileges have been abrogated 1971 by the Abolition of Privy Purses Privileges Act.

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Generally for the purpose of jurisdiction the territory of a country comprises its land and internal waters such as rivers, lakes and canals. Obviously a country did not have any jurisdiction over the sea adjourning its shores. This principle with regard to territorial jurisdiction gave rise to a controversy in **R.V.Keyn (1876 2) Ex. P.68** commonly known as the **Fronconia Case**. The facts were that the German ship Franconia while passing within three miles of the shore of England ran into a British ship causing the death of a passenger, which amounted to the offence of manslaughter. Mr. Keyn, the Captain of that ship was tried for the offence of manslaughter. The question arose whether an English Court had jurisdiction over a foreigner in command of a foreign ship. It was held by the majority that in the absence of a statutory enactment, the English criminal court has no power to try such an offence. The lacuna in the legal principles with regard to jurisdiction pointed out by this decision was filled up by the English Parliament by enacting the Territorial Waters Jurisdiction Acts of 1873, which extended the Jurisdiction of English Courts to three miles into sea from the shore. The reason for fixing the three miles limit from the coast was that till the end of the 18th century the range of artillery was about three miles. This three miles extension is known as the territorial waters or the maritime belt. Now this three mile limit is changed to 12 nautical miles.

The air space above a country is subject to its control and a country has the right to prohibit the disturbance of its space by wireless communications from foreign stations.

Extra-territorial jurisdiction: Sections 3 and 4 of the Code provide for the extra territorial Jurisdiction of the Penal Code. Section

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3 provides that when a person is liable under any Indian law commits an offence beyond India, then it is considered as an offence committed within India. Section 4 reads that the provisions of this code (applies to any offence committed by (1) any citizen of India in any place without and beyond India. (2) any person or any ship or aircraft registered in India wherever it may be (3) The explanation points out that the word Offence includes every act which is punishable under this Code though Committed outside India. Thus sections 3 and 4 extend the jurisdiction of Indian Courts over citizens of India beyond the territorial limits of India and for offensive acts committed on Indian ships wherever they are. This extended jurisdiction is knows as extraterritorial Jurisdiction. This extension is in accordance with the Law of Nations.

ILLUSTRATION

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

Extra territorial Jurisdiction may be exercised by the Indian Courts for offences committed beyond the territories of India either in land or in high seas.

The term 'Citizen of India" means every person who has his domicile in the territory of India and who was born in the territory of India or either of whose parents was born in the territory of India or who has been ordinarily resident in the territory of India for not less than five years immediately proceeding the commencement of Indian Constitution. The accused must be a citizen of India at the time of committing the offence and not an individual who has become a citizen subsequently.

For offences committed on land: Only Indian citizens come under the purview of this jurisdiction. The term Citizen of India according to the Indian Constitution and section 188 of the Criminal Procedure Code means ever person who has his domicile in the territory of India at the commencement of the Constitution and (1) who was born in the territory of Indian, or (2) either of whose parents was born in India, or (3) who has been ordinarily resident in the territory of India for not less than five years immediately proceeding the commencement of the Constitution.

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The meaning of the word "found in section 188 of the Criminal Procedure Code was discussed in the case of **V.D.Savarkar (1910-35 Bom.225).** It was laid down clearly by the court that even when an accused is brought to a place against his will he is considered to be 'found' there. With regard to citizenship, it was pointed out by the Supreme Court in **Central Bank of India v. Ram Narain A.I.R., 1955** that the accused must be a citizen of India at the time of committing the offence and not an individual who has become a citizen subsequently. A similar view has been taken by the House of Lords in **Joyee v. Director of Public Prosecution (1946).**

For offences committed on High Seas: The jurisdiction to try offences committed on high seas is known as admiralty jurisdiction. High Seas are considered to be as no man's place based on the principle that the ship is a floating island belonging to the nation whose flag she is flying. The admiralty jurisdiction extends: (1) over offences committed on Indian Ships. (2) over offences committed on foreign ships in Indian territorial waters and (3) over pirates.

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(1) offences committed to Indian ships: The admiralty jurisdiction exercised by the English courts has been conferred on the Indian court by the charters of the High Courts and certain British statutes such as the Admiralty Offences (Colonial) Act, 1849 (extended to India in 1860) colonial courts Act, 1890 read with the Indian Colonial Court Admiralty Act 1891 and the Merchant Shipping Act, 1894. The Merchant Shipping Act, 1894 has been replaced and repealed by the Indian Merchant Shipping Act of 1958.

Since offences committed on high seas were tried only by the Admiralty Courts, the ordinary criminal Court had no jurisdiction over such offences. But by virtue of the Admiralty Offences Act 1849 and the Merchant Shipping act, 1894, such offences are triable in England as well as in India upto the Amending Act of 1958, by the ordinary criminal courts, as if they were committed within the Local Jurisdiction of those courts. The High Courts of Bombay, Calcutta and Madras have the same Admiralty Jurisdiction as that of a High Court of Admiralty in England, which they inherited from the late Supreme Courts. The India Merchant Shipping Act of 1958 has omitted certain provisions with regard to a admiralty jurisdiction which has made the law in this aspect a bit vague and doubtful. This vagueness and the doubts regarding the procedure in these cases may be resolved by enacting a comprehensive legislation dealing with Admiralty Jurisdiction.

2) Offences committed on Foreign ships in Indian Territorial Waters: when an offence is committed on a foreign ship anchored or found in Indian territorial waters, the Indian court (which had jurisdiction) as well as the foreign court whose flag she flies has

jurisdiction. In the Case of **Thomas Allvin** the accused an English sailor stole three bundles of tea from the British vessel in which he was sailing, while it was lying in a river in China, held that the offence came under the purview of the admiralty jurisdiction of the English courts and also under the territorial jurisdiction of Chinese Courts.

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3) Over Pirates: Piracy is regarded as a heinous offence by all the nations of the world. Piracy is of two kinds, namely, **piracy jure gentium** know as piracy at common law, and piracy under municipal law.

Piracy jure gentium is described by Sir Charles Hones in **R.V.Joseph** Dawson as "Piracy jure gentium is a sea term for robbery, piracy being a robbery committed within the jurisdiction of the Admiralty". Stephen in his Digest of Criminal law defines Piracy thus" every one commits piracy by the Law of Nations, who without legal authority from any State and without any colour of right". (a) seizes or attempts to seize any ship on the high seas or within the jurisdiction of the high Admiral by violence or by putting those in possession of such ship in fear or, (b) attacks such ship and takes and carries away any of the goods thereon by violence or by putting those in possession of such ship in fear or (c) attacks or attempts to attack such ship with intent to take and carry away any of the goods thereon by violence or by putting those in possession of the ship in fear or (d) attacks such ship or offers violence to anyone on board therefore or attacks or attempts to attack such ship with intent to offer violence as aforesaid.

In re Piracy Jure Gentium (1934 A C 585) piracy was defined as "an armed violence at sea, which is not an act of war. It is an

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offence by International law and may be tried by the courts of any country, although it was not committed within its territorial water".

The following are the facts of the case: A number of armed Chinese nationals in two Chinese ships attacked a Chinese cargo vessel. The master of cargo vessel tried to escape but the ships chased the vessel. At this time two steamships and military ship which came that way intervened and after a hot pursuit took the two Chinese ships. When they were charged for piracy the High Court at Hong Kong came to the conclusion that a completed robbery was necessary to support a conviction for the offence of piracy and therefore the accused ships were acquitted. The matter was referred to the Juridical committee and their Lordship observed that "a frustrated attempt to commit a practical robbery is equally **Piracy Jure genetium.**

The other form of piracy under municipal law covers acts of violent robbery or acts of hostility on sea by British subjects under the colour of any commission, or by a commander or by a master of a ship either during war or in times of peace. The type of piracy is a felony punishable by imprisonment for life.

5.2 Interpretation of Criminal law

Criminal law provide for punishment for disobedience of the law by the offender by making him liable to imprisonment, fine, forfeiture, or even death. A statute enacting an offence or imposing a penalty is strictly consented.

In ancient days minor offences were used to be dealt with brutal sentence. The rule of strict construction of Penal statutes was evolved as reaction to the cruel nature of offences in these days.

The Courts must adopt that construction which shall suppress the mischief and advance the remedy – Lord Denning put it in this manner "when a defect appears a Judge cannot simply fold his hands and blame the draft men. He must set to work on the constrictive task of finding the intention of parliament.

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Smith Vs. Hughes (1960) I.W.L.R.830. The Interpretation of Section 1(1) of the Street offences Act 1959 was in question. The appellant contended that, attracting the attention of passers by from balconies or windows by prostitutes was not an offence within the preview of the Act, "For my part", said Lord Parker C.J. "I approach the matter by considering what is the mischief aimed at by this Act. Everybody knows that it was an Act intended to clean up streets, to enable people to walk along the streets without being molested or solicited by common prostitutes. Viewed in that way, the precise place from which a prostitute addressed her solicitations to somebody walking in the street became irrelevant.

Section 361 of I.P.C. speaks about the Kidnapping from lawful Guardianship. Our Supreme Court Interpretate the words "taking" and "allowing" along with facts of this case and give the Acquittal to the Varatharajan **(S.Varadarajan Vs. the State of Madras (AIR 1965 SC 942)** see the Chapter Kidnapping.

5.3 Extradition: Extradition proceedings are related to the legal principles of jurisdiction. When a criminal after committing an offence in a foreign State which is friendly with India, seeks asylum in India, he can be sent back on proper requisition to the State when the offence was committed to stand his regular trial there. The requisition of the foreign State is enquired into in a form of proceedings known as

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extradition proceedings. The extradition proceedings are governed by the provisions of the Indian Extradition Act of 1903, which has now been revised and re-enaced as the Indian Extradition Act XV, 1953. The fugitive offenders can be surrendered only to a foreign State which has entered into extradition treaties with India. Political offenders are exempted from extradition proceeding by the decision in **In re Castoni's Case. In Ram Babu's çase (1960)** the Supreme Court held that after independence the extradition treaty between Britain and Independent India alone had legal effect and that the other treaties of extradition between Britain and the princely States lost their legality.

5.4 History and theory of Punishment

Punishment is the suffering in person or property inflicted by the state on the offender who has been adjudged guilty of a crime under the established criminal law. It is the social reaction for the violation of the rules of the society which are made for its preservation and peace. Administration of punishment always involves the intention to produce some kind of pain which may be physical as in whipping or mental as in the case of imprisonment. The kind and amount of punishment varies depending on the nature of the offence and personality of the offender.

Penal treatment is based on the following four theories (a) Retribution, (2), Deterrence, (3) Prevention, and (4) Reformation.

(1) Retribution: Retribution (meaning relation) satisfies the feeling of private vengeance and was common in ancient days. According to this theory of punishment when a man injured another it was considered to be the right of the injured person to take revenge on the person causing injury by inflicting a similar injury. This type of a

reaction was formulated in Hammurabi's Code as 'an eye for an eye, and a tooth for a tooth'. Salmond in his book 'Juris prudence' observed conception of retributive justice still retains a prominent place in popular. It has been pointed out by the recent royal Commission on Capital Punishment in its report that the term retribution is used in more than one sense in modern times thus, in the first sense, the idea is that of satisfaction by the state of the wronged individual's desire to be avenged; in the second, it is that of the State its disapproval of the breaking of its law by punishment proportionate to the gravity of the offence".

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(2) Deterrence: The object of the theory of deterrence is to frighten or discourage the other prospective criminals from committing the offence by making them realize the suffering undergone by the criminal as a punishment. In other words the offender is punished so that he will be held up as an example of what happens to those who violate the law the assumption being that this will curb the criminal activities of the prospective offenders. It has also been felt that the first offender would be deterred by punishments from repeating his criminal activities. The punishment's provided in the Indian Penal Code are based on the theory of deterrence.

(3) Prevention: According to this theory a criminal should be prevented from committing another offence by punishing him. This purpose is served by the punishment of imprisonment. In addition to this, the public are also protected from the criminal activities of the offender. The preventive element of criminal justice is also stressed by the punishment of attempts and criminal conspiracies.

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(4) Reformation: Reformation is defined "the effect to restore a man to society as a better and wiser man and a good citizen in the Prison Commission's Report of 1912. This theory is also referred to as the Corrective theory. The advocates of this theory emphasise that endeavour should be made to rectify the criminal propensities of a criminal by curing him of his mental and environmental drawbacks. By reformation there should be a moral imprisonment, sharpening of intellect and a development of the sense of honesty. In the present century increasing importance has been given to this theory of reformation in almost all the civilized countries of the world. This theory has worked with comparative success in the case of juvenile offenders.

5.5 Punishment under Indian Penal Code

The code provides under section 53 six kind of punishment which can be inflicted on the offender. They are (a) Death penalty, (a) Imprisonment for life (3) Penal servitude (abolished in 1949) (4) Imprisonment – Rigorous (or) simple (5) Forfeiture of property (6) fine.

(1) Death Penalty: (Capital punishment): The sentence of death is the extreme penalty under the Code which is awarded for the serious offences like murder, aggravated from of dacoity and offences against the State. Reformists have always been of the view that capital punishment is a barbaric of the past. Though there are vehement arguments both in favour and against death penalty, slowly the pendulum has swung against it. It has been abolished in several European countries and in some of the states in the United States of America. In England it has been retained for serious offences like treason. Under the Indian Penal Code also it has been provided for the

offences against the State, murder and some aggravated forms of offences like dacoity and perjury.

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(2) Imprisonment for life: Next to death penalty, life imprisonment is a severe punishment. It has been provided for most of the serious offences like murder culpable homicide, aggravated forms of grevious hurt, robbery, dacoity and aggravated forms of certain property offences. A life imprisonment can be committed to a term not exceeding fourteen years under section 55 of IPC by the State even without the consent of the offender.

Section 55 & 302 Commutation of life imprisonment

In the present case though petitioner had been undergoing imprisonment for more than 17 years including remission yet Governments could not be regarded to have deducted sentence of rigorous life imprisonment under Section 55 or section 433 I.P.C. for a term not exceeding 14 years and therefore petitioner was held entitled to be released.

Section 57 sentence of life

A life sentence is for whole life but as it is not possible to the particular period of prisoner's death so any remission given as presents could not be regarded as a substitute for a sentence of transportation for the State of **M.P.Vs. Ratan Singh AIR 1976 SC 1552, 1976 CrLJ 1192 1976 Sec. Cri.428.**

(3) Imprisonment: Imprisonment is a confinement of a person in a prison or penitentiary by way of punishment. Such confinement need not necessarily be in the place prescribed for the purpose but can be in any other place. The requirement is that the individual liberty should be curtailed. Imprisonment can be either rigorous or simple.

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For the majority of offences under the Code, terms of imprisonment have been provided as punishment.

(4) Forfeiture of property: The sentence of forfeiture is of ancient British origin. Forfeiture of property was provided under sections 61 of the code and was operative till 1921 when it was abolished by Act XVI of 1921. There are however, three sections where under the offender is even now punished by a forfeiture of property. Those three sections are; 126, 127 and 169 of IPC.

(5) Fine: Fine is a financial penalty imposed on the offender especially in the case of less serious offences. Benthom in his 'Principles of Penal Laws' has pointed out the following advantages and disadvantages of the fine. The advantages are firstly, it has the striking advantage of being convertible to profit; secondly it can be regulated to the means of the offender, thirdly, it implies no infamy, fourthly, it is remissible so that complete reparation can be made for an unjust sentence and fifthly, it is popular. The disadvantages are, firstly it hits the family and the dependants who are innocent; and secondly it is not exemplary.

Section 63 lays down that in cases where no specific amount of fine is fixed, the amount of the fine is unlimited but should not be excessive. Section 65 provides that when the offence is punishable with imprisonment as well as fine, the imprisonment in default of payment of fine shall not exceed one fourth the maximum term of imprisonment fixed for the offence where the offence is punished with fine only, the imprisonment in default of payment of fine shall be simple and according to the following scale under Section 67:

	Fine	Imprisonment
1.	Rs. 50 or less	Two months or less.
2.	Rs.100 or less	Four months or less.
3.	Above Rs.100	Six months or less.

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Section 65 of IPC – provides for substantive sentence in default of fine.

Under section 65 of IPC a magistrate can order only one fourth of assigned sentence that too only in default of payments of fine, if sentence for default is more that $1/4^{th}$ of the original sentence that is liable to be set aside, **Ram Jas Vs. State of U.P., AIR 1974 SC 1811.**

Sections 71 to 75 deal with certain general provisions regarding punishments. Section 71 provides a limit to the punishment given when the offence is made up of parts and each part by itself forms a separate offence. In such cases the offender shall not be punished with punishment of more than one of such offences unless it be so expressly provided. The section also includes an offences which falls into two or more definitions or is made up of several acts which constitute separate offences, but when combined from a different offence and provides that in such cases the punishment should not be more than that for any one such offence. (Refer to illustrations).

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 below he might be imprisoned for fifty years one for each below. But he is liable only to one punishment for the whole beating.

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(b) But if, while A is beating Z, y interferes and A intentionally strikes Y here as the blow given to Y is not 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.

Contravention of Provisions Section 71

Where an offence falls within two or more definitions having separate punishments for that 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, **Puranmal Vs. State of Orissa, AIR 1958 SC 935.**

When the act of the offender, which fulfills the requirement, for several offences make the liability of the offender doubtful then the offender should be punished only for the lowest punishment provided. Section 72 deals with such cases.

Section 73 fixes the time duration for an order of solitary confinement. The following scale is given under the section: (a) time not exceeding one month if the terms of imprisonment shall not exceed six months; (b) a time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year, (c) a time not exceeding three months if the term of imprisonment shall exceed one year.

Solitary confinement is limited under Section 74 to a period of fourteen days at a stretch, if the term of imprisonment is less than three months, and if it is more than three months, the period is seven days at a stretch. The intervals between the periods should not be less in duration than the periods. Solitary confinement is limited in the above

said manner in order to reduce the deleterious effect of loneliness on the mental equilibrium of the offender.

Section 75 provides for an enhancement of punishment for offences punishable under Chapter XII i.e., offences relating to coin and Government Stamps and Chapter XVII i.e, offences against property with imprisonment of either description for a term of three years or upwards whenever the offender had been previously convicted for the same offences. The punishment can be enhanced upto life imprisonment or for a term of ten years.

The majority of sections under the Indian penal code provide for a maximum term of imprisonment but to this general rule Sections 397 and 398 are exceptions.

Section 397 provides for the offence of robbery or dacoity committed with deadly weapons with an attempt to cause death or grievous hurt and a minimum punishment of seven years has been awarded for the offence. Similarly when the offence under Section 397 is attempted, the punishment is not less than seven years, i.e. a minimum punishment has been provided in section 398.

5.6 Death Penalty- overview in India

The rarest of the rare cases doctrine leaving much to the judicial discretion has caused, inner conflict, in the minds of the Judges. The Apex Court laid down guidelines to identify the rarest of rare cases in Manchi singh's case (AIR 1983 SC 957). A five point formula was given to identify the rarest of the rare cases. These are (i) manner ii) Motive (iii) Anti-social Nature of Crime (iv) Magnitude of the Crime (v) Personalities of the Victim.

Space for hints

Check your progress:

1) What are the floating territories under the Indian Penal Code?

2) Different between the ambassador and High Commissions?

3) Sec 303 of the IPC.

a) Short down by the Supreme Court.

b) That Section violating the constitutional procedures

c) a and b is true

d) The above all statements are Falls.

4. How many types of punishments are prescribed under the IPC.

a) 3 b) 4 c) 5 d) 6

5. Section 73 of IPC Provides for the maximum limit for a sentence of solitary confinement to be.

a) 3 months b) 6 months

c) 1 year d) none of these.

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In **T.V.Vaitheeswaran Vs. State Tamil Nadu AIR 1983 SC 361)** the Supreme Court relying up on **Ediga Annumma Vs. State of A.P. (1974 SC 799)** delacs in execution of death sentence exceeding two years The controversy over death penalty is longstanding and Universal. Many countries have abolished the Death Penalty and a more to restore it is the Britain.

In India, constitutional validity of death penalty was questioned on the ground that it was violating of fundamental freedoms guaranteed u/Article 19 of the Constitution in **Jag Mohan Vs. State of U.P. (1973 AIR SC 497) and Rajendra Prasad Vs. State of U.P. (AIR 1979 S.C.996)** Our supreme Court held that death penalty in itself is not violative as the right to live is taken away in public interest. After Rajandra Prasad case – the Apex Court observed and awarded the rarest of rare cases policy in Bachan Singh's case (AIR 1980 SC 898) entitles the Petitioner to demand that the sentence be quashed and substituted with life imprisonment.

In **Mithu Vs. State of Punjab (AIR 1983 SC 473)** the Supreme Court because declared Sec. 303 I.P.C. was ultra vires. Because that section to be struck down as unconstitutional being violative of Article 14 and 24 of the Constitution.

5.7 Summary

The President, Governors, Chief Justice of Supreme Court, Chief Justice of High Court and other Judges of the apex Court, they are have a immunity against the Criminal Law by the virtue of the Indian constitution. High Commissioner and Ambassadors, Foreign warships, have also a immunity against the Indian Criminal Law.

State have a sovereignty and it is expressed in the view of granting punishment to the criminals. Each and every state have a penal laws, that object is to retrospective, prevent and reform the Criminals as well as give the deterrent effect to the general public. So the draft man, fix the various kinds of punishment in this Code.

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5.8 Answer to check your progress :

Question No 1: Refer 5.1

Question No 2: Refer 5.1

Question No 3: Refer Answer D

Question No 4: Refer Answer D

Question No 5: Refer Answer A

5.9 Key words :

Territorial – pertaining to land

Admiralty – Branch of British government – that controls the Navy.

Pirates – Sea robber

Extradition – The handing over of prisoner or a fugitive by one country to another.

Retribution – a deserved punishment

Servitude – slavery

5.10 Model Questions :

1. The Indian Penal Code is draconian in character as regards severity of punishments.-Explain this statement with the help of the kinds of Punishment Provided under the IPC.

2. Who are the persons exempted from the operation of the Indian Penal Code?

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3. Criminal Jurisdiction of the Indian Penal Code is territorial as well as extra territorial – Explain with reference to the leading case laws.

4. We must cure our Criminals, not to kill them -Discuss.

5. Offences for which death penalty may be given.

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UNIT-6

OFFENCES AGAINST THE STATE

Introduction:

The offences against the State comprised in chapter VI of the I.P.C. Chapter VII of the Indian Penal Code deals with the offences relating to the Army, Navy and Air force. Chapter VIII of the Penal Code deals with offences committed by a group of persons who disturb public tranquility.

First of all we discussed about the above three chapters, secondly we briefly discussed about the a) chapters IX & IX A, and X - offences relating to public servants and elections etc.,

b) Chapter XI and XVIII offences against public justice and forgery,

c) Chapter XII and XIII discussed the counterfeiting the coins and stamps fraudulent of weight & measure of the Indian Penal Code.

UNIT OBJECTIVES:

- To know the various kinds of offence against the state
- To understand the offences affecting Common well being.
- To observe the impact of special Criminal laws in the offence of Bribe and election related offences.
- To discuss the contempt of lawful authority of public servants.
- To study the offence of counterfeiting the coin, stamps and fraudulent use of weights and measures.

UNIT STRUCTURE:

6.1 offences against the State

6.2 Offences relating to the Armed Forces

6.3 Offences against Public tranquility

5.4 Offences Relating to Public servants

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6.5 offences Relating to elections.

6.6 Contempt of lawful Authority of Public servants.

6.7 Offences against Public Justice.

6.8 Offences Relating to Coin and Stamps

6.9 Offences relating to Documents and property marks.

6.10 Offences relating to weights and measures

6.11 Offences relating to public safety and convenience.

6.12 Summary

6.13 Answer to Check your progress

6.14 Key Words

6.15 Model Questions.

6.1.OFFENCE AGAINST THE STATE:

Chapter VI of the IPC deals with offences against the Sate. Law is the will of the State. The first and foremost concern of the State is to protect itself from disruption, and to provide for its own integrity. It views with grave concern acts designed to undetermine its authority. For the sake of convenient study, the offences against the State can be classified as follows:

1) Waging War (s. 121 to s. 123). 2) Assaulting the President or Governor (s.124). 3) Sedition (s. 124A). 4) Waging war against a power at peace with India and committing depredation on the territories of such power (s. 125 to s. 127) and 5) Permitting or aiding escape of, rescuing or harboring or suffering, escape of State Prisoners (s.128 to s.130)

1. Waging War (s.121 to 123).

Under sec. 121 (a) waging of war (b) attempting to wage war and (c) abetting to wage war are punished.

This section includes both insurrection from within and invasion from outside the State. From the illustration given to the

section if A joins an insurrection against the Government of India, he has committed offence under the section. Abetting the waging of war against the Government of India is not treason, but is an offence under this section. It is not the number of persons involved, but the object or purpose that is important. When several persons assemble and try to attain by violence any object of a general public nature, it amounts to waging of war against the Government, In other words, intention is more important; a deliberate and organized attack against the Government, forces with the object of overcoming the Government is waging war. The leading case on the point is **Mangan Lal Radhakrishnan v Emperor (1946);** in this case the accused and his followers, called **"Hindustan Red Army",** attacked a police station with about 20 and shot down 2 policeman. The Red Army had its own flag and badges. Held, the offenders were guilty under s. 121 since it was predetermined attack. The **Nagpur high court** laid down the following principles,(1) No specific number of persons is fixed under s. 121 (2) The number and the manner in which they were armed is not material. (3) The object of the gathering must be to attain by force and violence as an object of general public nature so as to strike directly against the Government. This is an essential requisite. (4) All those who take part in the unlawful act incur the same guilt.

Punishment for waging war against the Government of India is death penalty or imprisonment for life and also fine.

Conspiracy to wage war etc. (sec. 121 A) (1) Conspiracy to commit any of the offences under s. 121 and (2) Conspiracy to overawe the State or Central Government are punished under sec. 121 A. No overt act is necessary to commit the offence under the section. Engagement in a conspiracy to wage war against the Government is not but an offence under this section.

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Section 121 of the Indian penal code embraces conspiracy to organize a general insurrection and also a conspiracy to overawe the Central or State Government. But a conspiracy to change the form of the central or State Government, would not be an offence within the meaning of the section unless it is a conspiracy to overawe such Government by means of criminal force or show of criminal force. The expression overawe means more than the creation of a fear of apprehension. It signifies the creation of a situation in which the Ventral or State Government feel themselves compelled to choose between yielding to the force, or exposing themselves and the public to a very serious danger. The said danger need not be danger to life or body. It might include danger to public property.

By virtue of the explanation attached to s. 121 (A) seditious conspiracy is punishable as an offence. Thus the agreement itself is sufficient to constitute the offence, no over act being necessary. The punishment for conspiracy to wage war is imprisonment for life, or with imprisonment for either description which may extent to ten years, and also fine.

Under sec. 122 preparation to wage war against the Government of India is punishable with imprisonment of life or imprisonment of either description for a term not exceeding ten years and shall also be liable for fine.

Thus the combined effect of Secs, 121, 121 A and 122 is to make (a) Conspiracy, (b) preparation. (c) abetment and (d) attempt also punishable as actual waging of war. Because of the severity of the offence, framers of the Code thought it necessary to punish even the person involved in the beginning of a rebellion. It is with this view unlike other offences even the preparations in the case of offences against the State is made punishable.

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Sec 123 of the Indian penal code punishes those who conceal a design to wage war with imprisonment not exceeding ten years and also with fine.

2. Assaulting the President or Governor (s. 124): Under s. 124, it is an offence to assault President of India or the Governor of a state with the intent to compel or restrain the exercise of any lawful power.

3. Sedition (s. 124A): Whoever (1) brings or attempts to bring into hatred or contempt or (2) excites, or attempts to excite disaffection towards Government established by law in India by (a) speech or (b) writing or (c) visible representation or (d) any other means, commits the offences of sedition under this section. Creating contempt, hatred, disaffection disloyalty or enmity against the Government is sedition (see explanation to s. 124A). it is an offence affecting the reputation of the State and calculated to disturb the tranquility of the State and so the offender is severely punished.

Incitement to violence: Incitement to violence is not necessary to constitute the offence of sedition. This point was decided in Queen Empress v Bala Gangadhar Tilak by the Bombay High Court and affirmed this point in King **Emperor v. Shadashiv Narayan, (1947)** and held that incitement to violence is not a necessary ingredient of the crime of sedition. Sedition is punishable with imprisonment for life or and shorter term with or without fine, or with imprisonment (simple or rigorous) up to three years with or without fine or fine only.

Constitutional validity of s. 124A : Different views have been expressed on this point. Art. (19) (1) (a) of the Indian Constitution guarantees freedom of speech and expression. Before the First Amendment 1951, one of the grounds under which freedom of speech could be restricted is "security of .....the State". In **Ramesh**

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Thapper's case (1950) the Supreme Court observed that the security of the State would be endangered only in serious cases where the very foundation of the State is endangered. Relying of this observation of the of the Punjab High Court in Tara Sigh's case (1951_, held s, 124A ultra vires the Constitution and the restriction put by s. 124A on freedom of speech is not saved by Art. 19 (2). To overcome the decision in Ramesh Thappar's Case the Constitution was amended in 1951. according to which "in the interest of public order" was substituted in the place_of "undermines the security of or tends to overthrow the State". After the amendment the question again arose whether the restrictions made by s. 124A is in the interest of 'public order'.

The Patna High Court in Debi Soren v. State, helds. 124A valid and observed that it imposes only permissible reasonable restriction in the interest of 'public order'.

But a full Bench of the **Allahabad High Court in Ram Nandan's Case held s. 124(A)** ultra vires Art. 19, and hence void. The Court said that the words, "interest of public order" in Art. 19 (2) should not be interpreted so "as to swallow up the fundamental right guaranteed by Art. 19 (1) (a). The court held that s. 124A imposes unreasonable restriction; so it is a serious invasion on freedom of speech.

Now the issue is finally settled by the Supreme Court in **Kedarnath v. State of Bihar, (1962):** In this case the court held that s. 124A is valid and does not violate Art. 19 (1) (a). The court observed, it is only when the seditious words have tendency to create public disorder, or disturbance of law and order that the law steps in.The intention behind the statement determines whether the same is

seditious or not. The words become seditious only when the intention is to induce people to disobey the law or lawful authority.

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Explanation attached to s. 124A : According to the explanation attached to s. 124A the explanation attached to s. 124A the expression "disaffection" includes disloyalty and enmity too Criticism advanced against measures of the Government with a view to obtain change by lawful means without exciting or attempting to excite hatred, contempt or disaffection against Government do not constitute the offence of sedition. Similarly, criticism against administrative or other actions of the Government without exciting or attempting to excite hatred, contempt or disaffection do not constitute the offence of sedition.

4. Waging war against a power at peace with India or committing depredation in its territory. (s. 125 to s. 127):

While under s. 125 waging or attempting or abetting the waging of war with a power which is at peace with India is an offence. S. 126 makes it punishable the commission of depredation or plunder on the territory of the States at peace with India. Section 127 punishes those who knowingly receive any property obtained by waging war (under s. 125) or by committing depredation (under s. 126) on the territory of States at peace with India.

5. Permitting or aiding, escape rescuing or harbouring or suffering escape of State prisoners etc. (Secs. 128 to 130). Section 128 punishes a public servant having the custody of State prisoner of war if he voluntarily allows such prisoner to escape from his custody. State prisoner is one who is confined by Government of India to preserve the security of India from internal or external emergency or war. Prisoners of war are persons taken in war from the enemy force.

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Sec.225 of Indian Penal Code also punishes servants for escape of prisoners in their custody. But the prisoner under S. 225 may be an ordinary criminal, but S. 226 punishes a public servant who voluntarily or negligently suffers state prisoners to escape. In both the sections 128 and 129 the offence is committed by public servants; under the former he is punished for his activity and under the latter he is punished for his inactivity (or negligence) as a result of which the state prisoner escape from the place of confinement. Similar to s. 129 a public servant is punished for the escape of an ordinary prisoner.

Under s. 130 any person aiding, escape or rescuing or harboring of state prisoner of war is punished. You must note that under this section the offender may be any person including a public servant.

6.2. OFFENCES RELATING TO THE ARMED FORCES:

Chapter-VII deals with offences relating to the Army, Navy and Air Force and consist of ten sections (s. 131 to s. 140). Persons to whom the Army, Navy and Air Force Acts are applicable are not punishable for any one of the offences under this chapter (S.139).

The offence of Mutiny: (s. 131 and s. 132) : The term 'mutiny' is not defined in the Code. But it is clear that it is an offence relating to the Armed Forces. It is extreme collective insubordination or combination of defence personnel to resist or induce others to resist lawful military authority. A careful reading of the two sections suggest that the offences of mutiny may be committed even by the insubordination of one solider, sailor or airman.

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Section 131 punishes one who abets the committing of mutiny or attempting to seduce a soldier; sailor or airman from his duty. The offence under this section is not mutiny as such but only the offence of abetting mutiny. So, also, if mutiny is not followed as a result of abetment, it is not covered by this section. But section 132 covers a case of mutiny committed in consequences of abetment and makes it punishable.

Assaulting superior officers of Armed Forces (s. 133 to s. 134) Section 133 punishes the abetment of assault by soldier, sailor or airman or superior officers on duty. Where the assault is committed in consequence of such abetment the offence is punished under Sec. 134. abetment of desertion of soldier, sailor or airmen and harbouring such deserter: S. 135 to 136. Section 135 punishes the abetment of desertion of soldier, sailor or airman or an officer. Section 139 punishes harbouring of such deserters (Sec. s. 52-A for the meaning of "harbour"). Under Sec. 135 the "harbour given by wife to her husband's excepted and not punished.

Section 137 punishes the master or person in charge on board a merchant ship in which a deserter from the Army, Navy or Air Force has concealed himself due to the negligence on the part of the master, though he is ignorant of the concealment.

Section 139 punishes any person who abets an act which he knows to be one of insubordination by a soldier, sailor or airman. Wearing the dress of a soldier, sailor or airman intentionally so as to induce others to believe him to be as such soldier, sailor or airman is an offence under s. 40. mere wearing of the soldier's garb without the specific intention is no offence, as for example, actors using military uniform for demonstration or for delight.

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6.3. OFFENCES AGAINST THE PUBLIC TRANQUILITY:

Chapter VII deals with offences against public peace and consists of twenty section. They can be conveniently be grouped under the following heads. 1. Unlawful assembly and connected offences (s. 141 to s. 145 s. 150 s. 157 and s. 158). 2. Rioting and connected offence- (s. 146 to s. 148, s. 152 to s. 156). 3. Affray (s. 150 and s. 160).

Unlawful assembly is defined in section 141 as an assembly consisting of five or more persons assembled to execute the common object of the assembly as specified under the section. Hence, the first criterion is that the assembly should consist of five or more persons. Secondly, they have a common object among themselves for the prosecution of which they have assembled. Thirdly the common object must be one of the five specified in the latter part of section 141. The following are the five specified objects.

1) Overawing the central or the State Government or its officers.
2) Resistance to legal processes
3) Commission of any offence
4) Forcible possession and dispossession of property.
5) Illegal compulsion.

(1) Overawing the Government: When a public servant is threatened or restrained by a superior influence in the discharge of his legal duty he is said to be overawed. Mere presence of a crowd is not sufficient, but there should be a show of force.

(2) Resistance to legal process: When the member of an unlawful assembly offer resistance to any legal process, then come under the purview of this section. For example, the resistance offered to a court amin in the execution of a court decree.

(3) Commission of any offence: This clause provides that the object of the accused should be to commit any mischief or criminal trespass or other offence. Doubts were raised with regard to the interpretation of the phrase "other offence", that is whether other offence must be ejusdem gener is falling within the same species or whether it covers all offences against person and property. The courts have opted for the latter interpretation and it follows that "the other offence" means a thing punishable under the Codes or under any special or local law.

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(4) Forcible possession and dispossession of property: An accused is not allowed in law to establish his right to a property by force, by forming an unlawful assembly as he could do so by a regular court proceeding. The application of this clause is subject to the right of private defence of the individuals concerned.

(5) Illegal Compulsion: This clause in a general manner provides for any form of illegal compulsion for the commission of an unlawful act or omission of legal duty.

The gist of the offence lies in overawing by criminal force the Government or public servant in the lawful discharge of the duty. As assembly not unlawful in the beginning may subsequently become an unlawful assembly. In other words pre-concert is not an essential requisite under the section.

It is the combination of men for any one of the common objects which may lead to breach of peace or disorder, which is sought to be prevented for maintaining public peace. Anyone of the objects (s. 141) is sufficient to constitute an unlawful assembly.

Section 144 deals with an aggravated form of offence of joining an unlawful assembly (dealt with in s. 142). This section

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punishes joining unlawful assembly ordered to be dispersed (see also s. 151 infra).

Chikkaranga Gowda Vs. State of Mysore

Two brothers who were sleeping in the house of a concubine were killed when a mob attacked and set fire to the building, thereby injuring the brothers. All the members of the unlawful. Assembly were convicted under section 302 Read with sec. 149 and Sec. 34.(common intension – common object ,see – refer unit no 4)

There must be more than 4 persons having the common object. If a fifth person is present but he had no common object of the others he will not be guilty of just remaining in an unlawful assembly Masulti Vs State of U.P.

Peary Monun-Sicar Case

There was a dispute between the accused and other parties regarding certain Land. The accused want to sow the land along with men armed with sticks to keep off the opposite party. The accused was held to be guilty under this s. 144 IPC says that, if any person armed with deadly weapon or anything which used a weapon of offence is likely to cause death is a member of an unlawful assembly. He is punishable with imprisonment upto 2 years or fine or both. Under section 160 hiring or conniving at hiring, of person to join an unlawful assembly is punished in the same way as a member of an unlawful assembly.

Section 157 punishes harbouring of person hired to join unlawful assembly. This section contemplates the formation of an unlawful assembly in future. Section 158 punishes person who engage themselves as member of an unlawful assembly or assists any such members. Severe penalty is prescribed under this section where the accused are armed with deadly weapons.

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Lastly, under s. 151 persons knowingly joining or continuing in an assembly of five or more persons after it has been ordered to be dispersed, are punished. The difference between s. 151 and s. 145 is that under the former the assembly need not be an unlawful assembly within the meaning of s. 14 whereas in the case of the latter section it must be an unlawful assembly.

2.Rioting: Section 146 deals with the offence of rioting. The offence of rioting is committed when force or violence is used by any member of or by an unlawful assembly. In other words unlawful assembly plus violence is rioting.

Essentials of the offence of rioting: 1. There must be five or more persons forming themselves into am unlawful assembly. 2. They must have a common object. 3. That any member or all of them must have started using force or violence in prosecution of the common object.

Section 141 indicates the objects which are deemed unlawful, briefly they are as follows; (1) to overawe the Government or public servants (2) to resist legal process (3) to commit any offence (4) to take forcible possession of property or to dispossess it forcibly (5) illegal compulsion to do or not to do a thing.

If a number of persons assembled for any lawful purpose suddenly quarrel without any previous design they do not commit the offence of rioting. So also, if the common object of assembly is not illegal, it is not rioting even if force is used by a member of that assembly. Some members of the unlawful assembly committing some acts outside the common object of the assembly or chargeable under this section

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Section 148 (similar to s. 144) is an aggravated form of offence of rioting. A person armed with a deadly weapon while committing the offence of rioting is punishable under this section.

Assaulting or obstructing a public servant who is engaged in suppressing a riot is punished under s. 152. A person who maliciously or recklessly gives provocation by doing illegal act knowing such provocation will incite others to rioting punishable under s. 153, whether rioting is committed or not in consequence of the provocation. It is an offence under this section, but where rioting is committed in pursuance of the provocation, the offence is severely punished.

Promoting enmity between classes: Section 153 (A) punishes persons promoting enmity or hatred between different groups on the ground of religion, language and doing acts prejudicial to maintenance of harmony and thereby public tranquility.

Offence committed in prosecution of common object (s. 149). Under section 149 every member of an unlawful assembly is guilty of the offence committed in prosecution of the common object by any one member.

Essentials of the section: 1. That an offence has been committed by a member of the unlawful assembly. 2. Such offence is committed in prosecution of the Common Object: or must be such as the members know to be likely to be committed. The section does not punish a member of an unlawful assembly for every offence by one of its members when they are engaged in the prosecution of the common object.

Distinction between s. 34 and s. 149. both the sections deal with constructive liability. Object is different from intention, though the objective is same, intention may vary. In S. 34 participation in

action is necessary; under s. 149 membership in the assembly is sufficient.

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3) Affray (s. 159 and s. 160). When two or more persons by fighting in a public place disturb public peace, they are said to commit an affray.

Essentials of the sections: (1) Two or more person, fighting (2) In a public place (3) Such fighting must disturb public peace.

Affray and riot: Both the offence are against public peace 1. Whereas affray can be committed by two or more persons, a minimum of five persons are required for riot. 2. Riot can be committed in any place, whether public or private, but affray takes place only in public place; 3. affray does not require a common object, but riot cannot be committed without it, 4. Riot may be committed for any one of the five objects mentioned in s. 141 but affray may be for any objects including an innocent object; 5. Only those who are actually involved are punished for affray but that is not the case with riot. 6. Affray is unpremeditated but riot is not so.

6.4. OFFENCES RELATING TO PUBLIC SERVANTS:

This Part deals with to classes of offences, of which one can be committed by public servants alone and the other comprises offences. Committed by others, though relating to public servants.

Public Servant:

Public Servant is defined in section 21 of the Indian Penal Code, Section 21 of provides eleven categories of Persons which include commissioned Officers in the military, Navy and Air Force, Judicial Officers, Assessor, arbitrators, Jail and Jwinde home authorities police officials, Executive magistrates, and other Government officers including persons in the service of local bodies (e.g.) Municipal

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Commissioner) and statutory Authorities. Under Section 161 public servant includes a retired public servants also Nardinisatpaki cases.

A Chief Minister or a Minister is a public servant as he is in the policy of the Government which expression is much wider than the word salary and this would be so even if there is not master and servant relationship between a Minister and the Government. A reference to Arts 164 and 167 of the Constitution two shows that a Minister including C.M. is appointed by the Governor, he gets a salary for discharging a public duty and the said salary is paid to him from public money (or) Government fund. Therefore, point to one conclusion that he is a public servant within the meaning of clause 12 of Section 21, IPC.

(M. Karunanidhi (vs.) Union of India 1979 Crl.L.J.773, AIR 1979 SC 598.

Bribery:

Section 161 speaks about the public servant taking gratification other than legal remuneration in respect of an official Act.

For Example: If A, a munsif, obtains from a banker, a situation in Z's bank for A's brother, as a reward, for deciding a cause in favour of Z. A has committed the offence of this Section 162 and 163 – both the Sections deal with the offences of improperly influencing a public servant in return for consideration paid or promised by a third person, which in the former section a public servant is influenced by corrupt or illegal means, in the latter section he is included by the exercise of personal influence.

Section 164 punishes abetment by Public Servant or offences under Section 162 and Section 163 IPC. Section 165 Punishes a public servant for accepting any valuable thing without consideration

from any person concerned in a proceeding, or business transacted by such public servant in his official capacity.

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Section 165-A- This section was inserted in 1952 this section prescribed the punishment for abetment of offences contained in Section 161 and 165.

Chapter IX of the Indian penal code in sections 161 to 171 had earlier provided for dealing with the offences, by or relating to public servants. As per the Santhanam committee report, provisions relating to Bribery (Section 161 to 165 A IPC) were deleted and incorporated in the prevention of corruption Act 1988. Under Sections to 12. Since offences relating to public servants have been dealt extensively in the prevention of corruption Act 1988, besides IPC.

Chapter 3 of prevention of corruption Act, consisting of ten sections, commencing from 7 to 16, deals with offences and punishments. The Provisions of SS 161 to 165 A; IPC dealing with offences by or relating to public servants have been incorporated in SS 7 to 12 with slight modifications. A provision for minimum punishment has been made in place of alternative punishment prescribed under IPC and the punishment has been enhanced and the illustrations attached to the Sections have been omitted.

English case-law:

R Vs. Smith (1960)

Here the accused offered a gift to the mayor of Borough to use his office and official influence to sell a plot of land by the Council to the accused for which the Mayor refused.

The Court convicted the accused thought he contended that he had intention to carry out the transaction or to accept the favour which he had sought.

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Indian case Law-

Dalpatsingh Vs. State of Rajasthan. (A.I.R. 1969 S.C. 17)

A Hawilder and a Subedher, of the Rajastan Armed Police were stationed at a border outpost. They extorted money from the village peoples on certain false representation.

The question arose whether such extortion will come under Section 161 IPC. The Supreme Court held that the acts complained of did not constitute an offence under this section for the accused did not intend to show any official favour to the villagers, nor did the villagers expect any official favour from the accused.

The Court observed further that in the absence of motive of a particular kind mentioned in the Section, the alleged acts could not be brought under this section (Section 161 IPC).

State of Gujarat Vs. M.P.Dwivedi (1973) II S.C.J 211. A.I.R. 1970 GUJ. 97.

In this case the question arose whether a Government College Lecturer appointed as an examiner by the University was a public servant (or) not. The charge against him was that he received Rs.500/- for showing favour to a student in the examination the Court held that he was not a public servant and accordingly escaped from conviction because come under the following ingredients are must for establishing the offence U/Sec. 161 IPC.

- Public servant
- Such public servant must either accept or obtain or agree to accept or attempt to obtain the illegal gratification from any person.
- Gratification other than legal remuneration
- Such gratification is received as a motive (or) reward for doing any official act which he is empowered to do.

SECTION 166- Makes disobedience by a public servant of any direction of law with intent to cause injury to any person an offence. Section 167 makes preparing framing or translating of incorrect documents by a public servant with intent to cause injury an offence.

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Section 168 makes Provision for punishment of those public servants who are legally bound to engage in trade, but engage in trade. Contrary to the conditions and section 169 is an extension of Section 168. It prohibits a Public servant from purchasing or bidding for property which he is legally bound not to purchase.

Section 170 seeks to punish a person who pretends to hold any public office as a public servant and section 171 punishes the wearing of the grab or carrying a token used by a public servant with fraudulent intent to pass off as a public servant.

Under Section 21 of Indian Penal Code 'Public Servant' is a person.

a) falling in any of the twelve categories irrespective of whether appointed by Government or not.
b) Not falling in any of the twelve categories but appointed by the Government
c) Falling in any categories but appointed by the Government
d) All the above.

Dalpatsingh V.State of Rajasthan (A.I.R. 1969 S.C. 17): A Hawilder and a Subedher, of the Rajastan Armed police were stationed at a border outpost. They extorted money from the villagers on certain false representation. The question arose whether such extortion will come under S. 161. the Supreme Court held that the acts complained of did not constitute an offence under this section for the accused did not intend to show any official favour to the villagers; nor did the villagers expect any official favour from the accused. The Court observed further that in the absence of motive of a particular

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kind mentioned in the section, the alleged acts could not be brought under this section. Jotrlam Laxman v. State of Maharshtra (A.I.R. 1970 S.C. 365): In this case a secretary of a Gramapanchayat received from the complainant money for substituting his name as the owner of certain land in the revenue records. The defence was that he took the amount fro purchasing small savings certificate from the complainant. The court negatived the plea and found him guilty under s. 161.

Gratification: This need not be money or money's worth but anything "estimatable (In terms of) to money" is sufficient. Thus, if a person consents to marry his daughter on condition that he would do some official favours, it is gratification. It is anything or any object which appeals to human senses such as a dinner, a few fruits, or a medical bill is gratification within the meaning of the term.

Crown, Prosecutor v. Y.R.K. Pillal (1948): This case made it clear that a connection between the performance of official duty and demand or payment of gratification must be shown before it can be said that the gratification offered is a motive or reward for any of the purposes mentioned in the section. If no such connection is established but the payment was offered (as for example in a donation case) independently of doing any duty, no offence under s. 161.

Attempt to obtain bribe: In order to constitute an attempt, it is not necessary that a specific sum be asked for or that any definite promise of service be made. It is sufficient that the giver is led to believe that his money was likely to be spent profitably.

Mehadev Dhanappa v. State of Bombay (1953): In this case the accused were traders in partnership, carrying on business in silk textile goods. Police officers of Anti-Corruption Department suddenly raised the business premises and seized their books of

account because of suspected tax evasion. The accused offered Rs. 30,000/- as bribe to the Inspector of Police to hush up the case, On his refusal, the accused persisted in his request when the matter was brought to the notice of the authorities including the District Magistrate, a trap was arranged. Consequently the accused was caught red-handed in the very act of offering the sum of Rs. 15,000/- and sought to be prosecuted. The defence was that the amount was paid by way of settlement of State's claim of income tax. He was convicted and the Supreme Court also confirmed the conviction under S. 161 for abetment of the offence of bribery (see. s.11 c.).

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It is interesting to note that the Madras High Court has classified 'rraps' into legitimate ans illegitimate traps in Mohideen's case (1952). Where a public servant demands bribe and the man goes out offering to bring the money, but sets up a trap with the help of the police and the Magistrate to catch the culprit when the bribe is actually passed on, it is legitimate trap. But if a person is only suspected to be in the habit of taking bribe, and if he is tempted with a bribe to see whether he should accept it or not, and trap him if he accepts it is called illegitimate trap. According to the Court, the person engaged in illegitimate trap must be made punishable.

2. Bribe received to influence public servant (s. 162 and s.163) : In both the sections, bribe is not accepted by public servant. Section 162 punishes the taking of gratification in order to influence a public servant by corrupt or illegal means. Section 163 punishes the taking of gratification for the exercise or personal influence with public servant. In other words, both the sections deal with the offences of improperly influencing a public servant in return for consideration paid or promised by a third person, while in the former

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section a public servant is influenced by corrupt or illegal means, in the latter section he is included by the exercise of personal influence.

3. Abetment of offences under s. 162 and s.163 are punishable by s. 164. section 164 punishes abetment by public servant or offences under s. 162 and s. 163. **Illustration:** A wife of B, but his servant receives a present as a motive for soliciting B to give an office to particular person. B abets her doing so and is punishable.

4. Public servant obtaining valuables s (165) Section 165 punishes a public servant for accepting any valuable thing without consideration from any person concerned in a proceeding, or business transacted by such public servant in his official capacity. Illustrations: I.A., a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay Rs. 50/- per month for the house which otherwise fetches a rent of Rs. 200/- per month. A has obtained a valuable thing from Z without adequate consideration. 2. A's brother is apprehended and taken before Z, a magistrate, on a charge of perjury, Z sells to A, shares in a bank at a premium, when they are selling in the market at a discount A pays Z for the shares accordingly. The money to be obtained by Z is a valuable thing without adequate consideration.

Section 165-A punishes abetment of offence contained in sections 161 and 165, whether the offence is committed or not.

5. Public servant engaged in any trade or purchase of property (s.168 and 169): A public servant is expected to perform his official duties with undivided attention. Therefore, a public servant engaged himself in any trade is punished under s. 168. Section 169 also punishes a public servant for purchasing or bidding for property in his own name or otherwise which he is legally bound not to purchase. Section 169 is really an extension of section 168. if

public servants are allowed to trade, or purchase, property prohibited by s. 169, they could easily obtain unfair advantage over other traders, or purchasers, and as such they may not be interested in their official duties.

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6. Offences Committed by non-public servants (162 s. 163 s. 170 and s. 171):

(i) Section 162 and 163 have already been explained.

(ii) Personating or wearing the garb or using the token of a public servant (s. 170 and s. 171). Falsely pretending to hold any public office, or falsely personating a public servant. And as such doing or attempting to do any act under colour of such pretended or assumed office, is an offence punishable under s. 170. Wearing the garb of , or carrying the token used by, a public servant with fraudulent intention is an offence under section 171. The gist of the offence is the bad intention. This section is similar to s.140.

6.5 OFFENCES RELATING TO ELECTIONS (s. 171 A to s. 171.1): This chapter was introduced in the Code by an amendment in 1920 to punish certain malpractices in elections whether to parliament, State Legislature or Local Body to secure purity in elections. There are other enactments also such as the Representation of People Act, 1950, 1954 etc., dealing with the Law of Elections.

Election: It is defined in explanation 3 of section 21 of the Code. It denotes "an election for the purpose of selecting members of any legislature, municipal or other public authority, of whatever character, the method of selection to which is by or under, any law prescribed as by election". Electoral right is defined in section 171 A (b) so as to mean the right of a person (1) to stand, or not to stand as, or, (2) to withdraw form being a candidate or (3) to votc or restrain fromk voting at an election. "Candidate" (defined in s. 171 A (a))

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means a person who has been nominated as candidate at any election and includes a person who when an election is in contemplation, holds himself out as a preoperative candidate there at provided that he is subsequently nominated as a candidate at such election.

This six offences relating to elections are as follows: 1. Bribery (s. 171-B) 2. Uudue influence (s.171 C) 3. Personation at election (s. 171-D) 4. Making or publishing false statements (s.171-G). 5. Illegal payments (s.171-H) and 6. Failure to keep election accounts (s.171-1)

1. Bribery: The offence of bribery is defined in s. 171-B (1): Whoever gives a gratification to any person with the object of including him or any person for having exercised any such right; or accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducting or attempting to induce any other person to exercise any such right, commits the offence of bribery.

Bribery simply means the giving or the acceptance of a gratification either as a motive or as a reward to any person (1) to induce him to stand or not to stand as, (2) or to withdraw from being a candidate or to vote or refrain from voting at an election.

"Bribery by Treating": This is dealt with in s. 171-B. thought it is a form of bribery, it is not a serious offence, so a lesser punishment is prescribed. The explanation attached to the section defines "treating" as follows: "Treating" means that form of bribery where the gratification consists in food, drink entertainment or provision.

2. Undue Influence: Undue influence in relation to election means the undue interference with the enjoyment of one's electoral rights (as defined in s. 171 A (b) and covers all threats of injury to

person or property and all illegal method of personation and any interference with the liberty of a candidate or elector. Inducing or attempting to induce a person to believe that he will become the object of divine displeasure or of spiritual censure is also interference. But to make a declaration of public policy or a promise of public action is not interference for the purpose of this section. An attempt or threat is sufficient to constitute the offence; it is not necessary to prove that as a result of the treat the person was in fact prevented from.

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Raj Deb v. Gangadhar (A.I.R. 1964 Orissa P.I.): In this case a candidate informed the voters that he was the representative of Lord Jagannath himself and that any person who did not vote for him would be a sinner against the Hindu religion and against the lord. Held; such propaganda is an offence under this section.

Personation at an election is an offence: It is an attempt to vote at an election in another person's name or infictitudus name as well as a voter who attempts to procure such voting.

Muhammed Din's Case (1928) 30 Cri.L.J. 853: Here, the accused M.Whose father's name was A; asked for a ballot paper in the name of M, son of F. When questioned he asserted that his father's name was F. The electoral roll of the municipality also showed one M son of F. Held: the accused guilty of the offence of personation.

4. Making or Publishing false Statements: It is an offence under section 171 G to make or publish deliberately any false statement about the personal character or conduct of any candidate.

5. Illegal Payments: Section 171-H Punishes the making of any illegal payment in connection with an election or "without" the general or special authority in writing of a candidate incurring or authorizing expenses on account of the holding of any public meeting

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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". In other words the secton makes it punishable, unless authorized by a candidate, to incur any expense in connection with the promotion of a candidate's election.

Failure to Keep Election Accounts: Section 171-I, punishes failure to keep accounts for expenses incurred in connection with an election when it is required to be kept by any law or rule having the force of law.

6.6 CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS(S.172 TO 190):

This Chapter deals with contempts of lawful authority of public servants by members of the public. Under Chapter IX, public servants are punished for certain offences to ensure honesty and purity among public servants; but Chapter X imposes certain obligations on the public to assist public servants in the discharge of their duties.

The sections under this chapter can be grouped as follows 1. Wilful commissions or evasion of performance of a public duty (s. 171 to s.176 and s.187, s.202 to s.204 to s.225A) 2. Wilful refusal to do certain acts (s.177, s.181 to s.182) 4. Illegal purchase of or bid for property, (s.184) 5. Obstructing or disobeying a public servant. (s.183,s.186 to s.188) 6. Threat of injury s. 189 and s. 190).

Willful omissions or evasion of public duty: (1) Absconding to avoid service of summons, or other proceedings, from a public servant legally competent to issue is an offence. (s.172). (2) Intentionally preventing the service of summons notice or order or affixing of the same; or removing it after the same is affixed is also punishable under s.173. (3) Section 174 punishes non attendant in

obedience to an order form a public servant of after having attended departing before the prescribed time. (4) Omission to produce a document to a public servant by a person legally bound to produce is punished under s. 175. (5) Omission to give notice or information of commission or revelation of offence or apprehension of offender to a public servant by a person legally bound to give is an offence punishable under s. 176. (6) Omission to assist public servant (e.g., to prevent commission of a crime or to apprehend an offender), when demanded from a person who is bound by law to assist is punishable under s. 187. (7) Intentional omission to give information of an offence by one who is bound by law to give inform is an offence (s.202). (8) Giving false information about an offence is also an offence (s.203) This section applies to anyone whether bound by law or not, who gives a false information. (9) Destruction of document to prevent its production as evidence is an offence under s. 204. This section applies whether the proceeding is civil or criminal in nature. (10) Section 224 any resistance or obstruction offered by a person to his apprehension. (11) Where the resistance or obstruction is offered by others for the lawful apprehension of a person, such persons are punishable under section 225. (12) Section 225 A also punishes a public servant for his intentional or negligent omission to apprehend any person but not covered by s. 221 to 223. (13) Resistance or obstruction not covered by s. 224 or s.225 is covered by s. 224B for the purpose of pubishment.

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Wilful refusal to do certain acts: 1) Refusing on oath or affirmation to state the truth when required by a public servant legally competent to require it, is punishable (s.178). 2) Refusal to answer any question put to a person bound by law to state the truth, by a public servant on the exercise of his lawful authority is an offence (s.179). 3) Refusing

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to sign a statement made by the accused when required by a public servant in exercise of his authority is punishable under s.180.

Giving false information to public servant: In the following cases a person giving false information to a public servant is punished: 1. Knowingly furnishing false information by a person who is bound by law to give on any subject to any punlic servant (s.177) e.g., where A a landlord misinformsthe magistrate of a murder, that death occurred by a snake bite. 2. False statements on oath or affirmation to a public servant, or the person, authorized to administer an oath or affirmation (s.118) 3. False information made with intent to make the public servant use his lawful power to injure another (s.182).

Illegal purchase of or bid for property: Illegal purchase, bid for property offered for sale by authority of public servant is an offence under s, 185.

Obstruction or disobeying public servant: 1. Resistance to the taking of any property by a public authority under lawful exercise of power is punished under s. 183. 2. Section 184 punishes intentional obstruction to sale of property by lawful authority of public servant. 3. Voluntarily obstruction a public served in the discharge of his public function is an offence (s.186) 4. Knowingly disobeying an order duly promulgated by a public servant is an offence under s. 118.

Threat of injury: 1. Any threat of injury to public servant or to any one in whom the public servant is believed to be interested is punished under s.189. This section covers any menace which would have a tendency to induce the public servant to alter his action.

Yar Muhammad's Case (1930) 58 Cal. 392: In this case two constables went at night to the house of suspect, kept under surveillance, and called out his name from the public road. His

brother, who lived in the adjoining hut came out and threatened to assault the constables for the annoyance caused. Held: he was guilty under this section.

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2. Section 190 punishes any threat of injury offered to induce persons to refrain from applying for protection from public servants. In other words, this section prevents persons from terrorizing others with a view to deter them from seeking the protection of public servants against any injury.

6.7 FALSE EVIDENCE AND OFFENCE AGAINST PUNLIC JUSTIVE: (s. 191 to s. 229):

These offences can be brought under two major head:

(i) Giving or fabricating false evidence (s. 191 to s. 200).

(ii) Offences against public justice (s. 201 to s. 229).

False Evidence: It is dealt with in s. 191. The following are the essential elements of the offence of giving false evidence: (1) A person must be legally bound by oath, or any express provision of law to speak the truth, or to make a declaration upon any subjects: (2) He must make a false statement. (3) Such statement is one, which he knows or believes to be false, or does not believe to be true.

Oath: Oath is dealt with in s. 151. The word "oath" include 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 or not.

Thus, oath is religious assertions, by which the person taking the oath renounces the mercy and imprecates the vengeance of Heaven, if he speaks falsehood. A Christian swears on the Bible, Mohammedan upon the Kuran and a Hindu on the Gita.

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Perjury under English law (The Perjury Act, 1911): Under English law in order that a statement on oath or affirmation may amount to perjury the following are the requisites.

It must be 1) taken in a judicial proceeding: 2) taken before a competent tribunal; 3) material to the question; 4) false and 5) known to the witness as false or not to be true.

A person cannot be convicted of offence of perjury unless there is clear evidence that he gave the false statement deliberately. In **Dwarakanath v. Emperor (A.I.R. 1935 P.C. 25)** a doctor issued a postmortem certificate stating that certain injuries were anti-martem when actually he did not hold that belief. He was sought to be prosecuted for perjury under s. 194. Evidence of other doctors revealed that such injuries need not bee anti-mortem. The Privy Council held that this was not sufficient evidence to make a conviction for perjury.

Fabricating False Evidence (s. 192): The following ingredients must be present to constitute the offence of fabricating false evidence1. 1.Causing any circumstance to exist. Or making any document containing false statement. 2. Doing any one of the above acts with the intention that it may appear in evidence in (a) judicial proceedings or (b) legal proceeding, before a public servant, or (c) an arbitration (3) Thereby, to cause any person whose duty is in such proceeding to form an opinion upon the evidence to arrive at an erroneous opinion on any point material to the result of such proceeding.

A careful reading of section 192 would reveal that it is applicable not only in case were evidence is fabricated with a view to be sued in judicial or quasi judicial proceeding, but also in non judicial proceeding (sec. item No. 2 above) before a public officer.

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Abramayi v. Joseph (1950 K.L.J. 1307): In this case, the accused executed a false lease deed to produce before the Municipal Authority for the purpose of obtaining a licence to construct a work shop. The Kerala High Court held that this would amount to the offence of fabricating false evidence under s. 192.

Fabrication on a material point: Unless the fabrication is on a material point, the accused could not be found guilty under s. 192. As for example, where, A puts jewels into Z's box with the intention that this circumstance must lead Z to be convicted of theft. A has fabricated face evidence. If the evidence fabricated is intended to be used in a legal proceeding the offence is committed as soon as the fabrication is complete. You must clearly bear in mind that the fabrication evidence need not be put to actual use in a legal or judicial proceeding. That is, the mere fabrication as such is punishable under s. 196.

Distinction between giving false evidence and fabricating false evidence:1. In both the offences the mental element is the important factor. It is the intentional giving of false evidence or intentional fabrication, that is made punishable.(General intention is sufficient in the former case whereas particular intention is essential in the offence of fabricating false evidence) 2. The fabrication muse be on point material to the proceeding but giving of false evidence need not be on material point. 3. Under s. 191 false evidence is giving by a reason bound by an oath. But there is no such condition under s. 192. 4. There must be judicial proceeding or non judicial proceeding pending to give false evidence fabricated to be used in prospective proceeding. 5. The effect of evidence on the officer before whom the evidence is given is immaterial in the case of giving

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false evidence, but that is material in the case of giving false evidence.

Aggravated forms of giving false evidence and fabricating false evidence: (1) Giving or fabricating false evidence with the intent to procure conviction of capital offence is punishable as an offence. If an innocent person is convicted and executed in consequence of such false evidence, death penalty also is prescribed for the offender (s.194). (2) Giving or fabricating false evidence intending thereby to cause or knowing it to be likely that it will cause, some person to be convicted of an offence is punished under section 195.

Illustration: A gives false evidence before a court, intending thereby to cause Z to be convicted of dacoity. The punishment for a term which may extend to ten years; with or without fine. A, therefore e, is liable to imprisonment for the life or imprisonment with or without fine.

Section 194 deals with perjury of offence punishable with death, whereas, section 195 deals with perjury of offence punishable with imprisonment for life or for seven years or more.

3) Corruptly using or attempting to use, as true or genuine evidence, any evidence known to be false or fabricated is punishable under section 196 (4) Issuing or signing a false certificate in any material point is an offence (sec. 197) 5. Using as true a certificate known to be false is also an offence under section 198. 6. False statement made in declaration which is by law receivable as evidence is made punishable under section 199, IPC

Essentials of the section (sec.199): 1. It must be a declaration. 2. It must be admissible in evidence . 3. It must be false on point material to its object 4. The declarant must know or believe it to be false when made.

A direction was issued to the notary to show cause as to why he should not be prosecuted and punished for attesting false affidavit of impersonation and why his licence should not be cancelled and why he should not be prosecuted for giving such false certificates A notice was sent to him on the basis of the name furnished by the respondent and also in the oath. It is now reported by the registry that no such person is available in T is Hazan Court. Consequently by order dated October 23, 1996 Mr. Goburdhan Learned counsel appearing for the respondent was directed to give the name of the oath commissioner last proceedings should be initiated against the first respondent sudershan Kumari who has filed the affidavit alleged to have been attested by the oath commissioner which is found to be false. Accordingly time was given. It is stated by the learned counsel Mr. Goburdhan, that inspite of the letter written by him, the respondent is not responding.

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Under these circumstances, we are left with no option but to convict the first respondent Mrs. Sundershan Kumari for producing false certificate and false affidavit. Accordingly she is convicted under section 199 **I.P.C. Dy G.M.ISBT. Vs Sundarshan Kumari others 1997 Cr. L.J. 1931.**

7) Using as true knowingly such false declaration, is punishable under s.200.

Offences against Public Justice

1. Causing disappearance of evidence or giving false information to screen offender: Section 201 punishes, causing disappearance of evidence relating to an offence or giving false information concerning an offence.

Sections 118 to 120 deal with concealment of a design to commit as offence. Sections, 175,177,181 and 182 deal with

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omission to give information or giving false information. Sections 201 to 203 deal with causing the disappearance of evidence. Section 201 covers acts not covered by 193 or s. 195.

Begu vs King Emperor (1925) 52 I.A. 1991: In this case, five persons were charged under s. 301 and two of them were convicted. The evidenc established that the other three had assisted in removing the body. The Privy Council convicted them without any further charge being made.

Roshan Lal and Others vs. State of Punjab (A.I.R) 1965 S.C. 1412): Here one of the appellants. Roshan Lal, a Sub-Inspector of Police took Raja Ram into custody. He was severely beaten while in custody so that, the next morning Raja Ram was found dead in a pool of blood.The court convicted each of them under s. 201 and the Supreme Court confirmed the conviction, but reduced the sentience on other grounds. **The Supreme Court in this cases explained the true scope of s. 201 as follows.** In order to uphold a conviction under this section, four things must be present. (1) That an offence has been committed, (2) The accused must know or have reason to believe that the offence has been committed, (3) That accused must either cause any evidence of the commission of that offence to disappear or give any information respecting the offence which he knows or believes to be false. (4) the accused must have acted with the intention of screening the offender from legal punishment.

In the present case, It was alleged that deceased was died due to police torture offered in custody but from perusal of record it was clear that said policeman were not given any opportunity to explain the circumstances. It was regarded as serious injustice. Therefore supreme court also upheld finding recorded of acquittal by high court

and they were not held guilty under section 201 IPC. **State of M.P. vs. Shyamsunder Trevedi 1995 (4) SCC 262.**

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2. False Personation (s. 205 and s. 229): Section 205 deals with personation in a suit prosecution. It is an offence under this section to falsely personate another and in such character make an admission, confession, judgement, or cause any process to be issued or to any similar act as stated in the section. Section 129 punished personation of adjurer or assessor.

3. Abuse of process of Court(Collusive actions) s. 206 to s. 210: 1) Section 206 punishes fraudulent removal or concealment of property to prevent its seizure as forfeited or from being taken in execution of decree or order of a court, 2) Fraudulent Claim to property to prevent its seizure as forfeited or in execution or a decree or order of a court is also an offence. (s.207) 3) Fraudulently suffering a decree to be passed for a sum not due is punished under s. 208. in other words, this section punished persons making fictitious claims in order to secure the property of the defendant against persons to whom he may become indebted in future.

Illustration: A files a suit against Z.Z.., knowing that A is likely to obtain a decree fraudulently suffers a judgement to be passed 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's property which may be made under A's decree, Z has committed an offence under this section. 4) making a false claim before a court fraudulently under section 209. fraudulently obtaining a decree or order against any person for a greater sum or a sum due, is punished under section 210. whereas, this section is directed against a fraudulent plaintiff, section 208 is directed against at fraudulent defendant.

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4. False Charge (s.211): Under this section two offences are made punishable: (a) Preferring a false charge against a person; (b) Instituting or to institute a false criminal proceeding against a person.

False charge do not refer to the false evidence against the accused during course of criminal trial this to be construed with expression institution of criminal proceedings. **Santokh singh Vs Izhar Hussain AIR 1973 SC 2190, 1973 Cr.L.J. 1176.**

5. Essential ingredients of the offences: 1) Intention to injure 2) False charge 3) Malice.

The offence under this section is similar to the tort of malicious prosecution. Under this section the criminal law is set in motion. A simple complaint to an officer is not sufficient to constitute the offence under this section.

Santokh Singh v. Izhar Hussain (1973) 2 S.C.C. 406. The respondent was alleged to have given in court a false statement when he was examined as a witness for prosecution and later identified the accused; person in jail. This was proved to be untrue. But no step was taken against him for giving false evidence under s. 193 and s. 195. Held: prosecution not maintainable under section 211, the section not being the one to be relied on. The court also said that every incorrect statement does not make it incumbent on the court to order prosecution; court has to exercise judicial discretion in the light of all relevant facts. The false statement must be embodied in a complaint or in a report of a cognizable offence to a police officer or to an officer over the person against whom allegations are made. The power to make an order of complaint can be exercised either by the court which tried the original offence or a court to which the trial court was subordinate.

6. Harbouring offender: 1. Section 52A of IPC defines harbouring (for details see the section) It is an offence to harbour a person who has committed an offence with the intention of screening him from legal punishment. (s.212). Illustration: A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. A is guilty of the offence. Where the harboured and sheltered Main accused persons with full knowledge that they were involved in assassination, made efforts to destroy the evidence then their conviction under section 212 was just and proper. State to Tamil Nadu Vs Nalini 1999 Cr. L.J. 3124 SC.

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2. Harbouring an offender escaped from custody or whose apprehension is ordered is made punishable under section 216. section 214A deals with offence of harbouring robbers or decoits.

3. Taking a gift or any benefit to screen an offender from punishment is an offence(s.213). offering gift or restoration of property in consideration of screening an offender is also punishable (s. 214). Accepting any gratification so as to help to recover any movable property stolen, is punished under section 215.

Offences committed by public servants against public justice: 1.If a public servant knowingly disobeys the law with the intent to cause injury to any person he is punishable under section 166.

Illustration: A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a court, 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.

2. A public servant framing a document with the intent to cause injury is punished under section 167. The public servant herein must

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be charged with the preparation or translation of any document and he should have prepared such document wrongly.

3. A public servant, knowingly disobeying the directions of law with the intent to save any person from punishment or forfeiture of property is punishable (s. 218).

4. Public servant, authorized to prepare any record, intentionally preparing it incorrectly with the object of injuring any person, or the public, or saving any person from punishment of forfeiture of property is punishable (s.218) If it is proved that accused appellant had manipulated police records with intention of saving an accused from being punished by court, still this cannot be said that acquittal of accused for abetment of offence under section 218 IPC affects his conviction under 218 IPC. **Maulued Ahmad Vs State of U.P. 1964(2) Cr. L.J.71.**

5. A public servant, in any judicial proceeding corruptly or maliciously making or pronouncing any report, order verdict or decision contrary to law is punished under section 219.

6. It is an offence for a public servant, corruptly or maliciously committing any person for trial, or confine any person contrary to law (s.220).

To prove charges under section 220 I.P.C. it must be proved that accused with a malafide intention was keeping a person in confinement and being fully aware of the fact that he was going wrong and illegal act. **Suryamoorthi Vs Govindas wamy AIR 1989 SC 1410.**

7. Public servant intentionally omitting to apprehend or suffering to escape any person when legally bound to apprehend or kept in confinement, is punished under section 221. Similarly section 222 punishes a public servant when the person to be apprehended is

already convicted or committed. Section 223 punishes a public servant when he negligently suffers any person to escape from confinement or custody.

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Contempt of Court(s.228): Section 228 punishes one who offers any intentional insult in anyway to the public servant administering justice. The object of the section is to preserve the prestige and dignity of court. This section covers only a special form of contempt of court, by means of insult or interruption directed against servant sitting in a judicial proceeding. In other words, it is contempt inside the court, not outside, while the court is functioning.

Essentials of the Section: 1) Public servant acting or sitting as such in any judicial proceeding; 2) Insult or interruption directed against such public servant; 3) such insult or interruption must be intentional. The Contempt of Court Act. 1971 also deals with civil and criminal contempt's Showing or offering or imputing by any means or by any act, disrespect or indignity is the gist of the offence under the section.

6.8 OFFENCES RELATING TO COIN AND STAMPS (S.230 TO S. 263A):

These offence fall under two divisions: 1. Offences relating to coins (s. 230 to s. 254) 2. Offences relating to Government stamps. (s. 253 to s. 263).

In this Chapter XIII section 489-A to 289-E were subsequently added in 1899, when paper currency was introduced, to deal with offences relating to currency notes similar to offences relating to coins or stamps. Section 467 and 471 deal with forgery of valuable securities.

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Coin and Indian Coin (s. 230): Coin is a metal used for the time being as money and stamped and issued by the authority of same. State or Sovereign Power in order to be used. 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 though it may have ceased to be in use as money.

There are three classes of offence relating to coins. They are 1. Counterfeiting 2. Alteration of the coin (s. 246 to s. 254); 3. Criminal acts of mint employees (s. 244 and s. 245)

1. Counterfeiting: It is defined in section 28 thus "A person is said to "counterfeit" who causes one thing so resemble another thing 2. Intending by means of that resemblance 3. To practice deception, or 4. Knowing it to be likely that deception will there by the practiced. Counterfeiting simply means causing one thing to resemble another, but the imitation need be exact.

Section 231 and 232 deal with counterfeiting coin and counterfeiting Indian coin respectively, the latter being an offence seriously dealt with and severely punished. According to the explanation to s. 231, a person commits this offence, if the makes a genuine coin to appear like a different coin. If the resemblance of the counterfeit coin to the genuine coin is so close that it is capable of being circulated it is sufficient to constitute the offence.

2. Making or selling instrument for counterfeiting (s. 233 and s. 234): Section 233 and 234 punish the making or selling of instrument for counterfeiting coin and the making or selling of instrument for counterfeiting India respectively. These sections (following sections too punish mere acts or preparation towards the

offence of coining and such acts of preparation are made substantive offence e.g., Making of dies of instruments used for making coins.

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3. Possession of instrument for counterfeiting: (s. 235) Section 235 punishes possession of instrument or material for counterfeiting coin or Indian coins, the latter being punished severely. Possession of instrument must be with the intention of counterfeiting coin and the intent must be proved.

4. Abetting in India, the counterfeiting of coin out to India is punished by section 236.

Amrit Sonnr's Case (A.I.R. 1919 Pat. 220): In this case, a gold smith and his son were protected for having burned underneath the verandah counterfeit coins. The lower court convicted the father, on the finding that the shop was in his possession. But there was evidence that his son ordinarily worked in the shop while the father looked after the cultivation. The High Court held that the adverse presumption against the father was satisfactorily rebutted and therefore acquitted, since the verandah being open, others had access to it.

Amal Hussain's case (A.I.R. 1950 Lah 97) Held: Where the wife knows that certain implements and material are in the possession of her husband and the place where they are kept will not make her liable under this section. It is the possession of any instrument or material for the purpose of counterfeiting that is made punishable under the section and not the knowledge that someone else is in such possession.

5. Importing or exporting counterfeit coin: Importing into, or exporting from India any counterfeit coin or Indian coin knowingly or having reason to believe that it is counterfeit is punishable (s.237 and s. 238).

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6. Delivery to another person of a counterfeit coin, or Indian coin with the knowledge that it is a counterfeit is an offence, (s. 239 and s. 240)

7. Delivery of counterfeit it coins as genuine which be did not know when the first possessed it, if punished under s. 241.

8. Possession of counterfeit, coin or Indian coin, with the knowledge that it is counterfeit is an offence(s.242 and 243)

Illustration: A, coiner, delivers counterfeit company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, answer 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 punishable under section 239, or 240 as the case may be.

Thus section 239 to 243 create three classes of offences: 1. Delivery to another of coin, possessed with the knowledge that it is counterfeit (s. 239 and s. 240), 2. Delivery to another of coin as genuine, which when first possessed the deliverer did not know to e counterfeit (s. 241); and 3. Possession of counterfeit coin by a person who knew it to be counterfeit when he become possessed thereof (s. 242 and s. 243).

Alteration of the coin (s. 245 to s. 254): 1. Fraudulently or dishonestly diminishing the weight or altering the composition of any coin or Indian coin is punishable s. 246 and s. 247 respectively. A person who scoops out part of the coin and puts anything else into the cavity is said to alter the composition of that coin (See explanation to section 246).

2. Altering the appearance of any coin or Indian coin with the intent to pass the said coin as a coin or different description is punished under section 248 and 249 respectively.

3. Delivery of a coin or Indian coin to another person with the knowledge that the same is altered is punished under sections 250 and 251 respectively.

4. Section 251 and 253 punish the possession of altered coin or Indian coin, respectively, by anyone who knew it to be altered when he become possessed of it.

5. It is an offence under section 254 delivering of counterfeit coin as genuine which he did not know when he first possessed it.

Criminal acts of mint employees (s. 244 and 245): 1. Person in a mint, causing a coin to be of a different weight or composition from that fixed by law, is punished under section 244. 2. Unlawfully taking from a mint any coining instrument or tool, is punishable under section 244.

Offences against Government stamps: The following are the offences relating to Government Stamps. 1. Counterfeiting or performing and process of counterfeiting a Government Stamp is an offence (s. 255). A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp to a different denomination (See explanation to s. 255)

2. Possession of any instrument for the counterfeiting Government Stamp is an offence(s. 256). Making, buying or selling any instrument for the purpose of counterfeiting Government stamp is punished by section 257. sale of counterfeiting Government stamp is punished by section 258. Section makes it an offence punishable to possess counterfeit Government Stamp.

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3. Using as genuine a Government Stamp known to be counterfeit is punished under section 260. Section 261 makes it an offence to remove or efface fraudulently (or with the intent to cause loss of Governments) any writing from any substance bearing a Government Stamp, or removing from any document the stamp used for it. Using Government Stamp known to have been before is punishable under section 262. Section 263 punishes; a) erasure or removal of a mark denoting that a stamp has been used, b) knowingly possessing any such stamp and c) selling.

Section 263 A makes it an offence making, possessing or using of any fictitious, stamp or the possessing of a thing, instrument or material fictitious, 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 the purpose.

Offences relating to documents, trade and Property Mark: Sections 463 to 489 to the Indian Penal Code deal with offence falling under this chapter. They are, 1. forgery of documents, 2. offences relating to trade and property marks, 3. offences relating to Bank and Currency Notes.

6.9 OFFENCES RELATING TO DOCUMENTS AND PROPERTY MARKS:

Forgery

Section 29 defines a document. The section states, 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. The explanations to the section say that it is immaterial by what means or upon what substance the letter figures or marks are formed, or whether the evidence is intended for or may be

sued in a court of justice, or not. Thus a photograph is a document. Anything may be a document if it has any matter written, inscribed or printed upon it. In Emperor v. Kristoppa 27 B.L.R. 599, the Bombay High Court held the bark of a tree with the marks thereon was a document and upheld the conviction of the accused for forgery.

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Elements of Forgery: In R.Vs Ritson, L.R.I.C.R 203 it was held that according to English common law every " Instrument which ..... fraudulently purports to be that which it is not" is forgery. It is not of the essence of the offence that the whole of the instrument should be a fabrication; all that is essential is that there is falsification in and material fact. That alone will suffice to constitute the offence of forgery. Criminal amendment Act 2005 insert some words in provisions related to the forgery as per the amendment electronic documents also consider as a document.

R.Vs.Appasamy

The accused falsely representing that he is another person at the University exams got the other person's hall ticket, wrote the exam and signed the papers. Here the accused was guilty of forgery.

Section 463 of the I.P.C. deals with this offence and it says that making of a false document is the foundation of forgery; "A person commits forgery if he (1) makes any false document or part of a document. (2) with intent (a) to cause damage or injury to the public, or to any person, or (b) to support and claim or title or (c) to cause any person, to part with Property or to enter into any express or implied contract, or (d) to commit fraud, or (e) that fraud may be committed.

The ingredients of the offence of forgery are: 1. The making of a false document or part of it 2. Such making should be with intent to (a) cause damage or injury to the public or to any person; or (b)

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support any claim or title or, (c) cause any person to part with property: or, (d) enter into any express or implied contract: or (e) commit fraud or that fraud may be committed.

1) False document: Section 464 says that a person is said to make a false document if he dishonestly or fraudulently.

1) (a) makes, signs, seals; executes a document or part of a document or makes any mark denoting the execution of a document: (b) with the intention of causing it to be believed that such document or part of a document: was made, signed, sealed or executed (1) By the authority of a person by whom or by whose authority he knows that it was not made, signed or executed or (ii) at that time at which he knows that it was not made, signed, sealed or executed:

2) without lawful authority by cancellation or otherwise- (a) alters a document in any material part thereof, (b) alteration has been made or executed either by himself, or by any other person, (c) whether such person be living or dead at the time of such alteration.

3) (a) cause any person to sign, seal, execute or alter a document, (b) knowing that such person (i) by reason of unsoundness of mind or intoxication cannot, or (ii) deception practiced upon him does not. (iii) know the contents of the document, or the nature of the alteration.

Explanation (1) added to section 464 is that a man's signature of his own name may amount to forgery. But this must have been done with the intention that the signature may be mistaken or the signature of another person with the same name.

Explanation (2) says: the making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person or in the name of a deceased

person intending it to be bellied that the document was made by the person in his life time, may amount to forgery.

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(Note: The Indian Penal Code has given very many illustrations to explanation 1 and 2 under this section, and the student is directed to look up those illustrations in the code).

To summarise, there are three sets of acts which are essential for making a document, a false document for the purpose of forgery and a fraudulent and dishonest intention is common to them all. The making of a false document is complete as soon as the document is made with intent to commit a fraud. The fraud mentioned in this section is not such fraud, which should, necessarily intent to result in, or aim at deprivation of property, Pre-dating a document may become forgery if the date is a material part of the document. The intention of the accused suit be judged by the result which he expected, and not by that which actually took place or which could have taken place. That if X puts the name of Y on a bill of exchange as acceptor without Q's authority, hoping to meet it when due or hoping that Y will overlook it, this amounts to forgery. "that a particular person should be defrauded is not intended by the section, what is required is not that there must be general intention to defraud and a possibility of some person being, defrauded.

A document need not be legal evidence in the strict sense of the term. It is sufficient if it is intended to be evidence. So forging a document as a "well", however technically it may be defective will be an offence, if the intention is to convey the idea that it was executed by a person.

In Rinald's case 1863 L.C. 330 taking of a positive impression on glass by photography is "making", a false document. In Krishnappa Khandapp's Case, 1925-17 B.L.R. 599 making

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counterfeit marks on trees for which permission had been obtained for cutting has been held to be an offence under section 464.

In Idalkalammal v. Raman, 1908-32 Mad, 9-0 it was held not to be forgery for a man to make deed which contains a false recital such as when the exultant described himself as the adopted son of a person when in fact he was not.

Is Deprivation of property necessary for fraud? In the case of **R.V.Sheo Dayal I.L.R. VII. All 459,** a fabricated receipt for rent in place of a lost genuine receipt was held not to be forgery as no injury is caused to any one.

Dr. Vimala v. Delhi Administration A.I.R. 1969 S.C. 1572. The accused bought a car out of her own money in the name of her minor daughter Nalini and had the insurance policy transferred to daughter's name by signing her daughter's name. compensation for two accidents to the car was also received by her signing the claims etc, by the name of Nalini. The claims were genuine. On the facts found, neither the accused got advantage either pecuniary or otherwise, by signing the name of her minor daughter; nor did the insurance company incur any loss, pecuniary or otherwise, by dealing with the accused in the name of Nalini. The insurance company would not have acted differently even if the car had stood in the name of the accused and she had made the claims in her name. On the question whether she was guilty under section 463 and 464 I.P.C. It was held, that the accused was certainly guilty of deceit as she had made insurance Company to believe that her name was Nalini but the deceit did not secure for her any advantage or cause any non-economic loss or injury to the insurance company. In the result the accused was not guilty of the offence.

The Supreme Court again in **Sr. S. Cult v. State of U.P.A.I.R. 1965 S.C. 523** re-emphasized the rule that unless the false document is used with a view to cause wrongful gain or loss to another a prosecution under section 471 is not sustainable.

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The principle laid down by the Supreme Court in Dr. Vimala's case was followed in Daniel Haiely Welcott etc. v. State, 1968 M.L.J. 229, by the Madras High Court. In this case the accused was charged of the offences under section 463 and 464 I.P.C. for having forged a passport to gain entry into India. The accused was an American but falsely assumed the name of a British national B.P.C. Company, a non-existent person and obtained entry into India under this passport. Walcott had previous conviction in India for offences committed.

It was contended for the accused that even granted that there were false entries in the passport is not a false document falling under section 463 I.P.C. and the accused is not guilty. The contention was rightly rejected by Krishnasamy Reddy. J and the accused held guilty of the offences under section 463 and 464 along with offences under the **Foreign Exchange Regulation Act and Defence of India Rules.** The Court held: "Forged document is defined in section 470 I.P.C. as a false document made wholly or in part by forgery. The requirement to constitute the offence of forgery may be broadly stated as follows:

1) The document or the part of the document must be false in fact. 2) It must have been made dishonestly or "fraudulently" within the meaning of the words as used in section 464 I.P.C. and 3) It must have been with one of the intents specified under section 463 I.P.C. It was further pointed out "that the main element of the offence is that the document must have been made with a fraudulent intention. The word "fraud or fraudulently" involves two elements, viz., 1) Deceit and 2) injury caused or likely to be caused to the person deceiving or

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someone else in consequences of the deception. If a person deceiving another derives any advantage from it, which he could not have had of the truth had been known and thereby causes injury to the body, mind or reputation of the deceived, he commits fraud, in all cases where an advantage has been obtained by the deceiver there will be invariably an equivalent disadvantage in loss or risk of loss to the deceived or to some one else"

The Court also held that a passport was a valuable security within the meaning of section 30 and the right conferred to the passport holder is a perfect legal right.

Document made to conceal former fraud: If for any, document made by the accused in order to escape liability for criminal prosecution for an offence already committed can be convicted of the offence of forgery, is a moot point.

It has been held that making of a false document with intent merely to conceal a former fraud is not forgery as the language of the section clearly contemplates injury or fraud in future (Abdul Hamid v. R.I.L.R. 13 Cal, 359). But in other cases however it has been held that the intention in forgery need not necessarily have reference to a future injury or fraud; and that if the intention cannot be otherwise than fraudulent. In Larit Mohan Saikar's case (1894, 22 cal 333) an employee who was asked to pay a sum of money into a collectorate paid only a portion of the sum and altered the chalan given back to him, so as to make it appear that he had paid the whole sum, it was held that the alteration of the chalan to conceal his fraud, was fraudulent and that it amounted to forgery. The Madras High Court in **R.V. Sabapathi I.L.R. II Mad, 411** has taken the same view.

Aggravated forms of the offence of forgery: Section 466 to 469 dela with aggravated forms of the offence.

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Section 466: Forgery of a record of a court of justice or of a register of birth, baptism, marriage or burial or a certificate or authority to institute or defend a suit or a power of attorney, (7 years imp and fine). **Section 467:** Forgery for the valuable security will etc. (Life imp or 10 years imp. And fine)**Section 468:** Forgery for the purpose of cheating (7 years imp and fine) **Section 469:** Forgery for the purpose of harming the reputation of any person (3 years imp and five).

Other offences relating to Documents: Section 472 to 477 deal with these offence and they too are aggravated and the punishment is also enhanced.

Section 472: Making or possessing counterfeit seal etc. with intent to commit forgery under section 467.**Section 473:** Making or possessing counterfeit seal etc. with intent to commit forgery punishable otherwise (up to 7 years imp and five). **Section 474**: Having possession of document in section 466 or 467 knowing it to be forged and intending to use it as genuine document is one described in section 466 (imp,upto 7 years and fine). If document under section 467 (imp upto life or 7 years and fine) **Section 475:** Counterfeiting device or mauk used for authenticanting documents described in section 467 or possessing counterfeit marked material (imp upto 6 years and fine). **Section 476:** Counterfeiting device or mark used for authenticating documents described other than those described in section 567 or possessing counterfeit marked material (imprisonment upto 7 years and fine). **Section 477:** Fraudulent cancellation, destruction etc, of will, authority to adopt, or valuable security. (imprisonment for the life or imprisonment up to 7years and fine).

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Falsification of Accounts: Section 447 A : The offence of falsification of accounts is committed by any person. "Whoever being a clerk, officer, servants or employee or acting as such, with intent to defraud, destroys alters or falsifies any book paper, writhing or valuable security or any account book commits the offence of falsification of accounts, shall be punished with imprisonment upto 7 years and fine. A general intent to defraud is sufficient under this section because this section was introduced to meet cases of falsification of books punishable, even though no particular sum of money or particular occasion can be shown and without naming any particular person intended to be defrauded.

The following facts have to be proved to establish guilt under this section (a) The accused was a clerk or servant or he was employed or acting as such. (b) He must willfully and with intent to defraud; (i) destroy, alter etc. any book paper etc. belonging to or is in the possession of his employer, or (ii) has been received by him for or on behalf of his employer, or (c) make or abet the making of any false entry in or alter or abet the omission or alteration of any material particular from or in any such book, paper etc.

In Annasami Aiyanager' case (1901-1 Weit 554) a clerk of the lowest Department made alterations in the case book and office matter to make it appear that the moneys due to Government were paid into the treasury. He was held guilty under this section. In Kanadasami, Aiyar's case, 1929, 52 M.L.J. 703 a V.P. letter by a Sub Postmaster the accused, was delivered days later and the records were altered so as to tally with the actual date of delivery was held to have committed an offence under this section. This section require only falsification of accounts with intent to defraud, it does not require deprivation of property. In Doraisami Reddiar's case, 1951. I.M.L.J

691 were officers of a co-operative store made false entries in the accounts, even though nobody suffered any loss and held to be an offence under this section.

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Trade property and other Marks (Section 478 to 489-E): A trade mark according to Section 478 is "A mark for denoting the goods and the manufacture and merchandise of a particular person and a trade mark registered under the **Trade Marks Act, 1940".**

Section 479 defines a property mark as "A mark used for denoting that movable property belongs to a particular person" **Section 483** Counterfeiting a property mark used by another section 484. Counterfeiting a mark used by a public servant; Section 485 making or possession of any instrument for counterfeiting a property mark, Section 486 selling goods marked counterfeited property mark: Section 487 and 488 deceiving a public servant by a false mark and section 489 removing, defacing or alter ting any property mark.

Section 480 explains when a person uses a false trade mark. 1) If he a) mark any movable property or goods or any case package other receptacle containing movable property or goods, or b) uses any case, or package etc., having any mark thereon. 2) in a manner reasonably calculated to cause it to be believed that the goods marked or contained in any such receptacle so marked belong to a person to whom they do not belong.

The test here is not whether the trade mark is an exact replica of the trade mark used by the complainant, but whether the totality to the impression left by the trade mark in question is such that it has been mistaken for the trade of the complainant.

As property in a trade mark is the right to the exclusive use of some mark, name or symbol in connection with a particular manufacture or vendible commodity' so its use for a totally different article cannot be

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complained of a trade mark refers to manufacture or quality of goods and the property mark concern with proprietor as it deal with ownership. **Sumant Prasad Jain's Sheojanam Prasad AIR 1972 SC 2488;**

In Nalls v. Barrows. 1863 34 L.J. Ch 24 it was held a trade mark for iron goods, its owner restrain the use of such trade mark when impressed upon cotton or wollen goods.

Distinction between "Trade Mark" and Property Mark " The distinction between the two is that where trade mark is concerned it denotes the manufacture or quality of goods to which it is attached and property mark denotes the ownership of them i.e. the former denotes goods themselves, the latter right of property in them. The sections on counterfeiting given above have to be read along with the definition of "Counterfeit" given in section 28. It reads: A person is said to "Counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practice deception or knowing it to be likely then deception will thereby be practiced".

Explanations i) It is not essential to counterfeiting that the limitation should be exact, and (ii) when a person caused one thing to resemble an other thing, and the resemblance is such that a person might be deceived there by it shall be presumed until the contrary is proved that the person who caused that thing to resemble another intended by means of that resemblance to practice deception or known that deception would thereby be practiced.As already explained under explanation I what is necessary is the resemblance should be so close that the deception may thereby be practiced.

Explain –II lays down the rebuttable presumption where the resemblance is such that a person can be deceived then intention to deceive or knowledge of likelihood of deception would be presumed.

Currency –Notes and Bank Notes (Section 489 A to 489 E) **Section 489 A.** Counterfeiting Currency notes or bank notes or knowingly performing any part of the process f counterfeiting such notes (Life imp. Or 10 years with fine). **Section 489 B** knowingly using as genuine or otherwise trafficking is forced or counterfeit currency notes or bank notes (Life imp or 10 years with fine). **Section 489 C.** Possession with knowledge of such notes of such use etc. (Imp. Up to 7 years or 10 years of fine or both) **Section 489 D** Making or possessing instruments or material for forging them(imp. For life or 10 years with fine). **Section 489 E.** Making or causing to be made or using or delivering documents resembling currency notes or bank notes fine upto Rs. 100).

6.10 OFFENCES RELATING TO WEIGHTS AND MEASURES: (Sec. 264 to S. 267):

The following are the offences relating to weights and measure's (1) Section 294 deal with fraudulent use, false instruments for weighting. This section requires two things: a) fraudulent use of any false instrument weighing and b) knowledge that it is false. In other words this section punishes the use of false balance. (2) Section 276 punishes the fraudulent use of false weights or measures of length or capacity.

Nurodin's case (1889) Unrep C.C. 396: In this case the accused sold liquor, measuring it with a glass which had not the prescribed measure and of which he falsely misrepresented the capacity. Held not guilty under this section, but committed the offence under s. 415.

(3) Section 266 punishes a person in possession of false weight or measures. (4) Section 267 punishes the making or selling or disposing of a false balance weight or measure. The object of the

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Check your progress

1. Define section.

2. What is the offence of mutiny.

3. Write a short note on public nuisance.

4.Who is a public servant.

5. Write a brief note on offences relating to coin and Government stamps under the IPC.

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section is to prevent the circulation of false scales, weights or measures.

6.11 OFFENCES RELATING TO PUBLIC SAFETY AND CONVENIENCE:

Rash and Negligent Driving or Riding.

Rash and negligent driving or riding on a public way is punishable under section 279. a rash act is an over-hasty act. It is not a deliberate act. Absence of reasonable duty to take is the common feature of negligent act. In other words it is omission to take the ordinary care or scheme of minimum required skill or diligence.

The following are the essentials of this section: 1. Rash or negligent driving or riding: 2. On a public way and 3. Such driving or riding must endanger, human life or be likely to cause hurt or injury to any person.

It must be noted that negligence as such involving the risk of injury is punishable under this section . That is though nobody is hurt or injured a person will be guilty under this section (If hurt is caused the case would come under s. 337 or 338 and if death is caused, s. 304-A). but in a civil action, based on negligent act or omission, injury must have occurred.

Abdul Latif's Case.(1944): The accused was charged for rash driving. The question to be determined was whether the accused was driving at a reckless speed. If so the next question is whether the speed was such as to endanger human life or to be likely to cause hurt or injury to any person. The court, held, in such cases, it is immaterial whether the road was occupied by pedestrian or vehicle, even if the road was unoccupied if the above conditions are psatisfied the accused will be guilty of the offence.

The test applied in such cases is whether the accident could have been avoided by exercise of ordinary care and diligence on the part of the accused. This point was laid down in **Emperor v. Hamnarian Sakhailal 1932 Nag 65.**

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Other offences falling under the chapter are: Rash or negligent navigation is an offence (s. 280) 2. Exposing false light mark or buoy to mislead any navigator is also an offence (s.281) 3. Conveying persons by water for hire in an unsafe. (e.g.rowing boat having holes at the bottom) or overloaded vessel is also punishable (s.283) 4. Causing danger, obstructin or injury on a public way or line of navigation is punishable (s.283) 5. Negligent conduct with respect to poisonous substance (s.284). Under this section person in possession of poisonous substance should.

Section 286 punishes negligent conduct with respect to explosive substances. Section 287 deals with negligent conduct endangering human life or causing probable danger to human life with respect to machinery. Section 38 deals with negligent conduct with respect to pulling down or repairing building. Section 89 deals with negligent conduct with respect to animals, that is, improper or careless management of animals so as to endanger human life.

6.12 Summary:

Generally speaking, these crimes do not have specific victims. The victim of these crimes is society as a whole. **Blackstone** says that a Public nuisance must be an annoyance to all the King's subjects. These offences can cover almost any conduct that law enforcement officers consider a public nuisance (or) offences against the common well being.

Sedition is closely related to the form of treason consisting in 'levying war" against the queen in Britain. That crime may remain a

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crime long after it has ceased to be a threat to the security of the state or well being of society.

Public Elections, Armed Forces, Court, and appointment of Public servants, that are some arrangement by the state for keeping the peaceful movement of the society, coins, stamps, Documents, and property marks are maintain the Public wealth of the state. If any illegal interfearnce with this institutions the common peoples (or) society is affected and feel annoyancely. The 1st law commission members well understanding the Indian Social system and Government Institutional Set-ups, so they are comprised the offences and punishment related to the common well being in this above chapters constitute under the various heads.

6.13 Answer to check your progress:

Question NO.1: Refer: 6.1,

Question NO.2:Refer: 6.2,

Question NO.3:Refer: 6.3,

Question NO.4:Refer: 6.4,

Question NO.5:Refer: 6.8

6.14 Key Words:

Sedition – Creating enmity against the state by his speech and expression.

Riot - Violence committed by unlawful assembly

Affary - two (or) more persons fighting

Bribe - Public servant taking illegal gratification in respect of an official act.

Forgery - making a false instrument

Perjuny - give the false oral evidence before the Court.

Overawe- fill with great respect

6.15 Model questions:

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1. Enumerate the offences against Public justice.
2. Explain the offence of Forgery.
3. Explain the term-Bribery and discusses about the related offences under the Indian Penal code.
4. Discuss offences against public Justice with decided case.
5. Examine the scope of document under the offence of forgery.

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Unit - 7

OFFENCES AGAINST THE PERSON

Introduction:

The object of the law is to protect the rights of individuals and safeguard them from any interference by others. Any legal system secures three valuable rights.

1. Rights relating to person: 2. Rights relating to property and
3. Rights relating to reputation.

The object of criminal law is to declare certain acts as offences and punish, those who do such acts and thereby encroach upon the equal rights of others. Such offences are generally offences affecting the person property or reputation of an individual. Offences relating to property and reputation will be dealt with in later part. Offences against a person may be those affecting his life or his body is discussed in this unit.

Unit Objectives:

- To understand the various kinds of the offences affecting individuals
- To know the offence against the human body especially culpable homicide and murder
- To pointed out the differentiation between the kidnapping and abduction
- To discuss the offence of wrongful restraint and confinement
- To observe the death relating to the dowry and cruelty
- To study the different types of sexual offences, offences relating to the marriage under the Indian Penal Code

Unit Structure:

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7.1 Offences Affecting Human Body:

The word "life" is defined in s. 45 so as to denote, "the life of a human being unless the contrary appears from the context". The word "death" is defined in S. 46 so as to denote, "death of a human being, unless the contrary appears from the context". Section 44 defines a "injury" so as to denote, "any harm whatever illegally caused to be person in body, mind, reputation or property".

This part discuss about the major crimes an affecting human body. They are (i) culpable homicide and murder ii) miscarriage iii) attempt suicide and thug iv) Hurt v) Criminal assault, force etc. vi) wrongful restrain, kidnapping etc.

7.2 Culpable Homicide and murder:

Homicide: The word homicide has been derived from the Latin word 'homo' which means a man, and 'caedere' which means to cut. Thus

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homicide means kiiling of humen being by another humanbeing. But the Word homicide is not defined in the Code. It is the forcible putting to an end of the legal and physical existence of a human being it is considered to be the greatest injury that one can cause to another.

Kinds of Homicide: Homicide classified in two types (1) lawful homicide and (2) unlawful. Lawful homicide falls under two divisions(a) Excusable and (b) Justifiable.

Excusable Homicide: Where the act by which life of a person is taken away is excused by law; it is called excusable homicide. This class includes the cases given in sections 80, 82, 83, 84, 85, 87, 88 and 92 of the I.P.C.

(ii) If death is caused under circumstances described in sections 76, 77,78,79,81,100 or 103 it is justified by law.

Unlawful Homicide: Where the causing of death is punishable as an offence it is called unlawful homicide. Unlawful homicide includes a) culpable Homicide not amounting to murder b) murder.

Culpable Homicide (s. 299) : The first kind of unlawful homicide under the Code is culpable homicide dealt with in section 299. Culpable homicide simply means wrongful homicidal punished by law. Section 299 IPC defines culpable homicide thus: "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 culpable homicide". The culpable homicide is causing death of a person by doing an act: a) with the intention of causing death or b) with the intention of causing such bodily injury as is likely to cause death: or c) with the knowledge that he is likely by such act to cause death.

Means rea in culpable homicide: The required mental element t constitute the offence of culpable homicide is as follows: 1. An intention to cause death. 2. An intention to cause dangerous injury 3. Knowledge that death is a likely result. In the case of Jeyaraj Vs. State of Tamil Nadu AIR 1976 SC 1519. Supreme Court held that the intent and knowledge as the ingredients of Sec. 299 IPC.

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Intention to cause death: This point can be explained by the following illustrations: 1) Where A shoots B through the head or heart with the intention of killing him. A commits culpable homicide 2) a lays sticks and turf over a pit, with the intention of there by causing death, Z believing the ground to be firm, treads on it falls in and is killed. A has committed the offence of culpable homicide 3) A knows Z to be behind a bush. B does not know it A intending to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here A has committed the offence of culpable homicide. Intention of causing bodily injury likely to cause death.

The following illustration will make the position clear:

A intentionally given a sword cut or club wound in the vital part of his body which is likely to cause his death. If the injury inflicted is sufficient to cause the death of a man in the ordinary course of nature and as such Z dies in consequence. A is guilty of culpable homicide although he may not have intended Z's death.

Under section 299 clause (b) the intention is only to cause such bodily injury as is likely to cause death; the intention is only t cause dangerous injury. Such injury happens to be one likely to cause death. But there is neither the intention to cause death nor is the effect of the injury intended death occurs a likely result of injury. But under section 299 clause (a) the intention is to cause death.

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With the knowledge that death is the likely result: Under section 299 clause (c) knowledge that death is likely to result by such act is enough to commit the offence of culpable homicide. i.e. A lays strikes and turf over a pot with the knowledge that death is likely to be thereby caused Z, believing the ground to be firm treason it, falls in and is killed. A has committed the offence of culpable homicide (2) A knows Z to be behind a bush B does not know it. A knowing it to be likely to cause Z's death induces B to fire a the bush B fires and kills Z. A has committed the offence of culpable homicide.

Punishment for culpable Homicide not amounting to murder.

Death caused without intention or knowledge: This it is clear from section 299 that guilty intention or knowledge is the required mental element to constitute the offence of culpable homicide. In other words, if death is caused without "intention" or "Knowledge, it is not culpable homicide within the meaning of the section. A by shooting at a fowl with the 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 cause death by doing an act that he knew was likely to cause death.

The offence of homicide presupposes an intention or knowledge or likelihood of causing death. In the absence of such intention or knowledge, the offence committed may be grievous hurt, or simple hurt, as the case may be respectively. A person is said to be 'legally' bound to do whatever it is illegal in him to omit. That is a person is legally bound to do a thing, if there is remedy enforceable in law for his commission to do that thing. Thus, where death is caused by omission, no criminal liability attaches unless there is a legal duty to do the thing omitted. The following illustrations will make the

position clear e.g. A sees B, a stranger, about to cross and omits to inform him of the danger, B is drowned. A's omission is not illegal. But if A was a peon stationed by authority to warn passengers and if he were acting as a guide to B, he will be liable for his omission to inform B of the danger. (2) A sees B drowning, and could save him by holding out his hand. A does not do so and B is drowned. A's omission is not illegal. But A will be liable if the master of a ship from which B had fallen into the sea (3) A a passer by sees a dog savagely seize B, a stranger, by the thrust. A makes, no attempt to help B, B is killed A's omission is not illegal. But if A was the master of the dog in charge of it he will be liable.

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Death caused by illegal commissions will amount to culpable homicide. Section 299, 34 and 326 II'C. Culpable homicide not amounting murder.

In the present case neither injury caused to deceased was found sufficient to cause his death nor was any there common intention to kill him. Only one blow was given to the deceased and that resulted in his death after one week. In such circumstances it was held that said offence would be culpable homicide not amounting t murder. **Kishnachand Vs State of Punjab 1994 Cr. L.J.19, AIR 1994 SC 32.**

Whoever causes death by doing an act: To constitute the offence of culpable homicide, it is necessary that death resulted from the doing of an act. Death of the victim completes the commission of the offence.

According to explanation (3) attached to section 299 causing the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause death of a living child, if any part of the child has been brought forth even though the child may not

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have breathed or completely born t consider it a human being. Partial emerge from the womb is sufficient, whether it is breathing or not, to acquire the character of a human being. You will find that the popular conception of breathing as a test of life is not applied here. Under the English law the corresponding law on the point is that the child should have completely emerged out of the womb.

By doing an act: A cording t section 32 "act" includes illegal commission also. The expression "illegal" as defined by section 43, is applicable to everything which is an offence or which ls prohibited by law, or which furnished ground for a civil action. According to. section 33 "act" and "omission" denote a series of acts and series of omissions also.

Section 299 Explanation I deals with cases of acceleration of death. "A person who causes bodily injury by infirmity, and there by accelerates the death of that other, shall be deemed to have caused his death". The following illustrations will make the position clear, (1) A is suffering from an enlarged spleen and B kicks him in the stomach as a result of which the spleen is ruptured and A dies. B will be deemed to have caused the death of A. B, cannot contend that it is the rupture of the spleen that has caused A's death and that he has only accelerated death. Whether the causing of death will amount to homicide or not will depend upon the mens rea on his part (2) A, whilst suffering from an incurable disease is violently assaulted by B, and A dies in a few days. B has killed A, (3) A is suffering from aneurism of the heart. B his rushes into his room and shouts in his ear. "your wife is dead". Intending thereby to kill A. A dies of the shock B, has killed A (4) A is very ill with high fever. B intending his death administers large does of. opium which accelerates A's death. B kills A.

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Explanation-II: 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 treatments' death might have been prevented. The principle underlying this explanation is that a person must be answerable for the natural consequences of his act. The probable fact that by proper treatment death could have been avoided, will not absolve the accused from liability. Thus it was held in a case of stabbing that death could have been prevented if an operation was performed immediately, could not relieve the accused of his responsibility immediately.

A deliberately inflicted an injury on B likely to result in death by lock jaw. B refused a allow a surgeon to perform an operation to prevent death. B died. Held A killed B.

"MURDER"

The offence of murder is dealt with in section 300 of the Code. Murder is not defined in this section, but the section lays down the circumstances under which culpable homicide amounts to murder. In the Code "culpable homicide" is used as a genetic term and subdivided into two species, namely culpable homicide amounting to murder (s. 300 clauses 1 to 4) and culpable homicide not amounting to murder (s. 299 and the five exceptions to s. 300). **Culpable homicide is murder, if the Following essentials are present** (1) The act is done with the **intention** of causing death or (2)The act is done **with the intention** of causing such bodily injury as the offender **knows to be likely to cause death** of the person to whom the harm is caused, or (3) If the act 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 and if actually death results it's murder. **Reference case: Anda Vs state of**

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Rajasthan (AIR 1966 sc 148) (4) if the person committing the act known that the act is so imminently dangerous that it must in all probability cause death, and committed such act without any excuse for incurring the risk of causing death or such injury as aforesaid. **Reference case law – Sudharasan kumar Vs state of Delhi (1975) 1scw R289,**

Intentional killing: This point will be clear from the illustrations given below: (1) A shoots Z with the intention of killing him. Z dies in consequence, A commits murder. (2) A, under the influence of passion excited by a provocation given by Z. intentionally kills Y, Z's Child. This is murder, in as much 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 but intentionally, (3) Z strikes B by this provocation excited to violent rage, A a by stander intending to take advantage of B 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 has committed murder.

Death caused to a person and intended: This aspect is dealt with is section 301. If the person killed is not the person intended to be killed it does reduce the liability of the accused. By application of the doctrine of transfer of malice or the transmigration of motive. The accused is held liable in the same way if he intended to cause the death of the person unintended (see illustration (a) tos. 299)

Section 301 says that culpable homicide may be committed by causing the death of a person when the offender neither intended nor knew himself to be likely to kill. Under this if A intends to kill B but kills C whose death he neither intends nor knows himself to be likely

to cause, the intention to kill C is attributed to him by transfer of malice, where a mistake is made in respect of the person, the difference of person made no difference in the offence, or its consequence. As for example, where A shoots at B supposing him t be C, the crime consists in the willful doing of a prohibited act shooting B although A mistook B for C. similarly if A makes a thrust at B intending to kill and C throwing himself in between receives the thrust and dies. A will answer for it as if his moral purpose had taken place on B.

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Transferred Malice

Public Prosecutor v. Suryanarayana Murthi (1912). In this case the Madras High Court held, that it is sufficient for the purpose of section 299, if criminal intention or knowledge on the part of the accused existed with reference to any human being though death is caused to a person not intended by the accused. The facts of the case are as follows: The accused S. with the intention of killing N gave him some poisoned halwa. N ate a portion and threw the rest away so that a child aged 8 years picked it up, ate and gave a portion to another child who also ate it. Both the children died and N suffered very much as a result of the poison. The Madras High Court held the accused guilty of murder of the two children.

Thus under section 304 if the killing takes place in the course of doing an act which a person intends or knows to be likely t cause death it ought to be treated as if the real intention of the killer had been carried out. All that the section requires is that there should be an intention to cause death or knowledge that death is likely to be the result.

The last submission is that there was no motive for the appellant to commit this offence and therefore it cannot be said that

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the appellant had intention to cause the death of the deceased. The Intention has no gathered from the various circumstances particularly the nature of the weapons used and the injuries that are inflicted. If one shoots another with a fire arm there cannot be any other intention. The first illustration of section 300 itself makes if clear. **Tirlok singh Vs state of Punjab 1995 SCC (Cri) 896.**

Causing bodily injury which the offender knows to be likely to cause the death of the person: It applies to cases where the injured person is in such condition or state of health that his or her death would be likely to be caused by an injury which would not ordinarily cause the death of a person in sound health. The person inflicting the injury knows that owing to such condition or state of health it is likely to cause the death of the person injured.

Illustration: 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 blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although 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. 7. A is suffering from an enlarged spleen Z knowing that A is labouring under such a disease, a kick is likely to cause his death strikes him in the stomach as a result of which the spleen is rapture and A dies Z is guilty of offence of murder. Inflicting bodily injury sufficient in the ordinary course to cause death:

Under this the injury caused must be sufficient in the ordinary course to cause death e.g., A intentionally give 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 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.

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There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under section 304 Part II of the code if a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must in the absence of any circumstances negative the presumption be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death and the case may be covered by either cause 1stly or 3rdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit the amount of force employed and the circumstance attendant upon the death.

State of Karnataks Vs Vedanayagam 1994 (3) Crimes 1017 (1994) 7JT (SC) 55 (1994) 4 CCR 845 It is not necessary that death must bei nevitable or in all the Circumstance the injury inflicted must cause death. If the probability of death is very great the requirement of clause, third is satisfied if there is probability in a less degree of death ensuing from the act committed the finding should be of culpable homicide not amounting to murder. The emphasis is sufficiency of injury to cause death. A Judge must always try to find

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whether the bodily injury inflicted was that which the accused intended to inflict. The intention must be gathered from a careful examination of all the facts and Circumstances in a given case. The suits at which the injury was inflicted, nature of the injury, weapon used, force with which it was used are all relevant facts **Kikar Singh Vs State of Rajas than AIR 1993 SC 2426.**

Where common intention is not doubted and common object which sharing by all accused of causing such injuries that were sufficient for causing death in normal course of nature is proved conviction. Under section 302 read with section 34 IPC shall be Justified **Rajwant Singh Vs State of Kerala AIR 1966.**

Rajwant Singh and Unnl v.State of Kerala (1966): In this case, the accused had conspired together to burgle the safe of the Naval office at Cochin harbor and for that purpose he collected various article like chloroform, cotton, wool, rope etc. On the night in question they delayed Lt. Commander Mendanns of the Naval office from his house on some pretext and at a remote place his hands and legs were tied made unconscious and thrown in a shallow drain, where he died and his body was recovered next day. The doctor testified that his death was due to asphyxiation.

The accused contended that they only Wanted to keep the deceased out of the way for the time being and not to kill him, nor was there any intention to cause such bodily injury as was likely to kill. And, that at the most it could be said that death was caused with the knowledge on the part of the appellants that by these acts that were likely to cause death so as to bring the murder under section 304. The court rejected this argument and held that the case was covered by clause 3 to section 300.Accordingly they were held guilty

of murder, for the acts of the accused were sufficient in the ordinary course to cause death.

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The court pointed that for the application of clause 3 three things are necessary; (1) that an injury is caused, (2) that objectively what is the nature of injury in the ordinary course (3) if the injury is found to be sufficient to cause death, one test is satisfied if so it must be prove that there was intention to cause the very same injury and that it was not accidental or unintentional if this is also held against the accused, it is murder, The last clause, the court said, is ordinarily applicable to cases where there is no intention to kill any one in particular.

With the knowledge of doing an act which is imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death. Under clause 4 to section 300 it is deficient of the act is done with the knowledge that it is imminently dangerous that it would, in all probability cause death or such bodily injury as is likely to cause death.

Illustration: A without any excuse fires 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.

Murder reduced to culpable Homicide not amounting to murder: The five exceptions to section 300 provide for cases where what would otherwise be murders are reduces to culpable homicide not amounting to murder. That is, an accused charged for the offence of murder will escape the punishment prescribed for murder, if he comes under any one of the exceptions.

Exception: I Death by grave and sudden provocation: Culpable homicide is not murder if the offender whilst deprived of the

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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 exception is subject to the following limitations .This limitations are discussed in – Murugason vs state of TamilNadu (1993criL J 2565).

1) That the provocation is not sought or voluntary provided by the offender as an excuse for killing or doing harm to any person, e.g. a) A under the influence of passion excited by provocation given by Z intentionally kills Y,Z's child. this murder, in as much as the provocation was not caused by accident or misfortune in doing an act caused by the provocation b) Y gives grave and sudden provocations to A, A on this provocation, fires a pistol at Y, neither intending or knowing himself to be likely to kill X, who is near him, but out of sight. A kills Z. Here has not committed murder but merely culpable homicide; Z is killed accident.

2) That the provocation is not given by anything done in obedience to law, or by a public servant in the lawful exercise of the powers of such public servant e.g. a) A is lawfully arrested by Zap bailiff. A is excited to sudden and violent passion by the arrest and kills Z. This is murder in as much as the provocation was given by a thing done by a public servant. b) A appears as a witness before Z, a Magistrate, Z says the 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.

3) That the provocation is not given by anything done in the lawful exercise of the right of private defense'. E.g. A attempts in pull Z's nose. Z, in exercise of the right of private defense, laid 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, in as much as the

provocation was given by a thing done in the exercise of the right of private defense. Case – law Yogendrar Morarji vs. state of Rajasthan (AIR 1980 sc)

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Whether the provocation is grave and sudden enough to prevent the offence from amounting to murder is a question of fact. Case – law Sombal Vs The state (1977 criL-J-2)

The provocation from the stand point of a reasonable man not to be sufficient for accused to loose self control so as to repeatedly stab the deceased and kill him hence order of conviction restored. **Jangler Singh Vs State of Rajasthan AIR 1998 (7) SCC 372.**

English decisions on provocation: Mancini v. Director of public Prosecution (1942): In this case M was attacked by D (with a pen knife in his hand) and F so that M with his tow edged dagger type knife in self-fence stabbed and killed D.M. was convicted for murder and his appeal to the House of Lords dismisses. The court laid down that the test to be applied is that of a reasonable man.

Duffy's case (1946): In this case, the accused wife was subjected to brutal treatment by the husband. On the date of offence also there was a quarrel between them that she wanted to take away the child to which the husband objected.' A little later when the husband was in bed, with a hatchet and a hammer she struck him. Consequently the husband died. The court after rejecting her plea of provocation convicted her for the offence of murder. Lord Goddard. C.J. observed that: "Provocation is some actor series of acts done by the dead man to the accused which would cause in any, reasonable person and actually causes in the accused a sudden and temporary loss of self control, rendering the accused to subject to passion as to make him or her for the moment not master of his mind".

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The test of reasonable standard was confirmed by the House of Lords in Bidder v. Director of Public Prosecution. (1954) and Court of Appeal in **R.v.Ward (1956).** The principles laid down in the English decisions are applicable to the plea of provocation under the Indian law. (Sec.300 Exception 1).

Anger is a passion to which good and bad men are subjects and therefore mere human frailty and infirmity is not punished with actual severity, as ferocity and other evil feeling. The authors on the Code agreed that homicide committed in the sudden heat of passion on great provocation ought not to be punished so severely as murder. So that law views with leniency the man provoked to do the greatest harm to another under circumstance in which he himself had lost the control of his mind. Provocation is an excuse only when the accused is thereby deprived of the power of self control.

In order to bring the case under this exception the accused must show the following: 1) That the provocation was unexpected 2) That it was a grave provocation, 3) That it deprived the accused of the power of self control; 4) That the interval between the provocation and homicide was brief i.e., that there was no sufficient time to cool down; 5) That the person killed by him was either the person who gave provocation or some other person whose death the person provoked caused by mistake or accident.

Thus law takes note of the fact, that though the turbulent passion and animal instincts of man have been repressed by civilization yet he still finds difficult to curb them and that they get out of his control sometimes and therefore the law makes the provocation for such situations also.

Provocation by words and gestures: The House of Lords clearly laid down in the leading case of **Holmes v Director of Public**

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Prosecution (1946), that words alone (e.g. confession of adultery) will not amount to sufficient provocation to reduce murder to manslaughter except in very exceptional cases. The appellant had suspicion of his wife's conduct with his younger brother. One day in the midst of a quarrel between the husband and wife, she confessed her illicit intimacy with him, whereupon the applicant lost his temper, picked up a hammer and struck at her head. There after, she struggled for a moment in pain and agony and died. The House of Lords refused to depart from the rule that "mere words however abusing or insulting it may be will not amount to provocation" and the appellant was convicted for murder, Viscount Simon observer "Even if, gage's against Desdemona's virtues had been true. Othello's crime was murder and nothing else".

It is gratifying to note that under section 3, of the4 Homicide Act, 1957 if it is shown that he accused was provoked by words to kill a person the offence will be reduced to manslaughter.

Thus is has been the opinion of the authors of the code not to limit homicide committed in violent passion with he same punishment. Now the question arises whether provocation caused by adulterous intercourse is a good defense.

Provocation caused by adulterous intercourse: it has been held in several cases that the commission of adultery by wife within the sight of her husband is a sufficient grave provocation to bring the husband within this exception if he kills her. The following cases are illustrative of the point.

Sheik Bahoo: In this case the accused and his wife, sister's husband B, were sleeping on a cot on the verandah. The accuser's wife was sleeping in the adjoining room. B later got up, and went into that room and bolted it. The accused also get up, peeped through a

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chink in the door saw B and the accuser's wife were having sexual intercourse. The accused returned and lay down on the cot. Some time later B came out and lay down by the side of the accused. When B began dozing the accused got up and stabbed him several times and killed him, Held: he was guilty only of culpable homicide. The soundless of the decision is questionable because of the laps of time in between the provocation sight of adultery and the commission of the offence. Where A's wife was being forcibly taken to the house of a native physician for performance of some incantation, and the husband took a sword climbed up to roof and watched the proceedings and found that she was being ravished by the sword. Held the accused committed only culpable homicide not amounting to murder.

The question arises whether the plea of provocation is available if the woman happens to be other than the wife such as a concubine, daughter, sister, mother or a distant cousin. On this point there is a difference of opinion among the High Courts. When a man sees a woman in the aims of another, and losses control over himself the fact that she was his mistress does not change the position; the plea of provocation is available to him. This is the view taken by the Madras High Court (Kota Potharaju) but the application of the rule is limited to wife, married sister or mother and not to a first cousin. The High Courts of Allahabad, Bombay and Lahore have followed the view of the Madras High Court. But the Calcutta and the Patna High Courts, have held where the relationship between the parties is not that of husband and wife the offence would be murder.

Lapse of time is evidence of deliberation: The rule is that, if there was time for the blood to cool, it is deliberate murder if not, only manslaughter;

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R.V.Ganther (1943): In this case, the appellant, a soldier, developed an adulterous relationship with a women with whom he lived for a few days. The said woman had previously intimate relation with another soldier, who had gone away. Though the appellant left the house he entered through the back door and shot the woman. He was convicted of murder. The act must have been done under the immediate impulse of provocation; it should be traceable to the passion originating from provocation.

Nanavati v. State of Maharastra: In this case Nanavati's wife, Sylvia, confessed her illicit intimacy with Ahuja, a business man. Nanavati went to his ship took a revolver loaded it went to Ahuja's flat, entered his bed room and shot him dead and surrendered, The accused raised the plea of provocation to reduce the murder to manslaughter. The Supreme Court rejected the plea and observed that there was sufficient interval for his feelings to cool down after hearing his wife's confession and all his subsequent acts revealed calculated and deliberate preparations and planning to murder his wife's paramour. Between 1.30 p.m when he left his house and 4 p.m when the murder took place, three hours elapsed and there was sufficient time for him to regain his self control.

In this case **Justice Subba Rao** summed up the law regarding the plea of grave and sudden provocations as follows, (1) The test of grave and sudden provocation is that of a reasonable man of the status of the accused (2) In India, words and gestures may also under, certain circumstances cause grave and sudden provocation. (3) The mental back ground created by the previous act of the victim may be taken into consideration on ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence (4) The fatal blow should be clearly traced to the influence of passion

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arising from that provocation and not after the passion had cooled down by lapse of time or otherwise giving room and scope of premeditation and calculation.

Exception 2: Exceeding the rights of private defense: Culpable homicide is not murder if the offender, in the exercise good faith of the right of private defense of person or property exceeds the power given to him by law and causes the death of the person against whom he was exercising such right of defense without premeditation and without any intention of doing more than is necessary for the purpose of such defense.

For mitigation of the offence from murder to manslaughter the excessive exercise of private defense must be in good faith and not as a pretext for committing murder. That is, the harm caused must have been solely in the exercise of the right of private defense and must not be excessive. As for example, it is unnecessary to shoot down a thief found on the top of a coconut tree and who climbed there to steal coconut.

Illustrations: (1) A, into whose house B had broken by night for the purpose of committing theft, sees B,B was trying to escape through a hole in the wall where upon A intending to kill B obtained a Kodali and killed him. Held that A was guilty of murder (2) where the cry of a thief was unjustly raised against the accused and he turned round and shot dead one of his pursuerer, it was held that his offence was only culpable homicide and not murder. He had a right of defence of his body against his pursuerers and he could lawfully inflict any injury shout of death.

Simpat Singh (appellant) v state of Rajastan: In this case the deceased was sitting on the chest of one Shyam Lal, brother of the appellant, The appellant in order to save his brother from the grip of

the deceased, inflicted two blows (with a 'Jambia') which c caused his death. The Supreme Court agreed with the trial and High Courts and held the appellant had exceeded his right of private defense.

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Munney Khan (appellant) v State of MP (1971): Quarrel arose between the deceases, and the accuser's brother and deceased over powered the other sat on his chest and was giving him first blows. Accused tried to prevent the deceased from doing so, because he could not succeed the decease. The Supreme Court, reversing the High Court decision, held this is a case of exceeding the right of private defence.

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A: A draws out a pistal. Z persists in the assault, A believing in good faith that he can by no other means prevent him from being horse whipped shoots Z dead. A has not committed murder but only culpable homicide.

Exception 3: Public servant exceeding his power: Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of 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.

This exception protects two classes of persons, public servants and person aiding public servants acting for the advancement of public justice, if either of them exceeds the powers given to them, and cause death. The exception will not protect a public servant if he does not act in good faith, or if his act is illegal or unauthorized by law, or if there is glaring excess in exercise of power entrusted to him. For instance, a reward had been offered for the capture of an out laved

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murderer and some village servants believed that they would be punished if they did not effect his capture. They traced and killed him but made no effort to take him alive. It was held that the case is covered by the third exception.

Laxman Kisan Naare Vs State of Maharashtra: The deceased and the accused were quarrelling. The deceased was a stout and strong man, and he set on the accused. Though he was without arms, the accused I defending himself gave three blows with a knife there by killing him. Though he had no intention to cause death, he had knowledge that his blows may prove fatal. Hence he was held liable for culpable homicide not amounting to murder (murder reduced to culpable homicide under section 304 under Exception 2)

Subba Naick's case (1868): In this case the Head constable ordered his subordinates to open fire on a mo b without satisfying himself that such an extreme step was necessary for the preservation of public peace. The Madras High Court held that act was not done in good faith (The expression good faith is defined ins.52)

Exception 4: Death in sudden fight: Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heal of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in; a cruel or unusual manner. But it is immaterial in such case whether party offers the provocation or commits the first assault.

It may be a sudden fight not pre-arranged. If there is sufficient time for the passion to subside the exception may not apply. A fight requires at least two persons exchanging blows, though no weapon is used. It is necessary that the fight must be with the person who is killed and not with another person. The expression "undue advantage" signifies only "unfair advantage".

The essential ingredients of the exception are as follows: (1) Sudden fight, (2) absence of pre-meditation and (3) no undue advantage.

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In the instant case, there was a usual brawl between the person living as husband and wife resulted in the death of deceased. There is nothing on record to show that the accused had preplanned the execution of the offence. It is admitted even by the prosecution witnesses that the appellant had come unarmed at the residence of the parents of the deceased and after altercation he picked up a kitchen knife from that house by which he inflicted one injury on the person of the deceased. It appears that the appellant committed the offence without pre meditation in a sudden fight, in the heat of passion upon a sudden quarrel which was not provoked by him. It has also come on record that the appellant was not taking any undue advantages during the occurrence. The offence cannot be said to have been committed in a cruel or unusual manner. The appellant/accused was, therefore entitled to the benefit to exception 4 of section 300 of the Indian Penal Code.

The High Court only death with clauses 2,3,4, of section 300 to hold that the appellant was guilty of murder without noticing that culpable Homicide would be murder only if the action of the accused does not fall within ambit of any of the exceptions attached to the section. Even though the appellant was found to be guilty of culpable Homicide, yet because he was entitled to the benefit of Exception 4 the crime committed by him would be culpable homicide not amounting to murder, which is punishable under section 304 IPC and not section 302 IPC **Keshavial Vs state of Madhya Pradesh. 2002 Cr.L.J.1776, 2002.**

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Rajoo Ghose case (1875): A person, under that of passion, in a sudden quarrel snatched up a log of heavy wood and struck another with it on a vital part and caused instantaneous death. Held covered by this exception. **Somiruddin's case (1875):** In a sudden fight and exchange of blows A having received a severe blow from the other apprehending further violence, finding a knife took it and stabbed the other who died as a result of such stab wound. Held, comes within the exception, yet another case on the point is **Charmee Budhiya v. State of MP., (1951).**

Exception 5: Death caused to person consenting: 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 by his own consent.

Ingredients of the exception: (1) death caused with the consent of the deceased (2) The deceased was above the age of 18 years (3) The consent was free and voluntary and not given through fear or misconception of facts e.g.: 1) A by instigation, voluntarily causes Z, a person under 18 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. 2) where a wounded soldier requests his comrade to shoot him to death so as to relieve him of the agony and pain and the latter does, so, he is entitled to the benefit of this exception.

The distinction between the culpable homicide (S 299) and Murder (Sec 300) R vs. Govindan (1876). case, A struck his wife several times with his fist on her back so that she fell down where upon he knelt upon her and gave several blows on the left eye, thereby causing extravagation of blood in the brain from which she was died. Held: guilty of culpable homicide. Laterly discuss about

the matter in **Rayavarappu Punniya Vs. State of Andrapradesh (AIR 1977 Sc 49)**

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In the course of judgment **Melvill J.** explained the distinction between Section 299 and Section 300 as follows: latesly discussed about in Raya varappu Punniya vs. state of Andhra Pradesh. (AIR 1977 sec 49).

(Section 299) (Culpable homicide)	(Section 300) (Murder)
A person commits culpable homicide, if the act by which the death is caused is done.	(Subject to certain exceptions) culpable homicide is murder if the act by which the death caused is done:
(a) with the intention of causing death:	(1) with in the intention causing of death.
(b) with the intention of causing such bodily injury as is likely to cause death:	(2) 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. (3) 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.
(c) with the knowledge that the act is likely to cause death.	(4) With the intention of causing act which is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and committed without any excuse for incurring the risk of causing death or such injury as aforesaid.

You will find that in clauses (a) and (b) above there is intention to know where there is intention to kill, the offence is always murder. Clause (b) can be studied with clauses (2) and (3). The offence is murder if the offender knows that the particular person injured is likely because of his peculiar constitution or other circumstances, to be killed by an injury which would not ordinarily cause death. Under clause (d) and (3) if the bodily injury inflicted is likely to cause it is culpable homicide but if it is sufficient in the ordinary course of

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nature to cause death, it is murder. A fist blow on a vital part of the body may be likely but may not be sufficient ordinary course of nature to cause death. The distinction is really commendable.

Clauses (c) and (4) are intended to apply to cases where there is neither intention to cause death nor bodily injury. A case of furious driving of firing a mark near a public road can be cited as example. But whether the offence is culpable homicide or murder depends upon the degree or risk to human life. If death is likely to result it is culpable homicide, if it is a most probable result it is murder.

If a man should drive a buggy furiously in the midst of a crowd of persons, it would probably be found a fact that he knew that his act was so imminently dangerous that it must in all probability cause death or such bodily injury, etc., as in clause (4) of section 300. from a man's doing an act with the knowledge that he is likely to cause death, it may be presumed that he did it with the intention of causing death, if all the circumstances of the case justify such presumption.

You will find that if the act of the accused does not come within the first clause of section 300 (i.e., where the act was done without the intention of causing death) the difference in the degree of probability of death. Of death is known to be a probable result, it is culpable homicide and, it is murder if death is known to be the most probable result.

Thus there are five forms of culpable homicide of which four amount to murder. To cause death by an act: 1. intended to cause death. 2. intended to cause a bodily injury which is known to be likely to cause the death of the person in question.. 3. intended to cause a bodily injury sufficient in the ordinary course of nature to cause death. 4. which is known to be so imminently dangerous that it

must in all probability cause death or a bodily injury likely to cause death and 5. which is known to be likely to cause death.

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The first four cases are murder. It must be noted that in a case if there is nothing to bring it under any of the exceptions to section 300 it is not murder and it is wrong to convict the accused accordingly. Before convicting an accused the court must ascertain whether the cause falls under any one of the clauses to section 300. (C11 to C14)

Erringtod's case: In this case A. finding B asleep in some straw,, lights the straw intending to cause B some serious injury. D dies from the effect of the burns. A was held guilty of murder **Ellern Molles case:** Six men attacked B a strong man with a healthy spleen, with cattle goads inflicting sixteen wounds, and causing several ruptures of the spleen from which he died. Held, they were guilty of murder.

Perumal Naicken's case: (1942) A suspected his wife of infidelity and attempted to stab her with a knife. She ran to her aunt B for protection and clasped her arms round A's waist, B requested A not to stab whereupon he plunged, his knife into B's back. Held A was guilty of culpable homicide not amounting to murder for he has no intention to kill B or of causing a vital injury. **Devassi Yohannaard v State, (1948).** In this case the wife was residing in her house and after locating her with the help of a torch light, deliberately stabbed her with a penknife in the riddle of the back with such force that it penetrated the spinal cavity and damaged the card. Though the wife died after seven months the accused was sentenced to death for murder of his wife because he had the intention to cause death.

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R.V.Ganga singh: A poor woman with no means at the disposal committed to secure the service of a mid wife for her daughter B, who was child birth, B was of full age B died A's commission was not illegal, There was no obligation to expend money in charity. (But if B was a minor under the guardianship of A.A would be responsible for the death of B: Similarly if A, having the means, refuses to feed her child with the result that the child dies.

Sengada Gowndan's case: The accused stuffed a cloth into the deceased's mouth in order to silence him but not intending to kill the apex code said that, guilty of the offence under section 304. Marra's Case (1930): The accused gave blows on the head of the deceased with sticks so as to smash the skull, Held; guilty of culpable homicide not amounting to murder.

R.V.Katallda Model: The accused kicked his wife aged eight or nine years on her back with his barefoot as a result of which she fell down and died immediately. Held: accused was guilty of culpable homicide not amounting to murder.

R.V.Kaliyani: In this case, the accused woman by gripping and squeezing the testicles of the deceased reduced them to pulpy condition. The acused was held guilty of culpable homicide because of having caused bodily injury likely to cause death.

R.V.Fox: A being irritated by the lazy way in which B, a punkah coolly, was pulling a punkah, struck him one or more blows which were not heavy or severe. Unknown to A, B was at that time suffering from a diseased spleen and he died from the effect of the blows. Held: A was not guilty of culpable homicide but only of causing hurt.

R.V.Kandhir Singh: In this case the accused threw a small piece of brick from a distance at A which caused a slight blow over the

diseased spleen. A died from the effect of the blow. Held: B was not guilty of culpable homicide, but of causing hurt. Vira Singh v State of Punjab, 1958,: In this case the appellant Tirsa Singh inflicted a spear thrust wound on Khem Singh. The doctor deposed that such injury was sufficient to cause death in the ordinary course of nature. The Supreme Court dismissing the appeal and confirming the sentence passed by the lower court under s 302 observed that once the intention to cause bodily injury is proved the only question is whether the injury is sufficient in the ordinary course of nature to cause death. No one has a license to run around inflicting injures that are sufficient to cause death in the ordinary course of nature and claim that they are guilty of murder. If they inflict injuries of that kind, they must face the consequence.

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As regards section 300 clause (3) the Supreme Court observed that the prosecution has to prove the following facts: 1) It must establish quite objectively that the bodily injury is present, 2) The nature of the injury must be proved; these are purely objective enquires, 3) That there was an intention to inflict that particular bodily injury that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. 4) That the three elements set out above is sufficient to causes death in the ordinary course of nature. The part of the enquiry is purely objective and inferential and has nothing to do with intention of the offender.

Anant Chintaman Lagu v State of Bomaby. A.I.R. 1980 S.C.500: Laxmibai Karve, a widow aged 45 years, residing at Poona was a very rich woman possessing enormous gold omaments and other valuables. She was suffering from tuberculosis and diabetes and the accused, a doctor was her medical adviser. Besides, being her family doctor he was held by her in great trust and confidence

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regarding her money and investment. Her ailments were also under control.

The accused fixed up an appointment for her with another doctor in Bombay and on 12.12.1956 at 10.P.M. both of them boarded a slow train from Poona to Bombay. Until she boarded the train she was moving about with out any assistance and was attending to her normal requirements. She was not in any deterioration of health so as to suddenly collapse during the journey.

When the train arrived at Bombay she was hopelessly unconscious and accused carried her with the help of a stretcher to a taxi. At about 5.45 A.M. she was admitted in the G.I. Hospital Bombay. In the same unconscious state and she remained in the same condition till her death at 11.30 A.M. Her body was removed to J.J.Hospotal on 14th. Since no one claimed the body it was handed over for dissection purpose for students under orders of the coroner. Suspicion arose as a result of noticing some scratches on the deceased's body and a postmortem arranged on the sixth day after death could not detect any symptom of administration of poison. On 24th her body was handed over to he Hindu Relief Society for cremation as am unclaimed body.

The accused did not inform of her death to any of her relatives but resorted to a course of systematic embezzlement of her property within a few days of her death. Laxmibai's continues disappearance aroused suspicion of her friends and consequently a police investigations was commenced after 14th month of her death. Thereafter the accessed was charged for murder of Laxmibai by administering to her some unrecognized poison and convicted and sentenced to death. The High Court confined the lower court's conviction.

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It is interesting to note that the conviction of the accused was purely on the basis of circumstantial evidence. An expert doctor deposed that Laxmibai's death was not caused by diabetic coma. The conduct f the accused before and after her death and the different way s of dealing with her properties before and after her death by the accused were all relied upon for the purpose of conviction. Besides, there was ample opportunity for the accused to administer the poison while both of them was ample opportunity train. Therefore it was concluded that Laxmibai died of some undetected poison.

The conduct of the accused in causing the disappearance of Laxmibai's luggage before taking her to the hospital, and in taking her there bereft of her ornaments and of any money also tended to show the motive of the accused in causing her death. He gave a false name of the patient to the hospital authorities. He further gave a false statement that the deceased lady had a brother in Calcutta by name Deshpande. Again the part played by the accused in getting the post –mortum examination cancelled at the first instance in the G.I. Hospital through a known friend doctor of te accused also tended to show that the accused had done the crime. The abandonment of the corpse as unclaimed and the concealment of the fact of her death from everyone also showed his guilty conduct. Above all the conduct of the accused in respect of Laxmibai's property before and after her death also conclusively established that he committed the murder of his patient for the purpose of getting her money and other valuable jewellary. He forged her signature on various documents and thereby collected in all a sum of not less than Rs.26,000/- which be disposed of in various ways. In accordance with the opinion of the majority of the judges who heard the appeal before the Supreme Court, conviction under s 302 I.P.C. was held valid. The sentence of death

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confirmed by the High Court was maintained with the observation that, "it was the only sentence that could be imposed for this planned and cold blooded murder for gain".

State of **M.P.V. Prasad (1958):** The accused herein poured kerosene oil upon the clothes of his wife and set fire to them and as a result of serious burn injuries she died. In such a case, it was held that no special knowledge is needed to know that one may cause death by burning. Therefore, it was obvious that the accused knew that he was running the risk of causing her death. As he had no excuse for incurring that risk, the offence was taken to fall within the fourth clause of section 300. that is his offence was culpable homicide amounting to murder even if he did not intend causing the death of his wife he committed an act so imminently dangerous that it was in all probability likely to cause death. The Supreme Court held that the High Court and the Sessions Court were wrong in holding that the offence did not fall with murder.

Dhirajila Case: As a result of ill-treatment by her husband, one night the wife escaped form the house with the baby. After she had gone for some distance she was taken aback to see her husband pursuing her. So in panic she jumped into a well with the baby in her arms. The baby died but the woman was recovered and she was charged with murder of the child. It was held that intention to cause the death of the child could not be attributed to the accused and the culpable homicide did not amount to murder because considering the state of panic in which she was there was an "excuse of incurring the risk of causing death". This is a case illustrating the law involved in section 300 clause(4).

Ramgopal v. State of Maharashtra: Similar to Lagu's case of death by poison. The appellant was acquitted by the Supreme

Court as the possession by the accused of the motive for administering it or its administration was not proved.

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Matte Mah's case: In this case a snake charmer in order to show his skill in healing, caused a poisonous snake to bite B. B died of snake poison. Held the snake charmer was guilty of murder.

Death of the victim not by act intended: A strikes B on the head intending thereby to kill him. B falls down unconscious. A mistakenly thinking B is dead sets fire to the hut where B lives with a view to remove all evidence of the crime and it is found that the blow had only stunned the deceased and death is caused only by the burn injuries. The question arises whether A is liable for murder or for attempt to murder.

The Bombay High Court in Khandu's case.(1890) Under similar facts held A liable only for attempt to murder. But Parson J. dissented and expressed the opinion most emphatically that the accused ought to be held guilty of murder. The Madras High Court adopted the dissenting view of parson, J in Kallappa Gowndan's case (1938). In this case after an attempt to strangle her, the deceased was dragged in an unconscious condition in the Railway line and was placed in front of the train whereupon she was killed by the train. The accused were held guilty of murder. The same view was followed in Thabemanis case (1943) Patna High Court also in Limparaj Das's Case (1944) followed the Madras High Court's view in Kallappa Cownden's case the facts also being similar to it. The Calcutta High Court in Dalu Sadar's Case. (1914) followed the majority ruling in Khandu's case.

It is interesting to note that Privy Council in **Mail v. Queen** followed the dissenting opinion of parson, J. in Khandu's case. A struck B intending thereby to kill him and mistaking him dead, he

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roled him over a cliff to make it look like an accident, B died from exposures. On a charge of murder, A contended that when he in fact killed B he did not realize what he was doing. Rejecting the said contention the Privy Council found A guilty of murder.

English law relating to murder: It is murder for a person of sound memory and discretion unlawfully to kill any human creature in being and under the Queen's peace, with malice aforethought either express of implied by law, provided the person dies of injury inflicted within a year and a day after the same. Manslaughter is the unlawful killing of a person without malice either express or implied.

Malice aforethought: It simply means the "freely formed intention of a man to pursue a course of conduct which he realize will bring about the death of some person".

According to Kenny the offence of murder is committed under the following five modes: 1) with the intention to kill a particular person, he is killed. This is common instance of murder. 2) Intention is to kill A, but the one killed happens to be B. illustration: If A shoots at B with the intention of killing him but misses and kills C, a person whose life he had no intention to take, then the death of C is in law treated not as a homicide by misadventure but as murder. It will make no difference whether A thought it probable that he would kill C or thought it impossible, or did not even know that C, was there for A had the intention, to kill, (which is the requirement for the offence)and he has actually killed, (which is the actus reus) and he has actually killed, (which is the actus reus) 3. There is intention to kill, but without selecting any particular individual as the victim. This aspect of intention is called universal malice e.g. A man resolves to kill the next man he meets and in fact kills, accordingly next man he meets. 4) there is intention only to hurt, not to kill, but causes hurt

by means of an act which the prisoner released was likely to kill someone. **R.V.Grey (1666).** 7) In this case a black smith struck on the head of his apprentice with an iron bar. Held: the use of such dangerous instrument "is all one as if he had fun him though with a sword". There is intention to do an act which the prisoner realized was likely to kill, although he had no purpose of thereby inflicting any hurt.

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There are, two other cases of murder in English law where although there is an intention to kill the victim. They are: 1. where death is caused by a man in resisting lawful arrest by an officer of justice and (2) death is caused by a man in the course of or in furtherance of a felony or violence. **Director of Public Prosecutions v. Beard (1920).** In this case a girl aged 13 years was sent by her father to purchase something from a shop. At about 6.30 P.M. the girl was found entering the premises in which the prisoner was on duty as a night watchman. The prisoner caught hold of her placed his hand over her month and his thumb on her throat, raped her and thereby caused her death. Here death was caused by an act of violence in furtherance of the felony or rape (see item no 2 above). The House of Lords rejecting the plea of intoxication convicted him of the offence of murder.

R.V.Appleby (1940): this is illustrative case for murder committed while offering resistance to lawful arrest by an officer of justice (see item no I above).

A & B were suspected by police officers while committing the offence of house breaking. A fired a shot which killed one of the police officers, B was using violent words. The Court of Appeal held both of them guilty of murder. It is very interesting to note that by the Homicide Act of 1957 for the first time the principle of

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diminished responsibility' of reducing murder to manslaughter has been introduced into English law.

Director of Public Prosecution V. Smith (1960): The respondent accused was driving a car in which there was stolen property. The police officer chased the car and caught hold of it. The car pursued in terrific course and eventually the police was thrown off in the path of another vehicle which had run over him. The police officer died as a result of serious injuries, The House of Lords confirmed the Conviction of the accused for murder.

Distinction in the treatment of murder and culpable homicide in Indian and English law:

1) In English law, homicide is classified into murder and culpable homicide not amounting to murder.

2) Under English law, it is neither murder nor manslaughter unless death takes place within a year and a day from the blow or other cause. If the deceased died after that time, the law would presume that his death had proceeded from some other causes. This rule is not adopted in the code.

3) According to explanation (3) to section 299, 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. But under the English law, the child must have completely emerged to constitute a human being.

4) In the Code section 300 defines murder with reference to the definition of culpable homicide given in Section 299, this definition of murder differs materially in language from the definition of murder in English law, Murder in English law is "the killing of any person under the king's peace with malice aforethought either express or

implied in law". The term malice aforethought has caused some confusion relating to homicide. It is a flexible term.

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5) Under English law all killing is murder unless the contrary is established by the accused. Where one man causes the death of another it is for the accused to prove that the offence will not amount to murder but will be the lesser offence of manslaughter. In other words in English law the offence is determined by the act, the intention is presumed. But the Code approached the question from exactly the opposite stand point. It looks primarily not to the effect, but to the intention and knowledge of the offender. Consequently the burden of proving essential ingredients of murder is of the prosectution. Thus, under the English law the offence is considered objectively, but in the code it is subjectively dealt with. The result attained in each is same though the method of arriving at the result is different.

6) In the English Homicide Act, 1997, the doctrine of "diminished responsibility" is recognized for persons suffering from such mental abnormality as has substantially impaired his mental capacity. Such persons, if guilty of murder can be punished only for manslaughter. This doctrine is not recognized in the Code.

7) Exception 5 to section 300 is departure from English law Homicide is neither justified not extenuated by reasons of any consent given by the party killed under English law.

Punishment for murder-Section 302 provides death or imprisonment for life and fine for the offence of murder.

The constitutional validity of awarding death sentence discussed in the case of **Jagmohan Singh v. State of U.P. (1973).** In this case an argument was raised before the Supreme Court that death sentence puts an end to all the fundamental rights guaranteed by Art.

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19 and also violative of Art.21. Rejecting the above argument the Supreme Court held section 302 valid and not violative of the constitution. Section 303 prescribed compulsory capital sentence to life convict guilty of murder. Sec. 303 was struck down by the Supreme Court in Surjit Singh and others. V. State of Punjab (1983 Gr.L.J.P.1111) as violative of Articles 14 and 21 of the Constitution. Section 304 provides punishment for culpable homicide not amounting to murder.

7.3.CAUSING DEATH BY NEGLIGENCE

Causing death by negligence is known as **"manslaughter by negligence"** in English law. Section 304A was added to the code in 1870 by an amendment. Neither intention nor knowledge is an essential element of the offence under this section and operates outside the area covered by section 299 and 300. Rashness or negligence must be the direct cause of death, but death resulting from supervening act which could not have been anticipated is not covered by this section.

Cases: i)An engine driver failed to sound the whistle before starting the engine, the motion of which caused the death of a boy who was painting a wagon on the line. The court held that the driver was responsible for his negligent act- **Thompson (1894) Unrep.Cr.C.72.**

ii) The accused threw a stick at the deceased which hit him on the head with the point and made a punctured wound causing his death. The Court held that this is not an offence under section 304 because the injury was intentionally caused, but was guilty of causing hurt, **Keegan (1893) Unrep.Cr. C.673.**

According to this section where death is caused by any rash or negligent act and such death does not amount to culpable homicide

(under section 299) a lesser punishment is prescribed. Negligence or rashness signifies absence here is that the defence of contributory negligence inapplicable generally in criminal law and especially to section 304 A.

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NidamurthiNagaphooshanam's case. (1872) 7M.H.C. 119: In this case the deceased's (aged about sixty years) death was brought about by her own son by brutal beating, kicking and dragging her by the hair of the head. The lower court convicted the prisoner under section. 304 A. the High Court held the offence was murder under section 300 clause 2.

Criminal negligence is the gross and culpable neglect or failure to exercise reasonable and proper care of precaution of guard against injury. Negligent act is an unintentional act: a rash act is an over hasty act and in either case absence of deliberation is the demount factor.

The above said Madras decision was approved by the Calcutta High Court in the case of **Ketabai Mundai (1878) 4 Cal. 764.** in this case, the wife, aged nine years, died as a result of a kick with a bare foot which ruptured her stomach. The Court held section 304 applicable to voluntary commission of an offence against a person. Accordingly the conviction was altered to one under section 304.

Moh'd Rangawalls v. Maharashtra State. A.I.R. 1965 S.C.1616. The factory owner was held not liable under section 304 A for having negligently permitted to keep turpentine and other combustible matter in the same room along with lighted burners because the direct cause of death of 7 persons was that of the negligence of the chemist and not due to any act of the factory owner.

Where there was delay of three days in remaining vital witness by I.O. regarding accident having material infirmity in his evidence

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and absence of evidence that accused was intentionally driving vehicle at high speed then crushed to deceased. Therefore accused is liable to be convicted under **section 304 A.IPC. Satnam Singh Vs State of Rajasthan AIR 2000 SC 423.**

(2) It is rash and negligent act on part of a trained doctor who prescribes poisonous medicines without studying their probable effect on human being the accused is guilty of offence under **section 304 A.IPC. Juggan Khan Vs State of M.P, AIR 1965 SC 831.**

Cherubim Gregory's case, (1961) I.S.C.J.417: In this case the assured placed a naked live electric wire in the passage leading to his latrine to prevent trespassers using it. The deceased managed to pass into the latrine but when she came out, she happened to touch the wire, got a heavy shock and as a result of that she died soon after. The Supreme Court held the accused guilty under section 304 A.

Driving at furious speed through a crowded street and knocking down a pedestrian and killing him is causing death by rash act. So also knocking down and killing a pedestrian while driving along the wrong side of the road is causing death by negligent act under this section. A man having sexual intercourse with a girl (say under 11 years of age) not attained puberty and inflicting injuries on her so that she dies would be guilty of the offence under this section if he acted with reckless indifference. Using a boat which is unsafe to cross a flooded river, if it sinks and the passengers drown as a result of such unsafe condition, the owner of the boat would be liable under this section.

Where a gate- keeper at a level crossing went away to have lunch forgetting to close the gate and driver of a car was killed by a train, he was held guilty of an offence under this section **(R.V.pitwood, 29T.L.R. 1903, 37).**

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Kammaruddin V.R.Crl.L.J.R. 11P.207: P.L.R. 112: A person dispatched by train, two boxes of fire-works declaring the boxes as containing iron lock. While handling the boxes the fire-work exploded and a worker was killed. Held, guilty under the section.

R.V.Jamuna, ILR, 36 All 290: A, at the request of B, mixed a powder given to her by B in C's food. The powder was poison and C died from its effects. A was aware that B was a personal enemy of C. Held, that A was guilty under this section.

R.V.Mussamat Bhalkhyn 1817 P.R.Cr.60: A, the wife of B administered a powder to B in his food at the request of her lover C who said it would act as a charm. The powder was arsenic and B died there from. Held, A was guilty under this section.

De souza's case (1980) 42. All 272: In this case a compounded had to prepare a fever mixture and thinking a bottle contained quinine hydrochloride, mixed some other chemical which was poisonous. The mixture was administered to eight person out of whom seven died. Held, the compounded was guilty of causing death by negligent act.

7.4. ATTEMPT TO COMMIT SUICIDE:

Suicide is generally thus, defined as taking one's own life Section 306 IPC, deals with abetment of Suicide, and Section 309 IPC deals with attempt to commit suicide.

Abetment of Suicide Section 306

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. Section 305 – speaks about the abetment of suicide of Child or in same person only.

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Section 309:

Whoever attempts to commit suicide and does any act towards commission of such offence, shall be punished with simple imprisonment for a term which may extend imprisonment for a term which may extend to one year, or with fine; or with both under Section 306 a person must commit suicide and the accused must abet the commission of such offence. Abetment of suicide is an offence and the offender punished for compelling or inducing a person to commit suicide Abettor should be regarded Principal offender in case of suicide.

The Constitutional validity of Section 306 has been upheld in a decision of the Bombay High Court in **Naresh Morotra Vs. Union of India (1995) 1 Crl L.J.96 (Bom.)** The Court observed.

"Section 306 constitutes an entirely independent offence. It is based on this Principle of Public Policy, that no body should involve himself in or instigate or aid the commission of a crime. It is not violative of Article 14 or 21 of the constitution.

Essentials of the Section:

1. The act in question was an attempt.
2. The attempt was doing an act towards the commission of suicide.

Attempt to commit suicide:

i) Section 309

The act done must be in the course of the attempt. otherwise no offence is committed. Attempt is an act towards the Commission of Suicide, such as drawing, poisoning, or shooting oneself. Where A throws himself into a well with a view to drawn himself but rescued by others, he is guilty of attempt to commit suicide.

Section 309 stands as a class by itself as in the Indian Penal Code this is the only instance in which an attempt to commit an offence was punishable but where actual commission can not be punished.

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Section 3 of Commission of Sathi (Prevention) Act makes attempt to commit sati punishable. It States:

"Not withstanding Contained in the Indian Penal Code, whoever attempting to commit sati and does any act towards such commission shall be punishable with imprisonment for a term which may extend to one year or with fine or with both".

The Constitutional Validity of Section 309, IPC has been questioned in **Maruti Shripati Dubal Vs. the State of Maharastra (1986)** on the ground that it violates Article 14, 19, 21 of Constitution of India. It has also been argued that section 306 is also unconstitutional. The Court held that In Ramakk's case (1884)

Essentials of the section: 1) Attempt to commit suicide and 2) doing any act towards the committing of suicide.

Attempt is an act towards the commission of suicide, such as drowning, poisoning or shooting oneself. Where a throws himself into a well with a view to drown himself but rescued by others, he is guilty of attempt to commit suicide.

Section 309 IPC. (Right to life includes also a right not to live or not to be forced to live. So Section 309 is invalid.

After Bombay High Court, Andhra Pradesh High Court was also addressed with the arguments of unconstitutionality of Sec. 309 but entirely opposite result was achieved.

In **Chenna Jagadeeswar Vs. State of Andhra Pradesh. (1988 Crl.L.J.549)** The Andhra Pradesh High Court held that Sec. 309 was not ultra vires. It was a constitutional valid provisions.

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Two holdings of different High Courts evented an anomalous situation in regard to constitutional and legal status of Sec. 309 I.P.C. Once again the Constitutionality of Sec. 309 IPC was questioned before the Supreme Court in **P.Rathinam Vs. Union of India at 1994. (AIR 1994 & Sc 1844).**

The Supreme Court considered the decisions of Dubal and Chenna Jadgeesware and finally observed.

Suicide or attempt to commit it causes no harm to others, because, of which states interference with the personal liberty of the concerned person is not called for. We therefore, hold that section 309, Violates Article 21 and so it is void."

The Court also removed the misapprehension about the fate of Sec. 306 by observing that abetting the suicide and attempt to commit suicide were two different acts.

Now Rathinam case was over ruled by the Supreme Court in **Gain Kaur Vs. State of Punjab (AIR 1996 Crl.L.J.166 OSC)** and hence attempt to commit suicide continued to be an offence.

Whether attempt to commit suicide should be punished or not is a difficult and intractable issue; because of we are consider the Euthanasia (mercy Killing) (or) medical termination of life (MTL) and such act is not an offence in England.

7.5.OFFENCES RELATING TO BIRTH OF CHILDREN:

It is premature expulsion of the fetus from mother's womb during the pregnancy period. Section 312 deals with causing miscarriage with the consent of the women while section 313 deals with causing miscarriage without her consent. **The Medical Termination of Pregnancy Act, 1971,** permits a registered medical practitioner to terminate pregnancy according to the provisions of that Act. Such termination is not punishable.

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Section 314 makes it punishable if an act is done with the intent to cause miscarriage and such act causes death of the woman. Injuries to unborn children (s. 315 and s. 316): 1. Any act done with intent to prevent a child being born alive or to cause it to die after birth punishable. (s. 315).

2. Section 316 deals with offences against the child in the womb and the pregnancy is in an advanced stage of quickening and death is caused after the quickening and before the birth of the child.

Illustration: A, knowing that he is likely to cause the death of pregnant women, does an act which, if it caused the death of the woman would amount to culpable homicide. The woman is injured but the death of her unborn child is thereby caused. A is guilty of the offence defined in this section.

Exposure or abandonment of children: Section 317 punishes exposure, abandonment or desertion of a child under twelve years, by parent o r person having care of it. The object of the section is to protect children to tender age who are not being able to take are of themselves would run the risk of dying.

Essential ingredients of the section: 1. The person must be father or any one having the care of child. 2. The child must be under the age of twelve years 3. Such child must have been exposed or left in any place with the intention of wholly abandoning it. This section is not applicable to cases where children are under the care of others.

Concealment of birth by secret disposal: under section 318 concealment of birth of child by secret disposal of the dead body is an offence. The object of the section is to prevent infanticide.

Ingredients of the section: 1. Secretly burying or otherwise disposing of the dead body of a child. 2. Whether the death of the child took place before after or during it birth. 3. Such disposal or

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burying was with intention to conceal birth R.V. Turney (18 C & P. 7755). In this case the accused had gone to the privy where she was delivered of a child case the accused had gone to the privy where she was delivered of a child which fell and got suffocated in the soil. Though she denied birth of child, it was held that her conduct did not constitute disposal. Secrecy is the essence of the offence and if the dead body is left in a public place, where it will be found by people it is not an offence. In other words the crime consists in disposing of the dead baby with a view to conceal the fact that it was born of its mother.

7.6. HURT AND GRIEVOUS HURT

Hurt: Hurt is defined in section 319 "Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt" Hurt is equivalent to battery in English law. Battery is actual infliction of bodily injury. The word pain in section 319 signifies only bodily pain and does not include mental pain and the hurt caused must be the direct result of the act. Infirmity is used to denote the inability of an organ to perform its normal function. Disease or infirmity may be caused indirectly.

Grievous hurt: Section 320 deals with grievous hurt. All kinds of hurt are not grievous hurt but only the following kinds of hurt are designated as 'grievous'.

(1) Emasculation : (2) Permanent privation of the sight of either eye; (3) Permanent privation of the hearing of either ear; (4) Privation of any member or joint; (5) Destruction or permanent impairing of the powers of any member or joint; (6) Permanent disfiguration of the head or face; (7) Fracture or dislocation of a bone or foot; (8) And 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 follows his ordinary pursuits.

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Causing hurt and grievous hurt: Under the Code mere causing hurt (assault) is not an offence. By the operation of sections 321 and 322 only voluntarily causing hurt or voluntarily causing grievous hurt respectively that is made punishable. A person voluntarily causes hurt if he does any act (a) with the intention of thereby causing hurt to any person, or (b) with the knowledge that he is likely thereby to cause hurt to any person (s. 321). A person is said voluntarily to cause grievous hurt if he intend to cause or knows himself to be likely to cause grievous hurt of any kind and causes grievous hurt of the same or any other kind (s. 322). An offender is liable for grievous hurt only when he causes hurt. If the intention is to cause, particular kind of grievous hurt, but in fact another grievous hurt is caused, he will be liable for the injury caused.

Illustration; A intending or knowing himself to be likely to permanently disfigure Z's face but which cause Z suffer severe bodily pain for the space of 20 days. A has voluntarily caused grievous hurt.

Saha Rao's Case: Here the accused struck a woman several times and one of the blows fell on the head of the child in her hand and the child died as a result of the said blow, it was held the accused was guilty of voluntarily causing grievous hurt.

Emasculation: It means deprivation of masculine vigor of a male. This offence applies only against men. Emasculation can be brought about by squeezing the testicles. This may sometimes cause the death of injured.

Dangerous hurt : Item (8) above signifies three kinds of injuries.

a) Those endangering life. (e.g., injury to head).

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b) Those causing severe bodily pain for 20 days, and

c) Those which disable the injured from following his ordinary pursuit for 20 days.

Aggravated forme of hurt and grievous hurt:

1) Voluntarily causing hurt or grievous hurt, by dangerous weapons (e.g weapons used for shooting, stabbing, cutting etc,) or means of any animals (s. 324 and s. 326).

2) Voluntarily causing hurt, or grievous hurt to extort from the injured or any one interested in his property or valuable security; or to constrain him or any one interested in him to do anything which is illegal or which may facilitate the commission of any offence (s. 326 and s. 329).

3) Administering or causing t be person, any poison r unwholesome drug with intent to cause hurt to such person or with the intent to commit, or to facilitate the commission of an offence (s.328). The offence is complete even if no hurt is caused to the person to whom the poison or the drug is administered.

Hanumakka's case; 1943 Mad 679: In this case the wife who had no knowledge of the dangerous properties of aconite powder, with a view to regain her husband's affection mixed it with his food and gave it to him in consequence of which he died. Held, guilty of an offence under this section.

4) Voluntarily causing hurt or grievous hurt, to extort, from the victim or any one interested in him a confession or any information which may lead to the detection of an offence to constrain the restoration or property, or the satisfaction of any claim. (s. 330 and s.331).

Illustrations to s.330: i) 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. Ii) A, a police officer, tortures B to induce his to point out where certain property is deposited. A is guilty of an offence under section 330, iii) A, a revenue officer, fortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under section 330. iv) A, Zamindar tortures a ryot in order to compel him to pay his rent. A is guilty of an offence under this section.

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5) Voluntarily causing hurt or grievous hurt to a public servant in the discharge of his duty, or to prevent or deter him from so discharging it (s. 322 and 333).

Lighter forms of these offences:

1) Voluntarily causing hurt or grievous hurt of grave and sudden provocation (s. 334 and s.335).

2) Doing any act so rashly or negligently as to endanger human life or the personal safety of others (s. 336). Causing hurt, or grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or personal safety (s.337 and s. 338). Section 336 to 338 deals with criminal negligence and have been already dealt with. The liability under section 336 arises from the manner in which an act is done and not from the result of the act.

Essentials: 1) That the accused did an act; 2) Such an act was done rashly or negligently; 3) Such manner of doing endangered human life or personal safety of others.

7.7.WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT

Wrongful restraint is defined in section 339. "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".

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But 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.

Ingredients: 1. Voluntary obstruction of a person: 2.Such obstruction must prevent that person from proceeding in any direction in which he has a right to proceed.

Illustrations: 1. A obstructs a path along which Z has a right to pass. A not believing in good faith that he has a right to obstruct the path Z is thereby prevented from passing. A wrongfully restrains Z. 2. A builds a wall across a path along which Z has a right to pass. Z is thereby prevented from passing. A wrongfully restrains Z. 3. A illegally omits to take proper care with a vicious buffalo which is in his possession and thus voluntarily deters Z from passing along a road along which Z has a right to pass. A wrongfully restrains.

Thus a person may obstruct another by causing it to appear to another impossible, difficult or dangerous to proceed, as well as by causing it actually to be impossible, difficult or dangerous for the other person to proceed. It is an offence directed against the person. Where the bullock cart was obstructed though the driver of the cart, the complainant was not prevented to proceed through the passage, it was held that there was no offence under this section. **(Ram Lala's Case, (1912) 15 Bom. L.R. 103).**

WRONGFUL CONFINEMENT

Wrongful confinement is defined in section 340: "Whoever wrings fully 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".

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Ingredients: 1. Wrongful restraint of a person. 2. Such restraint must prevent that person from proceeding beyond certain circumscribing limits.

Illustrations: 1. A causes Z to go within a walled space and a lock Z in, Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z. 2. A places men with firearms at the outlets, of a building and tells Z that they will fire at Z, if, Z attempts to leave the building. A wrongfully confines Z.

Distinction between wrongful restraint and wrongful confinement: 1. In wrongful restraint the person who is restrained is free to proceed in other directions. But in wrongful confinement that person confined cannot proceed beyond certain limits. In other words the person is confined within the prescribed boundary beyond which he shall have no liberty to move. 2. Wrongful confinement is an aggravated form of wrongful restraint and is severely punished. The restraint may be caused physically or by oral threats.

Aggravated forms of wrongful confinement: 1. Wrongful confinement for 3, or more days (s.343). 2. Wrongful confinement for 10 days or more (s. 344). 3. Wrongful confinement of person knowing for whose liberation a writ has been issued (s.345). 4. Wrongful confinement in secret so as to signify that the confinement may not be known to persons interested or to a public servant or that the place of such confinement may not be known to or discovered by any such person or public servant (s.346). 5. Wrongful confinement to extort property from the person confined of from any person interested in the person so confined or for the purpose of constraining the person confined or any person interested in such person to do anything illegal or to give information which may facilitate the

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commission of an offence, (s.347). 6. Wrongful confinement to extort confession or information which may lead to the detection of an offence or compel restoration of property or valuable security or the satisfaction of any claim or demand or information which may lead to the restoration of any property or valuable security.

7.8. CRIMINAL FORCE AND ASSAULT

Force is defined in section 349. A person is said to use force, to another, 1, If he caused motion, change of motion, or cessation of motion to another, or 2, If he cause to any substance such motion or change of motion or cessation of motion as to bring that substance into contract: (a) With any part of the other's body, or by with anything that the other is wearing or carrying or c) With anything so situated that such contact affects that other's sense or feeling. 1) by his own bodily power, or 2) by disposing any substance in such manner, that the motion change or cessation of motion takes place without any further act on his part, or on the part of any other person 3) by including animal to move or to change its motion or to cease to move.

Criminal force (s. 350) : A person uses criminal force to an other if (1) he intentionally uses, (2) without that person's consent (3) in order to the committing of any offence, or (4) intending by the use of such force he will cause, injury: fear or annoyance to the person to whom the force is used, e.g : 1) Z is sitting in a mooted boat on a river. A unfastens the moorings and thus intentionally caused the boat to rift down the stream. Here A intentionally causes motion (See s. 349) to Z, and he does this by disposing substances in such manner that the motion is produced without any other action or person so 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 intending or knowing it to be likely that this use of force will cause injury in a chariot. A rashes Z's horse, and thereby caused them to quickly 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 there by injure, frighten or annoy knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

Space for hints

"Causes any substance and such motion"

3. Z is riding in a palanquin, A intending to rob Z seize 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, with out Z's consent, in order to the commission of an offence. A has used criminal force to Z. 4. 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 onto 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 injurer frighten or annoy Z, he has used criminal force to Z. 5. 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 splash the water against Z's cloths or something carried by Z. Here, if the throwing of the stone produces the effect of causing any substance to come into contact with Z's consent. Intending thereby to injure, frighten or annoy Z, he has used criminal force to Z. 6. A intentionally pulls up a woman's veil. Here A intentionally used force to her, and if he does it without her consent intending or

Space for hints

knowing it to be likely that he may thereby injure, frighten or annoy he has used criminal force to her.

7. 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 must affect Z; and if he has done this without Z's consent intending or knowing it to be likely that he may therefore cause injury, fear or annoyance to Z, he uses criminal force. 8. 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.

Illustrations 4, 5, 7, and 8- bring the substance into contact with any part of other's body.

Thus force is the exercise of one's energy upon another human being and it may be exercised directly or indirectly. Criminal force is known as battery in English law, i.e., the intentional infliction of force by one person upon another without the consent of the latter.

Essential ingredients of criminal force: (1) Intentional use of force to another; (2) Such force is used without the other person's consent; (3) Such force is used: (a) in order to commit an offence or (b) with the intention to cause or knowing it to be likely that he will cause injury, fear or annoyance to the person to whom it is used. But mere words do not amount to an assault.

Ingredients : 1) Making of any gesture or preparation by a person in the presence of another (2) Intention or knowledge of likelihood that such gesture or preparation will cause the person present to apprehend that the person making it is about to use criminal force to him.

1. Illustration: 1. 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. 2. A takes up a stick saying to Z, "I will give you bearing". Here, though the words mere gesture unaccompanied by any other circumstances, might not amount to an assault, the gesture explain by the word, may amount to an assault. 3. A begins to unloose the muzzle of a ferocious dog intending or knowing it to be likely that he may there by cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

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Distinction between assault and Criminal force: An assault is something less than use of criminal force, the force being cut shorts before the blow actually falls. Assault is indication that criminal force is about to be used. An assault is included in every use of criminal force.

Aggravated forms of Assault and Criminal force: 1. Assaulting or using criminal force to deter a public servant from the discharge of his duty (s. 353). The servant must be acting in execution of lawful discharge of his duty.

The Supreme Court in **Durgacharan Naik v. State of Orissa A.I.R. 1966 S.C. 1975** pointed out the distinctions between, S. 186 and s. 335. The latter is cognizable offence while the former is not. The former is applicable to a case whether the accused voluntarily obstructs public servant is in lawful discharge of his duty is necessary.

2. Assaulting or using criminal force to woman with the intent to outrage her modesty. (s.354).

Ingredients: (i) The accused assaulted or used criminal force (ii) against a woman; (iii) with the intention to outrage her modesty or knowing that he was likely to do so.

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State of Punjab vs. Major Singh, A.I.R. 1967 S.C. 63. In this case Supreme Court held that the reaction of the woman is not concerned and that is not the gist of the offence.

Facts: The accused Singh walked into the room where a 7 months old child was sleeping at about 9.30 a.m. Switched off the light removed his dress below the waist, knelt over her and performed indecent acts of unnatural lust on her hymen and causing to tear of ¾ inch length inside her vagina. He also tried fingering in the vagina.

It was argued on behalf of the accused that the child had not developed sufficient sex instinct and so her modesty could not be said to have been violated: that a female child of such age would not have womanly guilty under s. 354.

The court observed that "the essence of a woman's modesty is her sex". The modesty of an adult female is writ large on her body young or old; intelligent or imbecile, awake or sleeping, the women possesses modesty capable of being outraged. The culpable intention of the accused is the crux of the matter. The reaction of the woman is relevant, but its absence is not always decisive, as for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anesthesia, she may be sleeping, she may be unable to appreciate the significance of the act, and nevertheless the offender is punishable under the section. In this case the victim is a baby 7 months old. She has not yet developed a sense of a shame and has no awareness of sex. Nevertheless from her very birth she possesses the modesty which is the attribute of her sex.

Rosinks case, 1824, I Mood, Cr.C.19. A Doctor, who stripped naked a female patient under the pretence of examining her, was convicted under this section.

3. Assaulting or using Criminal force with the intent to dishonor a person, otherwise than on grave provocation (s. 355). 4. Assaulting or using criminal force to attempt to commit theft of property worn or carried by a person (s. 356). 5. Assaulting or using criminal force to any person in attempting to confine that person. Wrongful Restraint and Wrongful Confinement: (s. 339 to 348) Section 339 to 348 deals with some offences relating to the freedom of movement.

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7.9.KIDNAPPING AND ABDUCTION:

Kidnapping is stealing away a person especially a child. It is of two kinds: kidnapping from India, and kidnapping from lawful guardianship.

Kidnapping from India: It is dealt with in section 360. The following are the ingredients of the section. 1. Conveying of any person beyond the limits of India. 2. Such conveying must be without the consent of that person or person authorized to give such consent. The offence is complete as soon as the person conveyed beyond the limits of India. This offence may be committed on a child or grown up man or woman.

Kidnapping from lawful guardianship: This is dealt with in Sec.361. Kidnapping from lawful guardian is taking or enticing away 1) any male under 16 years of age 2) female under 18 years of age 3) any person of unsound mind, out of the keeping of the lawful guardianship of such persons, without the consent of the guardian. A person lawfully entrusted with the care or custody of a minor or other person is also a lawful guardian for the purpose of this section. Exception: This section does not extend to the act of any person who in good faith believe himself to be the father of an illegitimate child or who in good faith believes himself to be entitled to the lawful

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custody of such child, unless such act is committed for an immoral or unlawful purpose.

Ingredients: Taking or enticing away a minor or a person of unsound mind. 2. Such minor must, be if a male under 16 years of age, or under 18 years of age, if a female. Even the fact that the girl deceived the accused by overstating her age, would be no defence. 3. The taking or enticing must be from the lawful guardianship of such minor or person of unsound mind. 4. Such taking or enticing must be without the consent of such guardian. The object f the section is to give protection to children of tender age from being abducted or seduced for improper purposes.

Taking: Force need not be used, the mere leading of an unwilling child willsuffice, **Jagant Nath's Case, A.I.R. 1914 Orissa 126**. in this case a father sent his daughter to live with his other daughter. The later got his sister married to a man without the consent of the father. Held: the married daughter was not guilty of any offence, because there was no taking ort of lawful guardianship.

Varadarajan v. State of Madras: (1965) In this case, the Supreme Court held that when a minor girl leaves her father's protection knowing and having full capacity or knowing all aspects of what she was doing (in this case a senior college student on the verge of attaining majority)voluntarily joining her lever (accused herein) and inducing him to take her wherever he likes and marries him of her own accord, accused cannot be deemed to take her away from her lawful guardianship and was acquitted.

R.V. Robbins: (I.C. and K. 456): The accused went to the house of the girl during night and with her consent placed a ladder against the window of her room by which she defended and eloped

with him. The accused was held guilty and the consent of the girl was held to be no defence.

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R.V. Prince: If this case was decided in India, Prince would be punished under s. 361 because the right of a father to have personal custody of his child extends till the minor attains the age of 21. The taking must be from the keeping of a lawful guardian. According to the explanation guardian includes any persons, lawfully entrusted with the care or custody. Legal guardian is guardian recognized by law. Under the Hindu law father is the guardian ordinarily entitled to the custody of his children if a mother removes a girl from gather's house for marrying her without his consent, it will amount to taking, out of the keeping of the lawful guardian, if the husband and wife are living separately and wife is given the custody of children and if the father takes them away without the, mother's consent, he commits the offence under this section.Finally, the taking must be without the consent of the guardian. The question of consent, frequently arises when the kidnapper marries a minor girl on the alleged consent given be her Even in such a case the Allahabad and Bombay High Courts have held minor's consent is not valid consent. The Madras High Court also agreed with this view in **Subbana's case. (1952 Mad. 257).**

The Supreme Court in State of Hariyana v. Raja Ram (1973): S.C.C. 544 also expressed the view that the consent given by a minor who is enticed is wholly immaterial. The guardian's consent would take the case out of the purview of the section. It is not necessary for the purpose of taking, force must be employed, persuasion by the accused which creates willing nests on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section.

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Thakorial v.State of Gujarat (1973) 2. S.C.C. 413: In this case a rich industrialist induced a minor girl of 14 to leave her house and go to his garage to have illicit intercourse with him. The Supreme Court affirmed the conviction under s. 366 passed by the High Court. The court said the words "takes" is used in s. 361 to mean, "To cause to go to escort or to get into possession" etc.

Abduction

Abduction is defined in section 362, whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person. Ingredients; 1. Forceful compulsion or inducement by deceitful means. 2. The object of such compulsion or inducement must be the going of a person from any place.

The accused cannot be convicted if no force or deceit is used by the accused on the person abducted. To induce means to lead a woman in a direction which she would not gone but for the inducement. A change of mind is induced in her because of an external pressure. Deceit signified anything intended to mislead another. Consent or absent of consent is immaterial. It is enough if by deceitful means a person is induced to go from any place. It must also be noted that abduction by itself is not punishable. When abduction is to commit an offence like murder, wrongful confinement etc., it is punishable.

Kidnapping and abduction: The following are the distinction between kidnapping and abduction.

Kidnapping	Abduction
1. Committed only in respect of a minor or a person of unsound mind.	1.Committed in respect of any person
2. Person kidnapped is removed out of the lawful guardianship.	2.Removal from guardianships is unnecessary. Abduction has reference only to the person abducted.
3. Taken away or enticed to go away with the kidnapper. Means used may be innocent.	3. Force, compulsion and deceitful means are used.
4. Consent immaterial.	4. Consent condones the offence.
5. Intention is irrelevant.	5. Intent is an important factor.
6.It is not a continuing offence	6. It is a continuing offence.
7.Kidnapping from lawful guardianship is a substantive offence.	7. Not so, unless done with one or the other intent in s. 364.

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Check your progress

1. Differentiate miscarriage and infanticide

2. Define causing death by negligence

3. Varadarajan Vs. State of Madras – discuss

4. Give the ingredients of - kidnapping

Aggravated forms of kidnapping or abduction:

1. Kidnapping or abducting in order to commit murder. (s.364).

Illustration; 1. A kidnaps Z from India, intending or knowing to be likely that Z may be sacrificed to an idol. A has committed the offence defined in the section. 2. a forcibly carries B away from his home in order that B maybe murdered. A has committed the offence defined in this section. 3. Kidnapping or abduction with the intent secretly and wrongfully to confine a person (s. 365). 4. Kidnapping or abducting a women compel her to marry any person or to seduce her to illicit intercourse (s.369). The section applies where the woman has no intention of marriage or lawful intercourse when kidnapped. In other words this section is applied only when the woman is seduced under compulsion or coercion but not to cases of seduction in its ordinary sense. It is immaterial whether the woman kidnapped is married or not.

Ingredients: 1. Kidnapping or abduction of any woman. 2. With the intention or knowledge 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. 3. Seduction in this section means not

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merely patting for the first time by a girl of her virtue, but includes subsequent illicit sexual intercourse as well. 4. Inducing a minor girl under the age of 18 years to go from any place or to do any act with the intention or knowledge that she will be forced or seduced to illicit intercourse (s.366A). 5. Importing a girl under 21 years of age from a foreign country (or State of Jammu and Kashmir) with the intent or knowledge that she will be forced or seduced to illicit intercourse (s.366B). 6. Kidnapping or abduction for the purpose of subjecting a person to grievous hurt, slavery or unnatural lust. 7. Wrongfully concealing or confining a person known to have been kidnapped or abducted (s.369). 8. Kidnapping or abducting a child under 10 years with the intent to steal movable property from the person of such child (s.369).

Sec. 364A-Kidnapping for ransom. This section is inserted by the Criminal Law Amendment Act. According to this section, whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping and threatens to cause death or hurt in order to compel the Government or any other person to do or abstain from doing any act or to pay a ransom, shall be punished with death or imprisonment and shall also be liable to fine.

Offences relating to Slavery and Forced Labour: 1. Importing, exporting, buying, selling or disposing of any person as a slave , or accepting, receiving, or detaining of any person, against his will, as a slave (s.370). 2. Habitually importing, exporting, buying, selling trafficking or dealing in slave (s.371). 3. Section 374 deals with forced labour. Unlawful compulsion of any person to labour against his will is made an offence under this section.

Sale or purchase of minor for immoral purposes: The following section deals with sale or purchase of persons below the

age of 18 for immoral purposes. 1. Selling, letting to hire, or otherwise disposing of any person under the age of 18 years or for the purpose of prostitution, illicit intercourse or for any unlawful or immoral purpose, or knowing it to be likely that such person will at any age be used for such purpose. (s.372) 2. Buying, hiring, or otherwise obtaining possession of such person for a like purpose (s.373).

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7.10.Thug: They are habitual offenders they are committed robbery and child – stealing accompanied with murder. That murder was committed by thugs for the purpose of Economical cause. The Robbery and kidnapping (Child-stealing) also discuss about in various sections in this code. But the British Government give the more important to the preventing measure to the Habitual offenders. They are insert this Section in IPC.

Our Union Government, Home Department is evolutionary body of the Thug preventing Department. This Sections (Sec.310 and 311) incorporate the provisions of the Thugee Act – 1836.

Thugs are robbers and dacoits, but all robbers and decoits are not Thugs. Some gangs of persons habitually associated (Still Madhya Pradesh and Utter Pradesh regions) for the purpose of inveigling and murdering travelers, (or) others in order to take their property, etc.

An attempt to commit an offence is punishable under section 511, whereas in the case of suicide, attempt to commit suicide is made punishable under section 309, but if the offender succeeds in committing the offence, he is beyond the reach of the law to be punished.

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7.11 Summary:

Generally speaking, homicide, one human being killing another, takes three forms.

i) Justifiable – Such as homicide committed while exercising the right of self defence or that which take place in the cause of the use of deadly force by enforcement officials.

ii) Excusable homicides – such as those caused by accidents or insanity and

ii) Criminal homicides or all homicides that are neither justified nor excused. They have been categorized as murder and culpable homicide not m to

If the assault is made or criminal force is used upon sudden and grave provocation the punishment is initiated assault to deter a public servant from discharge of his duty, assault on a woman to outrage her modesty, assault to dishonor a person without provocation, assault omitted in an attempt to commit theft of property, assault in an attempt to wrongfully confine a person etc.

Kidnapping is a crime against the privacy and autonomy. It takes away his liberty. Its main ingredients are

i)seizing ii) Confirming and iii) carrying away another person before thereat of force, fraud or deception, under the I.P.C.

two kinds of kidnapping (i) kidnapping from India (ii) kidnapping from lawful guardianship.

The authors of the code say many of the offences which fall under the head of hurt will also fall under the head of assault. But bodily hurt may be caused by may act which are not assaults. The definition

of hurt appears to contemplate the causing of pain etc. by one person to another, pulling a woman by the hair was held to be this offence.

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Wrongful restrain means the keeping a man out of a place where he wishes to be and has a right to be wrongful confinement, which is a form of wrongful restraint, is keeping a man with in limits out of which he wishes to go, and has a right to go.

7.12. Answer to check your progress:

Question NO 1 : Refer 7.5,

Question NO 2 : Refer 7.3,

Question NO 3 : Refer 7.9,

Question NO 4: Refer 7.9.

7.13. Key Words:

Thug – habitual Rob hens and dacoits in India

Abduction – take away a person unlawfully using force.

Infanticide – Crime of killing an infant

Euthanasia – mercy killing

Homicide – cut the Human body

Miscarriage – premature expulsion of fetus from mothers womb.

7.14 Model questions:

1) What is the difference between the wrongful confinement and wrongful Restraint?

2) Distinguish between the S.299 and S.300 IPC.

3) All the murders are culpable homicides, but all culpable homicides are not murders" – Explain with illustrations.

4) State the exceptions to the offence of murder under the Indian Penal Code.

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UNIT 8

SEXUAL OFFENCES AND OFFENCES RELATING TO MARRIAGE

Introduction:

Crimes against person, encompass range conduct that hurts personal sexual integrity. Rape is a generally considered to be a very heinous crime, cruel and dastardly next only to murder. The public perception of rape is that it is a crime against humanity.

The peculiar practices relating to an institution of marriage in India had prompted the framers of the penal code to make several provisions which have a tendency of compelling people to practice to monogamy. There are provisions enabling the punishment that the persons who indulge in sexual intercourse with a woman deceitfully inducing a belief of lawful marriage (Sec.493) bigamy which was prevalent during the time of enactment of the penal code, came to be declared an offence under section 491. To enter in to a fake marriage, to commit adultery or to entice a married woman etc or all offences for which punishments have been provided under sections 496 to 498 Indian penal code.

Unit Objectives:

- To observe the various kinds of sexual offences
- To discuss the offences relating to the marriage.
- To study the cruelty by husbands and his relations.
- To understand unnatural offences.
- To observe the essential of the Gung Rape and Custodial
- Rape.

Unit Structure:

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8.1. Sexual offences

8.2. Rape

8.3. Unnatural offences

8.4. Offences relating to the marriage

8.5. Dowry Death

8.6. Cruelty

8.7. Summary

8.8. Answer to check your progress

8.9. Key words

8.10. Model Questions.

8.1. Sexual Offences:

The Common law concept of rape embraces of following.

i) only man can rape: Woman (or) minors are not capable of rape.

ii) Rape involves vaginal inter course.

iii) Men can rape only females, not other men or boys.

iv) Man can rape only those who are not their wives, marital rape is not offensive.

v) Rape requires force it is a crime of violence.

vi) Rape has to occur against the woman's will, or without her consent unless she is a minor, in which case consent does not obviate criminal responsibility.

Now in England the Sexual offences Act 1956 provides some type of new offences they are-

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Section – I (1) – Rape

2 (1) and (3) (1) – procurement of women by threats
(or)
by False pretences

4 (1) - Administering Drugs to obtain or facilitate Intercourse.

5 - Inter course with a girl under Thirteen.

4 - Intercourse with a girl under Sixteen.

- Procreation of girl under twenty one.

7 - Sexual Intercourse with mentally disordered patients.

9 - Procurement of Defective persons

10 and 11 - incest.

25 and 26 - Permitting use of premises for intercourse.

In India - In order to curb ever growing Crimes relating to women a number of laws have been enacted from time to time. The laws may broadly be classified into two categories.

(i) Crimes under the IPC - (i.e.) – Rape,

(ii) Crimes under the Special statutes,
(i.e.) - Prostitution
Indecent Representation of woman.

8.2.Rape:

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Chapter XVI of Indian Penal Code deals with the offences affecting the human body. Under this chapter, there is a separate heading for 'Sexual offences" in which sec. 375 defines rape and Sec 376 deals with the Punishment for the same. A man is said to commit rape who, except in the case hereinafter excepted, had sexual intercourse with a woman under circumstances falling under any of the following five descriptions. 1.Against her will 2. Without her consent. 3. With her consent when her consent has been obtained by putting her in fear of death or of hurt. 4. 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 lawfully married to her. 5.With or without her consent when she is under sixteen years of age. Penetration of the male sexual organ is sufficient to constitute the sexual intercourse necessary to the offence of rape. **Exception:** Sexual intercourse by a man with his own wife not being under fifteen years of age, is not rape. Rape is forcible sexual intercourse with a woman without her consent or against her will.

Ingredients of the offence: 1. Sexual intercourse by a man with a woman. 2. Such intercourse must fall under any one of the five clauses in the section.

Mensrea in rape: A sleeping person is incapable of giving consent. Therefore, if a person commits sexual intercourse when the woman is asleep, he commits rape (Mayers, (1872) 12 Cox. 311).

Ref: D.P.P. Vs. Morgan 1975 All E.R. (House of Lords)

If a person succeeds to have sexual intercourse by misrepresentation e.g., stating that he would marry her, he may not be guilty of the section. But on the other hand if he represents to her that

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he is the long lost husband, (whereas he is not) and succeeds to have sexual intercourse with her, he will be liable under this section.

The Explanation says that penetration is sufficient to constitute the offence. Discharge of seminal fluid or full penetration is not necessary. That is, if any part of the private part of the accused did enter into the person of the woman, it is sufficient to constitute the offence. (Allen's case (1839) 9C & P 31). It is not necessary that hymen should be ruptured.

Reg. v. Ferrol (1923) 26 Cr.L.J.1185: In this case the accused raped a six years old girl. There was no injury to her private parts but she was found suffering from gonophores from which the accused was also suffering. Therefore, he was convicted of rape.

Shahu's Case, II S.L.R. 76-42 I.C. 783: The accused an adult husband had intercourse with his child wife before the attained puberty with such violence as to rupture her vagina and destroyed the partition between the vagina and the rectum and so caused her death. The accused was convicted under section 304A.

Shambu Khatrl's case 3 pat. 451: The accused, aged 18 years raped a 12 years old girl and ruptured her vagina from the shock of which she died. The court held that it was case of rape and not one of culpable homicide under s. 304 A.

When a prosecution fails to prove that at the time of commitment of offence of rape the prosecutor was below 16 years of age, the offence cannot be justified. **Laltha Prasad Vs State of M.P. AIR 1979 SC 1276, 1979 Cr. L.J.867 SC.**

Lord Audleya's case (1931) 3 st .Ir. 401: This case held that a husband can be guilty of abetment of rape by another on his wife. In this case Lord Audrey held his wife down by force while his butler ravished her. Similar to this was the case of Tatya Tukaram Khabali

1930 Cr. App, 19 & 20). Here the husband suspecting his wife's fidelity went about searching for her with 9 others and found her with her paramour. Therefore, by way of punishment, he directed all the nine persons to ravish her in succession which they did. All of them were convicted of the offence of rape.

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Ramesh shah Kalyan Singh v. State of Rajasthan (A.I.R. 1962 S.C. 54): In this case, the Supreme Court decided that in a rape case the testimony of the complainant lady or girl need not be corroborated by other disinterested persons.

The appellant Singh raped an 8 year old girl. The question was whether the complaint made by the girl to her mother regarding the incident and the mother's testimony can be accepted. The court confirming the conviction of the appellant for rape ruled that no corroboration beyond the statement of the child to her mother was necessary.

Distinction between rape (s.375) and adultery (s.497): 1. Rape can be committed on any woman married or unmarried. Adultery is committed only on a legally married wife. 2. Adultery is committed with the consent of another man's wife. Rape is committed with the consent of the woman or against her will. 3. Rape can be committed by a husband on his own wife whereas adultery cannot be committed by husband with his wife. 4. Adultery is an offence against marriage and the husband is the aggrieved party. Rape is an offence against the person of the woman raped and the woman is the aggrieved party. In adultery consent of the husband is a defence.

Note: In English law a boy under the age of 14 is deemed to be incapable of committing rape. Prosecution for rape is not possible against him.

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Sec. 376 provides punishment for rape. The punishment is 10 years and also with fine unless the woman raped is his own wife and is not under 12 years of age in which case he shall be punished with imprisonment which may extend to two years or with fine or with both.

Due to increasing cases of sexual abuse of woman and on the basis of 135th Law Commission report, sec. 376 was amended by Criminal law Amendment Act, 1983 and inserted sections 376 (2), 376-A, 376-B, 376-C, and 376-D. Sec. 376(2) provides punishment for Marital rape the punishment is 7 years.

Marital Rape: Sec. 376-A deals with intercourse by a man with his wife during separation and states that whoever has sexual intercource 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 two years and shall also be liable to fine.

Custodial Rape: The Criminal law (Amendment) Act 1983, introduced new sections in the IPC namely Sections 376 B to 376 – D to stop sexual abuse of women in custody, care and control by various categories of persons.

In 1978, the Supreme Court Pronounced another live judgement against a conviction of the Bombay High Court under Section 375 IPC, and acquitted the accused in Tukaram Vs. State of Maharashtra (1979) 2 Sec. 143. Popularly known as the Mathura Trial. The Supreme Court reversed the decision of the Bombay High Court and held the accused not guilty". The Supreme Court held that under section 375 IPC, only fear of death or hurt can vitiate consent for sexualintercourse. There was no such fining recorded and

therefore since the girl was "habituated to sexual intercourse" there was consent.

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The case piloted the voice for amendment in the existing penal provisions to make them more effective in providing justice to the victims.

Custodial rape may be committed by a Police Officer, Public Servant, person on the Management or Staff of a Jail or a remand home or other place of custody for women and children or by one on the management or staff of a hospital. In all cases of custodial rape the person takes advantage of his official position.**Gang rapes** – sec 376 (2) speaks about the gang rape and prescribes the punishment for the same.

8.3 UNNATURAL OFFENCE & HOMOSEXUALITY:

Unnatural offence is dealt with in section 374. Unnatural offence is voluntarily having carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and also be liable to fine. Penetration is sufficient to constitute the offence. In other words the section punishes what is known as sodomy, **Ref: L.V.Deochand Vs. State AIR 1968 Guj 252** bestiality. **Ref Case: Khandu Vs. Emperor AIR 1934 Lah 261** and buggery.

Buggery:

Buggery at common law consists in intercourse per annum, by a man with a man or woman or intercourse per anum or per vaginam, by a man or a woman with an animal. Buggery has never been defined by statute and its elements are still governed by the Common law. At common law it was a single offence. Whatever the age or

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sex of the parties, whether the age or sex of the parties, whether or not they both consented and whether or not an animal was involved.

8.4. OFFENCES RELATING TO MARRIAGE:

Section 493 deals with the offence of deceitfully causing a woman not lawfully married to the offender and to cohabit or to have sexual intercourse with him. Section 493 is not intended to punish one for contracting a marriage which turns out to be illegal. But the section intends to punish a man for obtaining the body of a woman by deceit representing that he has acquired that right by Jusmariti. Ingredients of the offence: (1) Deceitfully causing a false belief in the existence of lawful marriage and 2) Cohabitation or sexual intercourse with the causing of such false belief.

Going through a marriage ceremony dishonestly or fraudulently knowing fully that no lawful marriage is thereby created is an offence punishable under section 496 for example a mock marriage. **Ref Case: Rambilas Singh Vs. State of Bihar (AIR 1989 S.C.1593)**

Differences between Bigamy and Mock marriage are:

Child marriage: Difference between section 493 &secion496:

Bigamy	Mock marriage
1.Punishes men only.	1. Punishes both men and women
2. Sexual intercourse is an essential ingredient of the offence.	2. No such ingredient is necessary.
3.No ulterior object other than having sexual relations	3. May be committed with an ulterior object, the object being other than sexual relations.
4. The intention must be deceit i.e. fraudulent only.	4. Intention may be fraudulent or dishonest. Dishonesty consists in wrongful loss of movable property while the injury caused by deceit is not confined to property and so may extend to heaven to mind of body or reputation.

In order to restrain the solemnization of child marriage, the child marriage restraint Act 1929, was enacted which was repealed by re-enacting the Prohibition of Child Marriage Act 2006 (PCMA). The Act of 2006 provided for the prohibition of solemnisation of child marriages and for matters connected therewith and incidental thereto.

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Bigamy: (s.494) Bigamy is marrying again during the lifetime to husband or wife, as the case why be. This is an offence punishable according to section 494. **Ref case : Mrs. Tolson's case.**

"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", is guilty of the offence of bigamy.

Exceptions: The second marriage is not an offence in the following cases. 1) When the first marriage is declared void by court of competent jurisdiction 2) When the former husband or wife has been continually absent for seven years and not heard of as being alive during that time and the same facts are disclosed to the person with whom the second marriage is contracted. In order to bring the case within this exception **three things are necessary**: 1) continued absence of one of the parties for seven years: 2) the absent spouse not having been heard of by the other party as being alive within that time; 3) disclosure of such facts by the party marrying to the other party.

If the first marriage is not valid, no offence is committed by contracting a second marriage e.g., where A, married first B who is within the prohibited degrees of affinity, again marries C, he will not be guilty of bigamy, the reason being the first marriage is not valid. Now the rule of monogamy is applicable to all communities except the Muslims.

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Similarly, if the second marriage is not valid according to the law (e.g. non observance of the required ceremonies) prosecution under this section will not succeed. The Supreme Court in **Kauwall Ram. V. Himachal Pradesh A.I.R. 1966 S.C. 614** held that in a bigamy case, the second marriage is a fact and the essential ceremonies constituting it must be proved. Admission of the marriage by the accused is not evidence of it for the purpose of proving marriage, adultery or bigamy.

Effect of conversion: On this point decisions of the High Court are not uniform.

Ram Kumar's case (1891) 18 Cal 364. In this case, it was held that a non-Christian marriage is not dissolved by the mere fact of the conversion of one or both of the parties to Christianity.

1. If the wife is a Hindu, conversion of the husband from one religion to another is not a good defence for the wife to marry another man. This is because Hindu law does not recognize polyandry on the part of women 2. A Christian cannot after embracing Mahomedanism mart a second time during the lifetime of his first wife. **Skinner v. Order (18710 14 M.A. 309-324.**

Section 495 deals with an aggravated form of bigamy. Where the offence of bigamy is committed with the concealment of the former marriage from person with whom subsequent marriage is contracted, severe punishment is prescribed. In a case of prosecution for bigamy it has been consistently held by various High Courts that strict proof of marriage is necessary.

ADULTERY: (s.497): Adultery is having intercourse by a man with the woman knowing that she is the wife of another person without the consent or connivance of that man and such sexual intercourse not amounting to rape. Adultery is an offence which in

India punishes man and not women. This discrimination was due to the weaker position held by women in all respects that they had to be given special protection. In **Yusuf-Abdul Aziz v. State of Bombay. A.I.R. 1954 S.C. 32** where the constitutionality of section 497 was challenged as violative of Arts. 14 and 15 of the Constitution. The Supreme Court held that Article 14 is general and must be read with other provisions which set out other provisions ambit of fundamental rights and further cleared that there is no restriction in the Article 15(3). **Ref Case: Nanavathi Vs. State of Maharastra.**

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Ingredients: 1. Sexual intercourse by a man with a woman whom he knows or has reason to believe to be the wife of another man. 2. Such sexual intercourse is without the consent or connivance of the husband. 3. Such sexual intercourse does not amount to rape.

English Law: Under English Law adultery is not an offence. It is only a Civil wrong and the aggrieved can only claim damages from the wrong doer. But with regards to matrimonial laws it is a serious offence.

Incest:

Incest, which consists in sexual intercourse between persons within a specified degree of consanguinity. Incest was not a crime at common law or at all until 1908. The Marriage Act 2949, Schedule I, sets out the degree of relationship within which marriage is prohibited and, if celebrated, void, but it is only in the case of a much narrower range of relationships that sexual intercourse is an offence under Section 10 and 11 of the Sexual offences Act 1956.

Justice Malimath committee in 2003 on reforms in criminal Justice system recommended the recasting of Section 497 IPC to

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include women as offender. The draft national polity on criminal Justice, authored by the **Madawmenon committee,** has also suggested to criminalizing the adultery.

Section 498 makes punishable the enticing or taking away or detaining a married woman with the criminal intent to have illicit intercourse.

This section contemplates four different kinds of cases. A woman may be taken away, or enticed away or concealed or detained.

Ingredients of the section: 1. Taking of enticing away or concealing or detaining the wife of another person. 2. Such taking or enticing is from that another person or from any person having the care of her on behalf of such person. 3. Such taking ete., is with the intent that she may have illicit intercourse with any person. 4. The person taking or enticing has knowledge or reason to believe that the woman is the wife of another person.

Alamgir and another v. State of Bihar, 1959 S.C.J. 457. in this case the 2 appellants were charged under section 498 for having detained the legally married wife of the complainant. The appellants contended that the woman was dissatisfied with her husband and had voluntarily left her husband and of her free will chosen to stay in the house of the appellants. Rejecting the contentions the court held the first appellant guilty of the offence under section 498. The court observed as follows with regard to the section. Consent of the wife is immaterial and is intended to protect only the rights of the husband. It is the infringement of the right of the husband coupled with the intention of eliciting course that is the essential ingredient of the offence. Regarding section 498 the court said that it is intended to protect women in general from abduction or kidnapping and that if it is shown that the woman kidnapped or abducted is a major and gave

her free consent it may be a good defence. The definition under section 498 does not mean against the will of the women.

Ramanarayan's Case, (1936) 39 Bom. L.R. 51: A married woman who was discarded by her husband, while living with her father and brother, ran away with the accused. He was prosecuted under this section. The Bombay High Court quashed the lower court's conviction on the ground that there was no evidence that the woman had been taken or enticed from a person having the care of her on behalf of her husband or that the woman was kept back or detained by the accused either from her husband or from the complainant, her brother, for she was a free agent.

8.5. DOWRY DEATH :

This section was added by Dowry Prohibition (Amendment) Act, 1984 and by the Criminal Law (second Amendment) Act, 1983. The object of this section to is prevent increasing number of dowry death in India and to provide stringent punishment for the same. Under this section, if a woman died within 7 years from the date of her marriage and if it is shown that she is subjected to cruelty and dowry harassment by her husband or in-laws or the relative of her husband, the offender is liable for punishment for not less than 7 years and may extend to imprisonment for life also.

Ashok Kumar v. State of Rajasthan A.J.R. 1990 S.C. 2134 is the illustrative case of dowry death. In this case the victim Asha Rani was burned to death by her in law in a small house with at least six inmates. Her husband, the accused and his parents demanded Rs. 500/- or an auto-rickshaw. Victim is one among the 7 daughters of her father and hence he is unable to afford the demand. As result, the victim was killed by pouring kerosene on her body.

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Check your progress

1.Distinguish between the Rape and adultery.

2. Write a short note on cruelty.

3. Write a short note on bigamy

4. Dowry Death is a new Crime- Discuss.

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Affirming the conviction and sentence of the accused, the Supreme Court pointed out that bride burning is a shame of our society. Evils of dowry is an economic problem due to rising prices and growth of consumer and luxurious goods. Law alone cannot totally eradicate this problem but people must adopt social **ostracism** against the offenders from debarring re marriage.

8.6.CRUELTY:

Sec. 498 A: Husband or relative of husband of a woman subjecting her to cruelty. This section was added by the Criminal Law

(Amendment) Act 1983. This Amendment for the first time defines cruelty.

Cruelty is defined in the Act as:

Any willful 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

R.B. Biksdhapathi Vs. State of Andhra Pradesh

1. Harassment of the woman where such harassment is with a view to coercing her on 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. **Ramesh Kumar Vs. State of Punjab (1986 Cri.L.J. 2087)**

Sexual Harrassment at Work place:

The first successful claim against sexual harassment at the workplace is **"Walker vs. Northumberland county council" (1995) IRLR 35,** where psychicatirc damages were awarded by the English Court arising out of occpational stress.

In India taking up cudgels against these macabro crimes a writ petition was filed in **Vishaka Vs. State of Rajasthan (1997) 6.S.C. 241** for the enforcement of a fundamental rights of working women. The guidelines and norms given by the Supreme Court in these case continue to govern, in the absence of legislation till now, in the field of sexual harassment of women at workplaces. In deed a histroic Judgement, responding to the needs of present day society. These guidelines become law filling the legislative lacuna. The Apex Court considered the proplems and give some guildlines to ensure the prevention of sexual harassment of women. There are

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i) Duty of the employer (or) other responsible persons in workplaces and other institutions.

ii) Definition of the Harrasment.

(i.e.) a) Physical contact and advances.

b) a demand or request of sexual favours.

c) Sexually collured remarks.

d) showing pornography.

iii) Preventive steps by employer; etc.

The Protection of women from Domestic Violence:

The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498 A. of I.P.C. But the Protection of women (Domestic Violance) Act 2005 applies to any woman in the family. Suffering domestic violence. It applies to all women irrespective of their religion. It does not apply to any violent misbehaviour towards domestic servant. The Act defines the expression" domestic voilence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional, or economic. The

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cruelty for dowry demands also come under this definition. (Section 3 of the protection of women (Domestic Violence) Act 2005)

8.7.Summary:

XVI of Indian penal code deals with the offences affecting the human body. Under this chapter, there is a separate heading for sexual offences in which Section 375 to 376.

The Criminal law Amendment Act 1983 has introduced certain important changes in the law relating to rape in India. By this amendment the Act lays down that onus of proving that the women had consented to the act shall be on the accused.

8.8. Answer to check your progress:

Question NO 1: Refer 8.2,

Question NO 2: Refer 8.6,

Question NO 3: Refer 8.4,

Question NO 4: Refer 8.5.

8.9. Key words:

Rape- the crime of submitting a woman by force to sexual act.

Adultery – Voluntary sexual act between a married person with another belonging to the opposite sex, other than one's lawful spouse.

Bigamy – living with tow wires or husbands.

Unnatural offence- The offence consist in a carnal knowledge committed against the order of nature.

8.10. Model Questions:

1) How is the consent of the victim in rape cases decided? Discuss the standard used by the court.
2) What are the Crimes related to the marriage under the IPC- Discuss.
3) Discuss the Custodial Rape and Gang Rape.
4) Define the unnatural offences .

UNIT - 9

OFFENCES AGAINST PROPERTY

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Introduction:

Offences against property are naturally enacted to preserve the private rights in property against adverse attack upon it. Cases of aggravated violations to be dealt with speedy and deterrent action. This accounts for the development of a system with division between Civil and Criminal law. Indian Penal Code (Provisions 378 to 462).

Offences against the property may be grouped into 3 classes:

1) Offences dealing with deprivation of property Sections 378 to 424
2) Offences dealing with damage to property Section 425 to 440
3) Offences dealing with violation of rights to property in order to commit some other offence Sections 441 to 462.

Unit Objectives:

- To observe the various kinds of offences relating to the property
- To know the distinguish between the robbery and decoity
- To understand the criminal liability of theft and receiving the stolen property.
- To discuss the relation between theft and criminal misappropriation
- To study the ingreadience of cheating
- To observe the essential ingreadience of criminal Trespass

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Unit Structure:

9.1 Theft:

Theft is defined section 378 as follows: "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".

Ingredients to the offence of theft: (1) The property must be movable: Such property must be in the possession of another person (2) Such property is taken out of his possession with a dishonest intention (3) Such taking is without his consent: (5) There must be a moving in order to the taking of it.

Property must be movable: Movable property is defined in section 22 of the code so as to include corporeal property of every description except land and things attached to the earth. But by virtue of explanation I appended to s.378 things attached to the land may become movable property by severance from the earth and that the act of severance itself will be theft. Thus point can be explained with the help

of the following illustration. A cuts down a tree on Z's land with the intention of dishonesty taking the tree out of Z's possession without Z's consent. Here as soon as A ha severed the tree in order to such taking he has committed theft.

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So also stones, clay, or salt formed on the surface of or on component severed from earth may form subject matter of theft. Animals are for this purpose treated as movables and can be subject matter of theft. But cattle seized on the ground that they were trespassing into the land and crops do not constitute theft of cattle however mistaken he may be about his right to the land or crops

(RAM Ratan v. State of Bihar)(1995). In the case of **Mehras. Stare Rajasthan (1957)** it was held aircraft can be subject matter of theft and the accused was found guilty of the offence by the Supreme court. The Court observed that the absence of the person's assuring and presence of dishonest intention are the essential ingredients of the theft. **Apparao's case (1962)** the Supreme Court settled the law that where a bonafide claim of right exists it is a good defence to a prosecution got theft.

Owner is liable for theft of his own Property: Thus arises when the owner removes a thing from the possession of a person who has a rightful claim to be in possession of it. Thus where the accused took a bundle belonging to himself but in the possession of a policeman for which he was accountable, it was held that the accused was guilty of theft **(Sheikh Hustan (1887).**

Illustration: a) If A owes money to Z for repairing the watch, and 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

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property as a security for his debt, he commits theft, in as much as he takes it dishonestly

b) 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 commit theft though the watch is his own property, in as much as he takes it dishonestly.

2. Property in possession of another: Where a man loses or misplaces property in his own house it still remains in his own possession and any one who finds the article is bound to assume that it belong to the owner. If he appropriates it to himself without making proper enquiry he commits the offences of theft.

To maintain an action for theft ownership is not necessary. Thus, if X steals the goods of A and Z steal them from X both X and Z have committed theft. In the absence of A, X can maintain a prosecution against Z for the law protects even the vicious possession of X as against Z.

In India husband and wife have separate legal capacity to own or possess property. Accordingly, if a wife removes her husband's property from his house, with dishonest intention, she will be guilty of theft. The same will be the result if the husband removes the wife's property.

It is clear from section 27 of the Code that mere custody is not possession. In **R.V. Thompson,** a lady handed over money to get a rail way ticket to a person standing close to the ticket counter. But he ran away with the money. **Held:** he was guilty of theft for she never parted with the dominion over the money but merely used his hand in the place of her own.

In **Virakutty v. Chiyamn (1884)** it was held when a joint owner in possession dishonestly takes exclusive possession is guilty of theft .

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3. Dishonest intention: This is the most important element in the offence of theft. It is the intention at the time of removal that determines whether the act is theft or not.

"Mens Rea and dishonest intention are ingredients of theft". **K.A.Mathai Vs. Korabbi Kutti (1996 7 Scc 212).**

Illustrations: (1) A sees a ring belonging to Z lying on a table in Z's home. 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 lost is forgotten. Here A, at the time of first moving the ring, commits theft.

2) A delivers his watch to Z a jeweller, to be regulated, R carries it to his ship A, not owing to the jeweler any debt for which the jeweler might lawfully detain the watch as 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 ad assault, has not committed theft, in as much as what he did was no done dishonestly.

Thus if the owner is temporarily kept out of possession with the intention of giving him trouble and ultimately to restore the thing to him such detention is not theft. So also the section does not cover where A conceals an article to his careless friend B to teach him a lesson to be careful in future or for a fun and later restores it to B.

Rameshwar Singh's Case (1836) A respectable person took the cycle belonging to another, thinking that it was his own which was missing and later brought it back, it was held that there was no criminal

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intention to obtain wrongful gain to himself and that he was not guilty of theft.

Srichuru Chungo's Case (1895) In this case the creditor took movable property out of the dehtor's possession without his consent with intention of correcting him to pay his debt. Held the creditor was guilty of theft.

Nanshe Ali Khan (1911): In this case accused snatched away some books from a school boy as he was coming out of school and told him that he would return them only if he came to the accused's house. The object of the accused was to commit unnatural offence upon the boy in the accused house. Held the accused was guilty of theft.

Taking without Consent: The taking of the property must be without the consent of the person in possession. It is not theft if for the taking there is consent express or implied. This aspect is clear from explanation 5 attached to the section.

Illustrations: (1) 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 assumed that he had Z's implied consent to use Z's books. If this was A's impression A has not committed theft. 2) Aasks charity from Z's wife. She gives A monelyfood 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. It must be noted that theft is an offence against possession and not ownership, Ownership is wholly immaterial to section 378, as it deal only with possession.

Where a person takes a lorry on hire purchase system from a company which under the agreement has reserved the right of seizing in case of default in payment of installment, the company is entitled to retake its possession by force or by removing it from the hands of the owner's servants. If it does so that company would by guilty of theft. Whether the ownership had passé to the hirer or not is immaterial for the purpose of section 378. if legal possession of the lorry with the company **(Ramson v. Trilaki Nath (1942).**

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5. Moving: In order to constitute the offence of theft there must be moving with a view to the taking of the property.

Venkataswami's case (1890): In this case a letter sorter instead of giving bearing letter for delivery in the usual course secreted it on his person , that he might give it to the delivery peon himself himself with a view to sharing the postage payable by the addresses. The Madras High Court held that he took the letter out of the possession of the postal authorities without their consent for a fraudulent purpose and therefore committed theft.

A moving effected by the same act which effects the severance may be theft. A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from anything as well as by actually moving it. A person who by any means uses 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 Illustrations: (1) A puts a bait for dogs in his pocket and thus induces Z's dog to follow it. Here, if A's intention is dishonest. A has committed theft as soon as Z's dog has begun to follow A.(2) A meets a bullock carrying a box of treasure. He drives the bullock in a certain

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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.

Aggravated Forms of Theft

The following are aggravated forms of theft (1) Theft of property from building, tent or vessel used as human dwelling (s.380). Sec.380 is restructured by Criminal Laws **(Tamil Nadu Amendment)Act,1993** in the following manner. To prevent theft in the place of worship. According to this Amendment, whoever commits theft of idol or icon in any building used as a place of worship, the offender is liable for punishment which may extend to 2 to 3 years and also fine upto Rs.2000/. 2) Theft of master's property by clerk or servant. (S.381): (3) Theft after preparation made for causing death, hurt or restraint in order to the committing of theft (S.382). illustrations (a) A commits theft on property in Z's possession and while committing this theft he had 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. 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.

Receiving Stolen Property

Section 410 explains what is meant by stolen property. The section reads "property" the possession where of has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed within or outside India is designated, as stolen property. 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.

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If A cheated and obtained property from B and such property is in the custody of C who knows that A got it by cheating B,C cannot be held guilty under section 410, for property obtained by cheating is not stolen property under section 110.

Section 410 can be analyzed as follows:

Stolen Property is

Property (a) the possession of which has been transferred

By (i) theft,(ii) extortion, (iii) robbery, or

(b) which has been criminally misappropriated or

(c) in respect of which criminal breach of trust has been committed within or outside India.

It is necessary that there should be substantial identity between the stolen article and the article found in the possession of the accused. An articles does not cease to be stolen property so long as it remains the same in substance though altered in appearance.

In Ganue Uithu Ghode's Case it was held that a stolen gold ornament melted down into a gold piece is still stolen property.

It must also be noted for an offence under this section, the property must have gone out of the control of the owner and it must have been received by the accused as 'stolen property' and not in any other manner. In **Schimidt's Case** four thieves stole goods from the custody of a railway company and sent it by way of railway parcel to the accused. When the theft was discovered the parcel was intercepted and the railway police handed it over to the railway porter to keep it until further orders. On the following day the porter was asked to deliver the

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parcel to the addressee, the accused, who was arrested and prosecute for receiving stolen property. It was held that the goods has really passed into the possession of the owner, so that it could no longer be called stolen goods and the accused could not be convicted under section 410.

The term receiving does not mean actual physical possession of the goods. In **Shewdhar Sukall's Case 1913** where the consignee presented a railway receipt for certain goods to the Station master paid the freight and received formal delivery of the package from the Station Master, it was held that the goods had come to be not merely in the potential possession of the consignees but actually within his power and unrestricted control though he had not removed them from the station where they were lying nor made any attempt to do and that the accused had received them within the meaning of section 410.

Dishonest reception of property is different from dishonest retention. In the former possession is dishonest from the outset. A person cannot be convicted of receiving stolen property if he had not guilty knowledge at the time of receipt.

The accused must have known or have a reason to believe the property to be stolen. Mere suspicion that the property may be stolen property will not be sufficient. The word "believe" implies that the prosecution must show that the circumstances were such that a responsible man must have felt convinced, in his mind that he property with which he was dealing must be stolen property.

Proceeds of the things stolen so not form stolen property. It A steals a buffalo and sells it to B for Rs.100 which sum he pays to C. Here the buffalo is stolen property, but not the Rs. 100. Sec 411 which deals with dishonestly receiving stolen property is remodified by Criminal

Laws (Tamil Nadu Amendment) Act.1993 and added receiving stolen idol as punishable with imprisonment for 2 years which may extend to 3 years or fine of Rs. 2000/- or both.

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In **Browne V,Dawson,** the trustee of a school had served a notice on the school teacher the plaintiff to vacate the premises under his occupation. He did so, but the next day re-entered the premises and was ejected by the trustees a few day later. The plaintiff sued in trespass the trustees on the strength of his last possession, but Lord Denman C.J. held that there was no trespass as alleged because once possession was restored to the trustees the plaintiffs re-entry was a trespass for which he and not the trustees were liable.

In Abdul Mojid's case, 1938 where the accused entered at night to the complainant's house with intent to carry on an intrigue with his unmarried grown up daughter it was held not to be criminal trespass as there was no intention to cause annoyance to the complainant.

A fundamental difference between criminal trespass and other offences is, the former does no necessarily imply dishonest, fraud, or deceit also there is a closer unity between the different offences contained under this head and that is because criminal trespass enters into all the offence contained under this head. The definitions of offences under this head are 1.Criminal trespasses 2. House trespass 3. Lurking house trespass 4. Lurking house trespasses by night 5. House breaking by night.

An owner of property, himself can be guilty of trespass on his own property, where his property rightly or wrongly is in possession of some other person and he enters into or upon such and with intent to

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commit an offence, or to intimidate, insult or annoy that person in possession of such property, or having lawfully entered into or upon such property unlawfully remains with intent thereby to intimidate, insult or annoy that person, or with intent to annoy other person or without intent to commit an offence.

9.2. EXTORTION:

Extortion is

(1) intentionally putting any person in fear of any injury to that person or any other and thereby.

(2) dishonesty induces the person so put in fear.

(3) to deliver to any person any property or valuable security.

(4) anything signed or sealed which may be converted into a valuable security commits extortion.

Illustration : (1) A threatens Z to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion. (2) A threatens C that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A promissory note biding Z to pay certain money to A, Z signs and delivers the note,. A has committed extortion. (3) A threatens to send clubmen to plough up R's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B and there by induces Z to sign and deliver the bond. A has committed extortion. (4) A by putting Z in fear of grievous hurt, dishonesty induces Z to sign or affix his seal to a blank paper and deliver it to A. here, as the paper so

signed may by converted into a valuable security A has committed extortion.

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Theft and Extortion: The Offence of extortion has a middle place between offences of theft and robbery (1) Extortion is committed by the wrongful obtaining or consent, in theft property is taken without the consent of the owner. (2) Theft is an offence against movable property but immovable property may be subject to extortion. 3) In extortion, property is obtained by intentionally putting a person in fear of injury to that person and thereby dishonestly inducing him to part with his property, in theft the element of force does not arise. Aggravated forms of Extortion: (1) Extortion by putting a person in fear of death or grievous hurt (S.386). (2) Putting or attempting to put, any person in fear of death or of grievous hurt, in order to commit extortion(s.387). (3) Extortion by threat of accusation of an offence punishable with death or imprisonment for life (s.338). (4) Putting or attempting to put any person in fear of such accusation in order to commit extortion (s.389).

9.3. ROBBERY AND DACOITY:

Robbery: According to section 390 robbery includes either theft or extortion. In other words it is either aggravated form of theft or extortion.

Theft is robbery if, in order to the Committing of the theft or in committing 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. Illustration: A hold Z down, and fraudulently takes Z's money and jewels from Z's clothes with out Z's consent. Here A has voluntarily caused wrongful restraint to Z. a has therefore committed robbery.

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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 or 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 and then to deliver up the thing extorted. The offender is said to be present if he is sufficiently near to put the other person in fear of instant death or hurt or of instant wrongful restraint.

Illustration: (1) A meets Z on the high road, shows a pistol and demands 'Z' 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. (2) A meets 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. (3) 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 in fear of instant death of his child.

Thus extortion in order to become robbery the following elements must be preset. (1) Simple extortion: (2) presence of the offender: (3) Fear of instant violence, and: (4) Immediate delivery of property.

DACOITY:

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Robbery (as dealt with in S. 390) becomes dacoity when Committed or attempted to be committed conjointly by five or more persons. (s.391).

"when five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons on jointly committing or attempting to commit a robbery and person present and aiding such commission or attempt amount to five or more or every person so committing attempting or aiding is said to commit dacoity"

When five or more persons assemble for the purpose of committing dacoity, each of them is punishable merely on the ground of joining assembly (sec section 402). (2) Preparation to commit robbery is also punishable (s.399). (3) By the definition of dacoity (s.191) actual committing and attempting to commit as well is made punishable. The nature of the offence is such that provision is made to punish it at all stages of committing the crime of dacoity.

Aggravated forms Robbery and Dacoity: i) Voluntarily causing hurt in committing robbery (sec 324) (ii) Dacoity with murder: If any one or more persons, who are conjointly committing dacoity, commits murder in committing dacoity, every one of those persons shall be punished for murder (section396)

Shyam Behari v. The State of U.P. (A.I.R 1957 S.C.320): In this case the Supreme Court discussed the exact scope of section 396, dacoity with murder. The combined effect of the definitions of robbery and decoity in section 390 and 391 is that if theft is in fact committed by five or more persons conjointly and of while the offenders are carrying away the property obtained by theft, any one of them voluntarily causes

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or attempts to cause death or hurt each one of the offenders is said to commit dacoity. If one of the dacoits commit murder while they are being chased, the question whether others can be convicted under section 396 for the offence of dacoity could or could not be said to be construing at that time.

In this case the change was that murder was committed by one of the dacoits while they were being chased away from the village where the dacoity was committed. The charge failed for the reason, that the dacoity had failed and the offenders were running away empty handed. While they were being chased. But one among them committed murder of one of the persons chasing them and that person was convicted under section 302 and 396. Here the offence of murder was committed in committing dacoity with in the meaning of this section.

In Babar v. State of Gujarat (1970) the Gujarat High Court held that, to prove that the accused person belonged to a gang was associated or the purpose of liability committing theft or robbery it is not necessary to prove the actual commission of any offence of theft or robbery. So also it is not necessary that the members of he gang should be members right from the beginning.

Difference between theft, extortion, robbery and decoity

S.no.	Theft	Extortion	Robbery	Decoity.
1.	**Concent:** Offender takes withoutthe consent of the owner	Offence committed by the wrongful obtaining of consent	It is an aggravated form of theft or extortion and the offender takes without consent.	There is either no consent or as in extortion consent isobtained wrongfully.

2.	**Property:** Committed in respect of movable.only.	Committed in respect of both movableand immovables	Against immovables if it is in the form of extortion not other wise.	Against immovables if it is in the form of extortion not other wise.
3.	**Use of Force:** The element of force does not arise.	Committed by intentionally putting a person in fear of injury to that person or to any other person and thus including him to part with his property	Force an essestial element though may not be actually used.	Force an essential element thought may not be actually used.
4.	**No.of Person:** Can be committed by one person	Can be committed by one person	Can be committed by one person	Can be committed by five or more persons only
5.	**Element of Few:** Fear does not exist.	Fear exist	Exists in the form of extortion	Fear exist.
6.	**Delivery of the property:** No delivery of the property by the victim.	Delivery by victim.	May or may not exist if it is in the form of theft if in the form of theft no delivery.	If in the form of theft no delivery.

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9.4. CHEATING :

The offence of cheating is dealt with in section 451 cheating is defined as follows. "whoever by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent shall retain any property or intentionally include 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 of commission causes or is likely to cause damage or harm, to that person in body, mind or reputation or property, is said to cheat". In other words cheating is

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deception practiced fraudulently to induce a person deceived to do or omit to do thing likely to cause injury. A dishonest concealment of facts is deception within the meaning of this section.

Ingredients: (1) A person is deceived. (2) by such deception he is induced (3) to deliver property or consented the property to be retained by any person. (4) such inducement is fraudulent or dishonest, or, (5) intentionally inducing the person deceived to do or omit to do some thing so as to cause injury to him. Injury includes injury to body mind reputation or property. Illustrations: (1) A by falsely pretending to be in the civil service, intentionally deceives Z and thus dishonestly indues Z to have credit goods for which he does not meant to pay. A cheats. (2) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article, was made by a certain celebrated manufacturers and thus dishonestly induce Z to buy and pay for the article. A cheats. 3) A by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and therefore dishonestly induce z to buy and pay for the article, A cheats. (4) A by tendering in payment for an article a bill on a house with which A keeps no money, and by which B expects that the bill which he dishonoured, intentionally deceives Z, and thereby induces Z to lend money, A cheats (5) A by pleading as diamond articles which he knows are not diamonds intentionally deceives Z and thereby dishonestly induces Z to lend money. A cheats.

Baijath Sehay's case, (1932): In this case the accused debtor sent to the creditor an insured cover containing only blank piece of paper in order to obtain from the creditor an acknowledgment of receipt which he

could use in evidence. The Punjab High Court held the debtor guilty of cheating.

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Where the accused sold liquor measuring it with a glass which was not prescribed measure and of which falsely misrepresented the capacity; it was held that the accused was guilty under s.415 **(Narodin's case 1888).** First by submitting a false degree in service commission and then by drawing salary the accused is proved to have committed an offence of cheating the government his conviction under section 415 IPC is fully justified.

Kanumukkala krishnamurhty Vs. State of A.P. AIR 1965 SC 333. 1965 (1) Cr.L.J. 355 SC.1965 (1) SCJ 268.

Cheating by personation: Section 416 deals with cheating by personation. Where (1) one person pretending to be some other person, or (2) by knowingly substituting himself for some other person or (3) by representing that he or any other person is a person other than he or such other person really is. The offence is committed whether the individual personate is a real or imaginary person.

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

R.v. Appaswami (1886) 12 Mad.(3): A falsely represented himself to be B at the University Examination got a hall ticket under B's name, and wrote answer papers in B's name. Held A was guilty of cheating by personation and forgery.

Krishnamoorthy v. State of AP.(A.I.R1965 S.C. 399): The accused falsely represented to the Madras Public Service Commission that he possessed the M.B.B.S. Degree prescribed for appointment as

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Civil Assistant Surgeon and accordingly he was selected and appointed as Assistant Surgeon and drew salary also from Government. Many years later his fraud was detected and he was prosecuted and convicted for cheating by personation.

It will be of help to note that there are **seven offences of impersonation**. They are (1) As soldier (section 140): (1) As a public servant (section 170 (3) As a juror or assessor (section 299): (4) personation at an election-section 171.D.(5) Wearing garb or carries a token used by a public servant (section 171): (6) Personation for the purpose of a act or proceeding in a suit or prosecution (section 204): (7) Cheating by personation (section 419)

Aggravated forms of Cheating: cheating with the knowledge that wrongful loss may ensure to a person whose interest the offender is bound to protect (s.418): Cheating by Personation (s.419): Cheating and thereby dishonesty inducing delivery of property (s.420).

Hari Rao v. State of Bihar A.I.R 1970 S.C.843: In this case a station master was induced to make out a railway receipt stating that the particular consignment contained 251 bags of chilies. The responsibility for loading and unloading vested with the consignor. In fact the loaded wagon contained 107 bags of chaff. The Supreme Court on the facts of the reason being that the Railway did not incur any additional liability by the false representation that the consignment contained 251 bags and the issue of the Railway receipt therefore was not likely to cause any damage or harm to the railway.

9.5. CRIMINAL MISAPPROPRIATION AND BREACH OF TRUST:

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Section 403, IPC, defines criminal misappropriation of property, it says 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 .

Illustration: 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 misappropriates the property to his own he is guilty of an offence under this section b) A being on friendly terms with Z, in Z's absence takes away book without Z's express consent. Here, if A was under the impression that he has Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A after words sells the books for his own use, he is guilty of an offence under this section. c) A and B being joint owners of a horse, A takes out of B's possession, intending to use it. Here as A has 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. to the section is : A dishonest misappropriation for a time only is a misappropriation with in the meaning of this section. E.g. 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 security for a loan intending a future time to restore it to Z. a has committed an offence under the section.

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Explanation 2 says: A person who finds property not in the possession of any other person and takes such property for the purpose of protecting it for or for restoring it to the owner does not take or misappropriates it dishonestly is not guilty of an offence, but he is guilty of the offence above defined, if he appropriates 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 given notice to the owner and has kept the property for a reasonable time to enable the owner to claim it.

What is 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, is sufficient if at the time of appropriating if he does not believe it to be his own property, or in good faith believes that the real owner cannot be found e.g. a) offence defined in this section b) A finds a letter on the roads, 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.

When a person comes into possession of a thing innocently, he does not commit the offence of criminal misappropriation but having come into possession of the thing innocently, and later knows to whom the thing belong and yet with intent keeps it for himself, now the retaining becomes wrongful and fraudulent. In all the illustrations appended to section 403, the accused acquires possession of the thing innocently, but its retention become wrongful and fraudulent either from a later change of intention or from knowledge of some new fact with which the accused was not previously acquainted. It is the mental act or attitude of the doer towards his act which completes the offence. **Kesho**

Ranio's Case 1889, the accused was the servant of A. he was entrusted with A's money for the purchase of gain as J.Instead of going to J he went to H and rendered false accounts of the money entrusted to him. On arrest the entire sum of money was found intact, and it was pleaded in his defence that he cannot be convicted of the offence of criminal misappropriation as there was no evidence that he had converted it to his own use. But it was rightly held that the possession initially being lawful the misappropriation consisted not in any actual expenditure of the money, but in the intent or the mental act to deprive A, the master of the property, even though there was no overt act of trespass, and the rendering false accounts was sufficient to make him liable under this section. Criminal misappropriation consists in dishonest reception which is a totally different offence.

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Distinction between India Law and English Law: In English law the intention of the accused at the time of taking the property also relevant. If he had acquired possession of the property innocently, then the subsequent dishonesty is not sufficient to make him guilty. Explanation 2 of the section emphasizes the difference between English law and I.P.C. According to the former, innocent acquisition followed by conversion owing to a change in the animus is a civil wrong rather than a crime.

Distinction between theft and Criminal Misappropriation

Theft	Criminal Misappropriation
1. Initial taking is always wrongful. 2. There is an invasion of possession of another person by wrongdoer.	1. It may be innocent and invalid it is the subsequent changes in intention, that changes the lawful taking into an lawful act. 2. No such violation of right of possession. The offender is already in possession of the property and it is the unlawful misappropriation that coverts it into an offence.

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3. Mere moving of the thing itself is an offence.	3. The moving may not be an offence. It may even be lawful. It is the change in the intention that completes the offence.
4. The property is moved without the consent of the owner or possessor.	4. The accused might have come into possession of the property with the consent of the owner. It is only when he converts the property to his won use that he commits the offence.
5. Dishonest intention is common to both. In theft it is evidenced by the moving of the property.	5. Here if is seen in the misappropriation for the use of the accused.
6. Dishonest intention preceeds, taking.	6. Dishonest intention develops after the taking.

7. Position of Servants or Clerks taking the property of Master or Employer

In **R.V. Betts** a salesman sold goods across the counter, but did not enter the transaction in the register but pocketed the cash. It was held to be a case of embezzlement and not breach of trust. But in India such cases would be considered as criminal misappropriation. For example, in **R.V. Ramkrishnan** where the income-tax clerk received money without paying it into treasury, pocketed it, it was held to be an offence punishable under section 403. in **Venkataswami's Case 1896.** 14 Mad 229, a postal clerk secreted two letters with the intention of sharing certain money payable upon them with the delivery peon, was held to have committed the offence of attempt to commit dishonest misappropriation of property and theft.

Finding of property: Section 430, Explanations and illustrations make it quite clear that there can be no question of criminal misappropriation of things which have actually been abandoned.

But difficulty arises when articles are lost without being abandoned, or those which have been abandoned only because they were lost. According to Maybe where such property is concerned as the

ownership is still with the owner and he naturally looks for them any person who takes them and coverts them to his own use commits larceny according to English law, and criminal misappropriation according to the Indian Penal Code.

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In **R.V. Sita,** a gold mohur was found by the accused in an open and she sold it the next day to the village shorff. The Bombay High Court on appeal held that as the gold mohur was not claimed by anyone till date, she could not be convicted under section 403.

Aggravated forms of criminal misappropriation

Section 404 deals with aggravated forms of criminal misappropriation. It consists in dishonest misapplication or conversion of property possessed by a deceased person at the time of his death for which the punishment is up to three years and a fine and if it is committed by clerk or servant of the deceased, then the imprisonment may extend to seven years. Illustration: Z, dies in possession of furniture and money. His servant A dishonestly misappropriates it before it comes into the possession of anybody. A has committed the offence defined in this section.

The offence of criminal misappropriation is therefore made up of the following two ingredients. A) dishonest misappropriation or conversion of property to one's own use, and b) such property must be movable. In order to prove an offence under section 403 the prosecution has to prove that (1) the property was the property of the complainant. (ii) the accused misappropriated that sum or converted it to his own use and (iii) he did so dishonestly either permanently or temporarily.

Criminal Breach of Trust

Section 405 I.P.C defines criminal breach of trust as follows:

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Whoever, being in any manner entrusted with property or with any dominion over property, dishonesty misappropriates or converts t his own use that property, 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, or willfully suffers any other person so to do, commits 'criminal breach of trust'.

The essential ingredients of the offence of criminal breach of trust are (i) The accused must be entrusted with property or with dominion over it. (ii) He must dishonestly misappropriate or convert such property to his own use; (iii) The offender must dishonestly use or dispose of such property or willfully suffer any other person so to do in violation; a) of any direction of the law prescribing the mode in which trust is to be discharged or b) of any legal contract made touching the discharge of such trust.

On an analysis of the section and the case law, it must be noted that the section applies to both immovable and movable property. Section 405 does not provide that the entrustment of the property should be by someone or the amount received must be the property of the person on whose behalf it is received if the offender is given possession of the property for a specific purpose or to deal with it in a particular manner, the owner being a person other than the offender he can be said to be entrusted with the property to be applied in accordance with the terms of entrustment and for the benefit of the owner.

The word entrustment is used in its widest sense to mean any arrangement by which one person is authorized to deal with property for the benefit of another and when such property is dishonestly disposed of contrary to the terms on which the possession has been handed over, he

commits an offence under the section. In **Sommath v State of Maharastra (1972)** a traffic assistant employed by the Indian Airlines corporation, demanded on behalf of the Corporation certain excess amount for trunk call charges from passengers for reservation of seats. Having received the amount, receipts were issued in the name of the corporation. But later falsified the accounts in the counterfoils of the receipts and misappropriated the excess amount. It was held by the Supreme Court that this offence amounted to criminal breach of trust.

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The section is applicable only in cases where some sort of trust or fiduciary relationship is created and the expression 'entrustment' carries with it the implication that the person handing over the property or on whose behalf the property is handed over to another continues to be its owner. Therefore, where a trick is employed to get bonds to the tune of Rs.3,50,000 from a trend on false representation and their worth misappropriated will not amount to criminal breach of trust as this will be cheating and in no sense is there an entrustment of property **R.v.John Mc.Iyer (1936).** So too a receiver appointed by court in respect of "Sitaram Mills" and who receives a bribe, from a purchaser of cloth from the company is not guilty of criminal breach of trust as there is no entrustment, the bribe taker receives money in his own behalf and not as a trustee for and anybody else.

The words "converts to his own use" imply that there must be actual conversion of the thing. So where a person finding a purse of the pavement of a temple in a crowded gathering picks it up and puts to into his pocket and is immediately arrested cannot be convicted of an offence under this section, because, it cannot be assumed that the mere act of

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picking up the purse and putting it in his pocket he intended to appropriate its contents to his own use.

"Willfully suffers any person so to do' means, that any person entrusted with property allows any one else to use or dispose of the property he will be guilty of criminal breach of trust. In Abdul Salam's Case 1935, the Record Keeper allowed another to have the keys of the record room, which enabled the other person to take copies of certain records without due payment, the Record Keeper was held guilty of criminal breach of trust.

In hire purchase agreement it is easy to commit an offence under this section, where before making payments in full the hirer sells the article to another, **Mosses Case,1916.**

Aggravated forms of Criminal Breach of Trust: Section 407 to 409 treat criminal breach of trust by a carrier, wharfinger or warehouseman, clerk or servant, public servant, banker, merchant, factor, broker, attorney or agent as aggravated forms of the offence. Where a servant fails to render accounts and to deliver up the money realized by him in spite of repeated demands, he uses the property entrusted to him in violation of the legal contract made by him with his master.

When an officer who is entrusted a very vital work of drawing funds and making expenses incurred in business expenditure blank, cheque duly signed are used in other than purpose of company affairs his conviction under section 405 and 409 IPC for an offence of criminal breach of Trust. **Velji Raghavji Patel Vs. state of Maharashtra AIR 1965 SC 1433.**

When the appellant, a public servant working as Gram Sachiv for Gram Panchayats dishonestly misappropriated the collected amount towards house tax, for his own use thus committed breach of trust and therefore sentenced to six months R.I. and fine. **Bachchusingh Vs State of Harayana 1999 Cr.L.J.3528 SC.**

Where oral and documentary evidence showed that delivery of diesel oil was given to junior officer who had signed on the cash memo and also on register and delivery to senior officer not proved then conviction of senior officer/accused for the charge of embezzlement is liable to be set aside while that of junior officer should be heldup. **Jiwan Dass Vs State of Haryanas 1999 Cr.L.J.2034SC.**

Distinction between theft, Criminal Misappropriation and Criminal Breach of Trust.

1) In theft the accused is not in possession of the thing he gets possession only in the act of stealing; but I the other two offences the accused is already in possession of the property and it is only his subsequent act his wrongful use, that makes him guilty of the offence specified.

2) A fiduciary relations up is necessary for criminal breach of trust and the conversion of property held by a person should be in this fiduciary capacity. But in criminal misappropriation the conversion of property is of property coming into possession of the offender any how but not unlawfully while in theft, where the completed offence is concerned possession of the property is unlawful.

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3) In criminal breach trust, there is more contractual relationship between the parties, but in criminal misappropriation and in theft there is no contractual relationship of any kind.

9.6. CRIMINAL TRESPASS:

Trespass means an encroachment on the property of another. It is unjustifiable interference with possession of property of another. It is unjustifiable interference with possession of property. Such interference they both be a civil wrong and a criminal wrong. Civil Wrong which in other words is the tort of trespass can become a criminal wrong when the entry is forcible and the right of the trespasser doubtful it is known as **"forcible entry" in English law.**

Sec. 441 of the Indian Penal Code defines criminal trespass as follows: A person commits criminal trespass if he (1) enters into or upon property in the possession of another, (2) with intent to commit an offence or to intimidate insult or annoy any person in possession of such property or (3) having lawfully entered into upon such property unlawfully remains there (a) with intent there by intimidate insult or annoy any such person or (b) with intent to commit an offence.

For the offence of criminal trespass three essentials are required:

i) There must be an entry into or upon property in the possession of another.

ii) If such entry is lawful, then lawfully by remaining on such property.

iii) Such entry or lawful remaining must be with intent either

a) to commit an offence or

b) to intimidate, insult or annoy the person in possession of the property.

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House – trespass: As trespass into a house is naturally more serious than in one's field, this amounts to an aggravated form of criminal trespass.

The meaning of a human dwelling is that it should form part of the residence for the person in occupation of the premises of his family or servants it includes out houses, stables cowshed dairy house and the like but not open courtyards with or without fence and walls around it:

Aggravated forms of House Trespass: Sections 449 to 452 deal with aggravated forms of House trespass for which the punishment is also severe. House trespass is an offence punishable with death, imprisonment for life if accompanied by theft or causing hurt, assault, or wrongful restraint. These are all aggravated forms of house trespass.

Lurking House Trespass: Sections 443 and 444 deal with this offence. Section 443 states: whoever commits house trespass having taken precaution to conceal such house trespass from some person who has a right to exclude or reject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit lurking house trespass.

Section 444 States: who ever commits lurking house trespass after sunset and before sunrise is said to commit lurking house trespass by night entrance.

House Breaking: Section 445 deals with house breaking". It is committed by a person who commits house trespass if he effects his enhance into the house or any part of it in any of the six ways mentioned

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in the section or if he is already in the house or any part of it for the purpose of committing an offence, or having already committed an offence therein, quits the house or any part of it in any of the six ways mentioned.

Firstly: If he enters or quits through a passage made by himself, or by an a better of the house trespass in order to the committing of the house trespass. **Illustration:** 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.

Secondly: If he enters or quits through any passage not intended by any person other than himself or on a better of the offence for human entrance or through any passage to which he has obtained access by scaling or climbing over wall or building. **Illustrations:** A commits house trespass by creeping into a said by a porthole between decks. This is house breaking. A commits house trespass by entering Z's house through the window. This is house breaking.

Thirdly: If he enters or quits through any passage, which he or an 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 opened.

Fourthly: if he enters or quits by opening any lock in order to the committing of the house trespass, or in order to quit the house after a house trespass. **Illustration:** A finds the key of Z's house door, which Z has lost and commits house trespass by entering Z's house having opened the door with key. This is house-breaking.

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

Check your progress

1.Write a short note impersonation and it's kinds.

2.The offence of criminal breach of trust could be committed against both movable and immovable property?
a) True b) Partly true
c) False d) none of the above.

3. Dacoity is dealt under section ---------- of the Indian penal code.
a)391 b)392 c)385 d)386

4. Extortion is under Section ---------- of the Indian penal code.
a)383 b)384 c)385 d)386

5.Extortion is an offence against property
a) True b) Partly true
c) False d) none of the above.

assault. **Illustration:** Z is standing in his doorway. A forces a passage by knocking Z down and commits house trespass by entering the house. This is houses breaking.

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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 fastened against such entrance or departure and to have been unfastened by himself or by an a better of the house trespass. **Illustration:** A commits house trespass by entering Z's house through the door, having opened a door which was fastened. This is house breaking.

The explanation to section 445 states that 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:

Aggravated forms of the offence of lurking house trespass by right and house breaking by night: When the above offence is committed in order to commit any offence punishable by imprisonment, such as theft. When the offence is committed after making preparation for causing hurt, assault or wrongful restraint. While committing the offence, voluntary causing or attempting to cause death or grievous hurt.

State Amendment

In sec.454 a provision was also added by virtue of criminal Laws (Tamil Nadu Amendment) Act, 1993, which deals with lurking house trespass or hose breaking in a place of worship for theft. For the offence the punishment may be 3 years minimum and 10 years maximum imprisonment. The offence also carries a fine of Rs.5000/-

In the same manner, in sec.457 a provision was also added to the affect, lurking house trespass or house breaking by night in the place of

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worship. The minimum punishment is 3 years and the maximum punishment is 14 years and also liable for fine of Rs.5000/-.

9.7. SUMMARY:

The offence of theft and other property related offence are elaborately dealt with, in this aforesaid given passages. The distinction between possessive of the article found with the accused and stolen article and aggravated form of theft, extortion, robbery, dacoity are finally explained.

9.8. Answer to check your progress:

Question NO 1: Refer 9.4,

Question NO 2: Refer Answer (a)

Question NO 3: Refer Answer (a)

Question NO 4: Refer Answer (a)

Question NO 5: Refer Answer (a)

9.9. Key words:

Robbery – it is an aggravated form of theft

Dacoity – it is an aggravated form of Robbery can be committed by five or more persons.

Cheating – dishonestly induce the person deceived to deliver any property.

Trespass – Encroachment on the property of another.

9.10. Model questions:

1). Define 'extortion', when it will amount to robbery? When robbery will amount to dacoity?

2) Explain the ingredients of the offence of criminal misappropriation and distinguish between criminal breach trust?

3) What is stolen property? When a person will be made liable for receiving or retaining stolen property.

4) Define Theft? Distinguish it with extortion when theft is robbery?

5) Distinguish between- 'Theft' and 'Misappropriation'

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Unit - 10

OFFENCES AFFECTING REPUTATION AND NUISANCE

Introduction:

The English Common Law recognized four forms of Criminal Libel.(Defamation in a Permanent form) namely Blasphemous, defamatory obscene and seditious. Though all four offences still exist at common law, obscene libels are now in practice in England and it is governed by the Obscene Publications Act 1959.

Blasphemous - It denies the truth of the Christian Religion or of the Bible.

Defamatory - Publication of statement which lends to lower a person's reputation. Goldsmith Vs. Pressdram Ltd., (1977) Q/B 383.

Defamation - The India Penal Code 1860 has dealt with these matters in (Sections 499 to 502).

Obscene - In English Criminal Law, the obscene handled by the obscene Publication Acts 1959 and 1964. But Section 294 of the IPC. speaks about the absence.

Sedition - Sedition is closely related to the form of treason consisting in levying **war against the Queen in England**

But in Indian Penal Code Sedition is given in Chapter VI offences against the state (Section 12A). (See the Unit No.1.1) In this unit we are giving to discuss about the offences relating to reputation, Decency and morals offences relating to religion, offences affecting public health and safety.

Unit Objectives:

- ❖ To study the various kinds of offences relating to the reputation and offences affecting the decency and morals.
- ❖ To know the deformation under the Indian Penal Code

- ❖ To discuss the offences relating to public morals and decency of the woman
- ❖ To understand the offences relating to the religion
- ❖ To study the offences affecting the public health and safety.

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Unit Structure:

10.1.OFFENCES AFFECTING REPUTATION-DEFAMATION (Sec. 499 to s. 502).

Defamation simply means causing injury to the reputation of a person. Injury, according to section 44, includes damage to reputation also. A man of very bad character may have a very high reputation and the object of the law is to protect such reputation by entitling the injured person to prosecute the offender criminally and seek from him damages civilly.

"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 herein after excepted, to defame that person". According to the Indian Penal Code, there is no such distinction between libel and slander.

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Ingredients of Section 499 I.P.C.

1) A person intends to defame another person.
2) He makes (or) publishes any imputation intending that another person.
    a) by words, either spoken (or) intended to be read.
    b) By signs or
    c) By visible representations.
3) The person making any imputation, intends to harm to that another person, or knowing or having reason to believe that such imputation will harm, the reputation of such person.
4) If the imputation comes within any one of ten exceptions the person making imputation is not held for defamation.

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 which are 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 loath some state or in a state generally considered as disgraceful.

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Thigaraya v. Krishnaswamy: The accused published a leaflet stating that the complainant was a *doshi* (sinner) and ought to have been in fact excommunicated from the society of Brahmins and challenged his readmission to the caste. Held, the circulation of the leaflet was defamation.

Mohan Lal v. Ramachandran. (1928) In this case the accused, at the time of a feast, declared that the complainant, a Hindu had been outcasted and was not fit to sit along with others. Held : guilty of defamation Panna Lal's Case : (1935) 37 Cr L. J. 1039 : The accused published at an election contest against his rival candidate a Barrister a poster. " The hollowness of M .... 's Capacity as a Barrister has been exposed." Held; the accused was guilty of defamation for the reason that the imputation was calculated to lower the estimation of his intellectual and professional qualification as a Barrister.

Essential ingredients of the section

1. The making or publishing an imputation concerning any person,
2. The publication of such imputation may be by words spoken, written, signs or visible representations.
3. Such imputation is made with the intention to harm the reputation of the person abut whom the imputation is made.

Publication : Publication is communication of the statement at least to one person other than the person defamed. If the defamatory matter is communicated directly to the person regarding whom the imputation is made, it is not defamation. A defamatory matter concerning B is communicated directly to B. It is not defamation because there is no publication.

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English law and Indian Law

Under English civil law (Tort) publication is an essential requisite. But under criminal law the test is whether the words have a tendency to provoke breach of peace. Accordingly, if the statement is communicated directly to the person defamed and such statement has a tendency to provoke breach of peace, it is defamatory and criminal prosecution is possible. In other words communication to a person other than the defamed is not basic to English criminal law of defamation. But under the Indian law publication is absolutely necessary in civil and criminal law of defamation. But under the Indian law publication is absolutely necessary in civil and criminal law. (In the code, words which will have the effect of provoking another person at whom they are uttered are punishable under section 504)

In England slander is not actionable criminally unless it amounts to be seditious or blasphemous. (Slander simply means defamation by spoken words). But under the Indian law defamation whether by spoken word or in writing in criminal, both are punishable.

CASE LAW ON PUBLICATION

Taki Hussain , (7A, 205) F.B. In this case the accused sent a suit notice to a policeman imputing malice and bribery and claiming damages from him for having made an unjustifiable search in the complainant's house. Held : communication to the defamed is not a publication.

Sukhdeo's Case, (55 a, 253) : The accused in his reply to the President of the municipality made a defamatory imputation and the President in the ordinary course of business laid the reply before the councilors. Held,: the accused guilty of publication of the defamatory matter. Thus the law is, where the accused knows that the

communication will be read by others or will be known to others in the usual course of business, he will be liable e.g., libellous matter in a postcard or a telegraphic message.

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The term publication includes repetition or republication of libel

already published. Where a newspaper reproduces a libelous statement from another, it makes it, its own, and is liable for all the consequences. The case of *Howard,* is an illustration on the point; it related to the republication of a defamatory extract for which the publisher was held liable.

The liability of editor, printer, publisher and distributor is the same. It is not open to a publisher to contend that he had no knowledge that the paper contained any defamatory matter. But the rigour of English law was mitigated by enactment (e.g., The Defamation Act, 1952) so far as publisher, proprietor or editor of a newspaper is concerned.

BALASUBRAMANIA MUDALIAR vRAJAGOPALACHARIAR (1944 M. W. N. 322) The Madras High Court held that the editor of a Journal is in no better position than an ordinary citizen.

IMPUTATION CONCERNING Space for hints Under section 499 the imputation made concerning "any person" must at least be believed to harm the reputation of " Such person". Therefore, the rule laid down in **HULTON AND Co. v . JONES,** 1910 A.C. 20, that the intention of the defendant is immaterial, is not applicable to criminal defamation under section 499. Yet another point to be noted is malice which is another essential element of the wrong of defamation in tort, is not necessary to constitute the offence of defamation under section 499.

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MEANS OF PUBLICATION : The distinction between libel and slander is not maintained by section 499. There are four modes of publication under the section : (a) spoken words, (b) written, (c) signs, and (d) visible representations. Visible representation will include a statue, a caricature, an effigy, chalk marks on a wall, signs or pictures etc. (1) A is asked who stole B's watch, A points to Z , intending to cause it to be believed that Z stoke B's watch. This is defamation by sign. (2) 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, by visible representation.

INTENTION TO INJURE : Under section 499 the person defaming must have intended to harm or knowing or having reason to believe that such imputation will harm the reputation of another person.

ILLUSTRATION: 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.

Exception:

i) Imputation of truth which public good requires to be made or published.
(Chamanlal Vs. State of Punjab AIR 1970 SC 1372.)

ii) public conduct of a public servant.

iii) Conduct of any person touching any public question.

iv) Publication of reports relating to proceedings of courts.

v) Merits of case decided in court relating to the facts of the case.

vi) Merits of public performance.

vii) Censure passed in good faith by person having lawful authority over another.

viii) Accusation preferred in good faith to authorized person.

ix) Imputation made in good faith by person for protection of his or other interests.

x) Caution intended for good of person to whom conveyed or for public good.

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These are ten exceptions to section 499. In other words there are 10 defences to the offence of defamation. They are as follows:-

I. IMPUTATION OF TRUTH FOR PUBLIC GOOD: 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 it is for the public good is a question of fact.

Under this, truth alone is not sufficient; publication of such statement must have been for public good. But it is not necessary that it must be proved literally true ; if it is substantially true, it is sufficient, e.g., if you impute that A is a notorious seducer of women, you must prove that this fact is substantially true by showing his involving in such conduct or conviction for such offence. It is no justification if you prove that A had been convicted of theft or other offences. Besides no amount of truth will justify such imputation unless its publication was for public good ; that is the fact that A is a seducer of women was notified to others to safeguard the interest of the public so as to signify to other women to guard against A.

RAMANAND'S CASE : In this case the accused was found guilty for having given circulation of the plaintiff's intimacy with a woman as the reason for his excommunication out of the caste.

THE GURU SANKARA NARASHIMA BHARATHI'S CASE : In this case the Guru published a circular proclaiming M an outcaste and asked his disciples and the public not to associate with him. The same fact was communicated to the complainant by a registered

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postcard. Held, though the Guru was privileged, he lost his privilege by undue publicity.

II. FAIR CRITICISM OF PUBLIC SERVANT : It is not defamation *to express in good faith any opinion* whatever respecting *the conduct of public servant* in discharge of his *public functions* or respecting *his character* so far as his character appears *in that conduct,* and not further. What is protected under this exception is the expression of opinion or fair comments upon public men or matters of public interest.

The expression of opinion must be made in *good faith.* Good faith is defined in section 52 of the Code. (Read carefully the section dealing with good faith) The accused must show either the imputation is true or that if false, *he has reasonable ground for believing it to be true,* looking at the source from which the information was taken.

Howard V. Mull, (1866) I Bom. H.C. R. App. 85-91 : This is an authority for the rule that the opinion must be fair and honest.

The plaintiff, the Director of Public Instruction, Bombay sued the partner of the "Times of India" for defaming him in a series of articles in which it was stated that the Director by the use of his official position secured private gain in sale of text books. The court held that the defendant gave no evidence of truth of his allegation and the fact that he was a journalist did not clothe him with greater immunity than any other member or the public. The defendant was held liable in damages to the sum of Rs. 2500.

III. Fair comment on public conduct of public men other than public servants:

It is defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question

and respecting his character so far as his character appears in that conduct, and no further.

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The opinion must be honest and fair base on true facts. Under this members of Parliament, Legislative Assembly, or Corporation or Municipal Council may be the persons whose public career is the subject of comment.

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

In this respect newspapers have no higher rights than ordinary citizen. *In Sahib Singh v. State of U.P* (A. I. R. 1965 SC.1451) the Supreme Court held that exceptions 3 to 9 to section 499, will not afford protection to the editor of the paper, "Kaliyug", where he had published an article attributing bribery to the Public Prosecutors and Assistant Public Prosecutors of U.P. The court said that reckless comments are to be avoided and when a statement is proved to be defamatory with an ulterior motive and without the least justification motivated by self – interest, he deserved a deterrent punishment.

IV. Report of proceedings of Courts: It is not defamation if it is a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings. 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.

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It is not necessary that the report should be complete or a verbatim reproduction; it is sufficient if it is substantially fair and correct. The report ought not to mix up comments of his own. A sensational heading to the report is a comment.

V. Comments on judicial decisions (case laws)

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 a person as far as his character appears in that conduct, and no further.

This exception protects bona fide comments on cases adjudicated, but not when they are still *sub judice*. Such comments must be confined to merits of the case, including the conduct of parties, their agents and witnesses. Such comments must be honest and fair and made in good faith.

Illustrations

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

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

VI. Comments on Public Performance (Literary Criticism)

It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has

submitted to the judgement of the public or respecting the character of the author so far as his character appears in the performance, and no further.

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

The objects of this exception is that the public should have the benefit of free criticism of all public performances submitted to its judgement e.g., dramatic performance, literary works etc.

Essentials:

(1) The author must have invited public criticism;

(2) The criticism must relate to the merit of the performance;

(3) such criticism must be made in good faith because:-

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

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

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

Illustrations:

(1) Duplani v Davis, (1886): Here the defendant wrote an article in a newspaper advising an actor to return to his old profession, that of a waiter, where in fact the actor was never a waiter in his life and the defendant was held liable.

(2) A says of a book published by Z "Z's book is foolish. Z must be a weak man. Z's book is indecent, Z must be a man of impure mind". A is within the exception. If he says this in good faith in so far as the opinion which he

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expresses of Z respecting Z's character is only so far as it appears in Z's book, and no further.

(3) 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 his exception, in as much as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

VII. Censure by an authority : It is not defamation if a person who having authority, over another 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.

Essentials:-

(1) Censure must be on the conduct of the person within the scope of the critics authority, and (2) It must be passed in good faith.

Illustration:

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

VIII. Complaint to authority : 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.

Under this any accusation preferred in good faith must be made to a person in authority over the accused.

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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.

IX. Imputation for protection of interests :

It is not defamation to prefer in good faith, an accusation against 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.

Harbhajan Singh v. State of Punjab, A. I. R. 1966 S.C. 97

In this case the Supreme Court discussed the scope of exception IX, and the distinction between the first exception and the ninth exception.

Facts: The accused, a State Secretary of the Punjab Praja Socialist Party, published in the Blitz dt; 23-7-1957 an article defamatory of the complainant, son of the Chief Minister of Punjab, Pratap Singh Kairon. The article contained imputations that the complainant was leader of smugglers were withdrawn at the instance of the Chief Minister. There was evidence to the effect that the son took active interest in defending some cases against the smugglers and wrote letters to Government officers to let certain loaded trucks to cross the state borders without obstruction. The trial court and the High Court found the accused guilty. The Supreme Court allowed the appeal and set aside the conviction and held that the accused was entitled to the protection of section 49 exception IX.

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The court made the following observations

(1) The accused need not prove (under s. 499 exception,-9) the truth of all the allegations beyond reasonable doubt as the prosecutor should do to establish the guilt of the accused.

(2) If it is shown that the accused proved that the acted in `good faith` and by the test of probabilities that evidence establishes his case, he will be entitled to claim the protection under exception 9.

(3) The proof of truth of the statement is not an essential ingredient of the ninth exception as in the case of the first, it is immaterial whether the accused has strictly proved the truth of the allegations made by him.

(4) The mere plea that the accused believed that what he stated was true by itself is not enough; it must be shown that the belief in the imputed statement had rational basis and was not just a blind belief. Whether a person acted in good faith or not depends upon the facts and circumstances of each case; no rigid rule is possible.

Privileges of judges, advocates, witnesses and parties

Privileges of judges, parties, advocates and witnesses come under the exception. Under the English law both in the criminal branch and in torts they have absolute privilege. But under section

499. imputations are protected only if made in good faith. Thus the Code confers qualified privilege by good faith.

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In this area decisions of various High Courts are confliction. In *Raman Nair V. Subramanya Ayyar,* (1873) 17 Mad. 87 the Madras High Court held that an action for defamation cannot be maintained against a judge for words used by him while trying a case. (see also section 77 of the code).

Advocates: In the full Bench case of *Sullivan V. Norton,* (1886) 10 Mad28 – 35 the Madras High Court held that advocates are also absolutely protected. But in the subsequent case this ruling was doubted. The Bombay, Calcutta, Allahabad and Lahore High Courts have held that advocates enjoy only qualified privilege. The Madras High Court in *Tiruvengada Mudali's* case (1926) 49 Mad 728 F B held that a party to the suit has only a qualified privilege.

In *Chamman Lal v. State of Punjab* A. I. R. 1970 S. C. 1372, the Supreme Court observed as follows with regard to the 9th exception:- "Interest of the person has to be real and legitimate when communication is made in protection of the interest of the person making it. If that be so then good faith is automatically drawn in and good faith obviously does not require logical infallibility".

X Caution in good faith: It is not defamation to make an imputation n 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.

A confidential advice given by a relation to a lady not to marry a particular man is within the exception. So also where A was under the service of B who dismissed him for dishonesty, it is within the exception for B to advise C not to appoint him as cashier.

Section 500 deals with punishment for defamation.

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Section 501 deals with printing or engraving matter known to be defamatory.

10.2 OFFENCES RELATING TO MORALS AND DECENCY:

Section 292 IPC provides punishment for sale etc., of obscene books, pamphlets, papers, etc., one of the fundamental objects and purposes of criminal law is to protect and, guard public morals and decency.

The Indian Penal code provides certain checks against moral exploitation and deviation from well accepted decencies in this way, it indirectly upholds the community morals including sex moral.

OBSCENITY:

Obscenity is not defined in the code. But Section 292 IPC Provides Punishment for Sale etc., of obscene books, Pamphlets, papers, etc.,

With a view to preventing and suppressing the circulation of obscene publications, many Nations met in a conference in Geneva on August 31, 1923, under the auspices of the League of Nations. The conference attended also by India, drafted a convention on the suppressing of circulation of and traffic in obscene publications. The Indian penal code already contained Provisions against purveyors of obscenity; but in order to effectively implement the convention. The Obscene Publications Act 1925 was passed.

The constitutional validity of the obscenity law was challenged on the ground that these laws were a vague restriction on the freedom of speech and expression guaranteed under Article 19(1) of the constitution. In **Shankar and Co., Vs. The State of Madras AIR 1955 Mad.498.**

The Supreme Court held that there could not be any freedom of speech and expression for obscenity in Public. The constitutional

validity of Sec.292, IPC came up for consideration before the Supreme Court in **Ranjit Dudeshi Vs. State of Maharastra**.

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The Court held that the section did not go beyond obscenity and fell directly with in the words "Public decency and morality". The Court further stated that the obscenity which was offensive to modesty or decency was not protected by the freedom of speech and expression. In **Neelam Mahajan Singh vs Commissioner of Police Crl.L.J. 1996. 2725.** the constitutional validity of Sec. 292 came into question as it violated Article 24.

When the petitioner read the book "the Women and men in my life" by kushwant singh. In this Book writer had discussed sex in a manner which was offensive to public decency and morality. The court pointed out the question of violation of right to privacy, dignity, fair treatment or reputation as enshrined Under Article 21 of the Constitution .Thus the Court has upheld the constitutionality of section 292 IPC by holding that it does not violate the fundamental rights. It also does not violate Art 21 of the constitution as the question of violation of right to privacy does not arise.

The Young Persons (Harmful Publications) Act 1956, was intended to prevent the distribution of publications, harmful to young persons. The Act is drawn on the lines of the English legislation, namely the children and young persons (Harmful Publications) Act 1955. Young person means a person under the age of twenty.

In 1968 Government of India had set up an enquiry committee on Film censorship under the Chairmanship of Mr.G.D.Khosla. The Committee submitted its report in July 1959. In the pursuance of the Kosla committee the Cinematograph Act 1974 was passed. This Act was a result of amendment. to the Cinematograph Act ,1952.

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In a case relating to D.H. Lawrence Lady chatterley's Lover, the Hicklin's test and section 292 I.P.C. were questioned as violation of the free speech guarantee. The Supreme Court held that the law against obscenity, being in the interest of decency and morality is protected by Art 19 (2) of the Constitution

Modesty of a Woman

The Law thus seeks to protect women against indecent behavior of others. which is offensive to public morality. Under Section 509 of the I.P.C. assault or Criminal force is not essential. This section requires:

i) Intention to insult the modesty of a woman

ii) The insult must be caused.

a) by uttering any word or making any sound or gesture, or exhibiting any object intending that such word or sound shall be heard or that the gesture or object shall be seen by such woman (or)

b) by intruding upon the privacy of such woman.

EVE - TEASING

Eve-Teasing in public places has been a perennial problem, incidents of eve-teasing leading to serious injuries to and even death of a woman have come to the notice of the Government. (Sarikha Sahw's case 1998) with this view, the Government decided to prohibit eve-teasing in the state of Tamil Nadu. Accordingly the Tamil Nadu Eve-teasing ordinance 1998 was promulgated. This Act was amended by the passing of Tamil Nadu Prohibition of Harassment of Woman Act 2002.

In 1986, the Parliament, took note of the perspectives of various women ganisation, or enacted the Indecent representation of

women (Prohibition) Act 1986. The Act provides for punishment in case of indecent exposure of women.

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10.3.OFFENCES RELATING TO RELIGION AND CASTE:

India is secular State; it is neither religious nor irreligious or anti-religious. Article 25 of the Constitution of India guarantees the freedom of conscience and the right to profess, practice and propagate any religion. To emphasize the secular character of the Constitution, the word secular is now added to the preamble by the 42nd Amendment. Chapter XV of code by declaring certain acts as offence makes a person liable to punishment for his interference with, or disregard of another person's freedom of conscience and religion.

The offences relating to religion can be grouped under the following heads: 1. Defilement of places of worship or object of veneration (sec295 and 297) 2. Outraging religious feeling (s.295A and s.298) 3. Disturbing religious assemblies (s.296)

Defilement: 1. Injuring or defiling places of worship, with the intent to insult the religion of any class is an offence (s.295). The object of this section is to punish one who intentionally wound the religious feeling of others by injuring or damaging or defiling place of worship or object such as church, mosque, temple or stone figures representing Gods.

Ingredients of the Section: 1. The accused must destroy, damage or defile (a) any place of worship, or (b) any object held as sacred by a class of persons. 2. Such acts must be done (a) with the intention to insult the religion of a class of person or (b) with the knowledge that a class of persons are likely to take it as an insult to their religion.

Periyar EV Ramasamy's Case: ("Ganesa Idol" Case) AIR 1958 (SC.1032): In this case the accused broke an idol of Ganesa in

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public at the Town Hall Maidan (Trichy) after having spoken in the public meeting held immediately before that. He intended to insult the feelings of the Hindu Community. The Supreme Court held that any object, however trivial or destitute of real value in itself if regarded as sacred by any class of persons is covered by this section. Accordingly the accused was found guilty under s. 295.

Sivakoti Swami's Case:(1885) The accused, a goldsmith performed the abhishekam by pouring coconut oil over the "Sivalingam" Held: the conduct of the accused would amount to an offence under this section if the idol could be touched only by priests and if the object of the accused in performing the ritual was to ridicule openly the established custom.

2. It is an offence under section 297 to trespass into a place of worship or offer any indignity to corpse or disturb person performing funeral ceremonies, with the intent to wound their feelings or to insult the religion of any person or with knowledge that the feelings of any person are likely to be wounded.

This section extends the principle laid down in s. 295 by making trespass to place treated as sacred is punishable. The essence of the section is the intent, or knowledge or likelihood, to wound the feelings or insult or offer any indignity to corpse, disturb persons assembled for funeral ceremonies.

Ratna Mudall v. Queen (I.L.R. 10 Mad. 125): The accused a Hindu, had sexual intercourse with a woman secretly at night within an encloser surrounding the tomb of Mohomedan Fakir. The Madras High Court held the accused guilty under section 297. The court observed that he could not be held guilty under section 295 because the predominant intention of the accused was something different and

the intention to insult the religion being the gist of the offence under s. 295.

Space for hints

Outraging Religious Feelings: 1. Deliberate and malicious acts intended to outage the religious feelings by insulting its religion or religious feelings is punished under section 292 -A. Under this section the insult to religion or to outrage the religious feelings must be sole, or primary, or at least the deliberate and conscious intention.

Ramil Lal Medi's Case: (1957) S.C.R.860: In this case the Supreme Court held that section 295-A is constitutionally valid and is protected by Article 19 (3).

2. Uttering any word, sound, light or placing any object with the deliberate intent to wound the religious feelings of any person is an offence under section 298.

Disturbing Religious Assemblies: Voluntarily disturbing religious assembly lawfully engaged in the performance of religious worship or religious ceremonies is punished under section 296.

Ingredients of the section: 1) The disturbances caused must be voluntary. 2) Such disturbance must be directed against an assembly engaged to religious worship or religious ceremonies. 3) Such assembly must be lawfully engaged in religious worship or ceremony, that is they must have the right to do the same.

This section protects followers of a particular religion from intentional insult or molestation to conduct religious assemblies or religious worship or to perform religious ceremonies.

Ata-Ullah v. Azim –Ullah (1889):A person of one sect was pronouncing the word"amin" loudly in bonafide exercise of his religious feeling. The question was whether the loud exclamation of one insect disturbed the other sect and as such liable under this section. Held not guilty.

Space for hints

Jauapal Gir v. Darmapal: In this case D, a Buddhist from Ceylon failing to get possession of the Buddhist temple at Gaya which had for long time been in possession of the Shalvaltl Mahants took with him an artistic image of Buddha and entered the temple. The Mahants turned him out. D and his men launched a prosecution against the Mahant's men. The court acquitted the accused on the ground that the complainants were not engaged in any religious ceremony and were only asserting to establish their rights.

Besically, the Indian Constitution does not recognize any religion or caste. But, in practice the untouchability was part of the Hindu way of life. In 1938 for the first time, British India Government intervened to secure castes when Madras provinces passed Temple Entry Act. After the independence, the constitution abolished untouchability with a stroke of the pen through Article 17. Accordingly, Parliament is empowered to make a law prescribing punishment for practicing untouchability. The Untouchability (offences) Act was passed by Parliament on May 2, 1955. The Act declares certain acts as offences, when done on the ground of "untouchability" and prescribes punishment.

In Apirl 1965, the Government of India appointed the Committee on untouchability, under the Chairmanship of L. Elayaperumal to Examine, inter alia the problem of untouchability vis-à-vis-the working of the untouchability (offences) Act 1955 and make recommendations to the Government for amendments to the Act. The Untouchability Act was amended in 1976 as "Protection of Civil Rights Act".

When the SC's/ST's try to preserve their self-respect and honour of their woman. But they are disturbed by others, commission of certain atrocities on the helpless scheduled castes and Scheduled

Tribes is increasing .Under the circumstances, tne existing laws like PCR Act 1955 and I.P.C. have been found inadequate to check these crimes. So the Parliament passed another one Act namely "the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989". Which came into force on 30 January 1990.

10.4. OFFENCES AFFECTING PUBLIC HEALTH & SAFETY:

This chapter generally deals with nuisance and its specific instances. Nuisance may be either private nuisance or public nuisance. The former affects a particular individual while latter affects the public generally Private nuisance is treated as private wrong while public nuisance forms the subject matter of public prosecution. Private nuisance is anything that hurt or annoyance of the lands, tenements or here determent of another, and not amounting to trespass. It entitles the person whose rights are violated to bring a civil action for damages or an injunction or both. Public nuisance is a wrong or an offence against the society because the right affected is that of the general public. It causes annoyance to all citizens so the public prosecutes the wrongdoer and awards him a punishment for the disregard of his duty to the public. It is certainly an offence affecting the public safety convenience decency or morals dealt with in this chapter as specific application of public nuisance. (i.e.) brothel any house, room, conveyance (or) Place which is used for purposes of sexual exploitation (or) abuse, for the gain of another person or for the mutual gain of two or more prostitutes. (Section 2(a) The Immoral Traffic (Prevention) Act -1956.

Public Nuisance: Public nuisance is defined in section 268 as follows: A Person is guilty of 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 sell or

Space for hints

Check your progress

1. The following are exceptions to defamation
a)Imputation of truth for public good.
b) Public conduct of Public servants.
c) Literary Criticism
d) All the above

2. An imputation regarding a dead person, which will be harmful to the feelings of his near relatives amounts to defamation.
a)True b)Partly true c)false.
3. "Obscenity" with lase laws – Discuss.

Space for hints

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 public (or common) nuisance is not excused on the ground that it causes some convenience or advantage. The section is applicable infavour of three classes of person; 1.The public, 2.The neighbors and 3.Persons possessing a public right.

The following are the essentials of the section: 1. Doing an act or illegal omission to do an act. 2. Such act or omission causing any injury, danger or annoyance; a) to the public, b) to the people in general who dwell, preoccupy property in the vicinity or c) the persons who have occasion to use any public right must necessarily be met to any injury "Obstruction, danger or annoyance".

"Sicutere tuoutrem publicum non leads": (Enjoy your property in such a way as not to injure the rights of the public) is the civil law maxim on which public nuisance is based.

Examples of Public Nuisance: The negligent blasting of stones in a quarry so as to endanger the safety of persons living in the vicinity is a public nuisance. Erection of structures and making fires which send forth noxious, offensive and stinking liquors near the common highway and near the dwelling houses of inhabitants are all common nuisance. Allowing a verandah of his house in the sight of the complainants, the neighbors. The exposure of the meat although revolting to the feelings of the jains, the Bombay High Court held that it was not sufficient to constitute a nuisance.

Disposal of Dead Bodies: Cremation and burial of the dead bodies are the ordinary recognized methods of disposal of dead bodies and as such there is nothing illegal in burning or burying the body. If there is no abnormality in doing such acts so as to cause annoyance or

discomfort to person nearby there is no nuisance. This point was decided in **Saminatha Pillai's** Case (19M.464) and was followed in **Muhommuay, V. Municipal Commissioner (25 Mad 118)**

Space for hints

Offences Relating to Health: Unlawful or negligent act likely to spread infection of any disease dangerous to life is an offence. (s. 269). In **Cahoon v. Mathews, (1897)** a mother refused to allow her daughter suffering from small pox to be removed to a hospital in accordance with an order made by the District Magistrate unless she accompanied her. Held, that the mother had committed no unlawful or negligent at within the meaning of this section. In **Ka Sanoppa's Case (1883)** K, knowing that he was suffering from cholera, traveled by a train without informing the railway authorities M, knowing K's condition, secured his ticket and travelled with him. Held: K was guilty under this section for he was doing the act knowingly and that it was an act likely to spread infection. Held: further that M was guilty of abetment of K's offence.

Section 270 is an aggravated form of offence dealt with in s. 269. This section punishes negligent act likely to spread infection of disease dangerous to life. In order that a person may be punished the fact that he was actuated by malice must be proved; that is malice signifying deliberate intention on the part of the accused.

Section 270 punishes any willful disobedience to a quarantine rule made by government. Motive for disobeying the rule is immaterial besides the disobedience is punished whether any injurious consequence follows from it or not.

Space for hints

OFFENCES RELATING TO FOOD AND DRUGS

Adulteration of food or drink intended for sale is an offence (s. 272). Section 273 punishes the sale of such adulterated or noxious food or drink. As per the Santhanam committee report, the new law namely prevention of food Adulteration was enacted by Parliament and is in force effectively.

Adulteration of drug is punished by section 274 and section 275 punishes the sale of such adulterated drug. As per the law commission report, many legislations amended for managing the offences relating drug like Drug & Cosmetic Act, NDPS Act

Voluntarily corrupting or fouling the water of a public spring or reservoir is an offence under section 277, whereas making the atmosphere noxious is punished under section 276 Law relating to Environment like Air, Water Act was passed by the Parliament as a result of variations International conventions and conference made by UNO. The legislative authorities have more power to control / water bodies/ water reservoirs from variation pollutions.

10.5. Summary:

The essence of defamation consists in its tender as to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed.

According to English law the essence of the crime of private libel consists in its tendency to provoke breach of the peace. Under the penal code defamation has been made an offence without any reference to its tendency to cause acts of illegal violence.

On the earlier unit we have already discussed about the offence relating to the woman but in this unit, the offences relating to morals

regarding both the sex have been dealt with Even though, India is considered to be a state of secularism all religions were treated equally and hence the religions feeling of all the classes are given importance by varions legislations

Space for hints

10.6. Answer to Check your Progress

Question NO 1: Refer Answer (d),

Question NO 2: Refer Answer (a),

Question NO 3: Refer 10.2.

10.7. Key words:

Public Nuisance – it is an criminal act causing injury to public or common people.

Adulteration – added something to the food stuffs and drinks for illegal gratification

Defamation – it is causing injury to the person's reputation.

10.8. Model questions:

1) State briefly the provisions of the Indian Penal Code regarding offence and relating to religion. What changes are required in the existing law?

2) Adulteration of food is an offence handed under the I.P.C.– Explain.

3) Defamation is an offence. But it have some exceptions – Discuss.

4) Explain the various offences under the I.P.C. relating to the Public health and safety.

MODEL QUESTION PAPER
LAW OF CRIMES

Time : Three hours **Maximum : 100 marks**

PART A – (5X15 = 75 marks)
Answer any FIVE questions.
Each question carries 15 marks

1. Define crime and analyse the constituent elements of crime.
2. Examine the principle of constructive liability envisaged under S.34 of Indian Penal code.
3. Can a person cause exercise his right to private defence to the extent of killing the assailant? If so when?
4. Explain the different parties to crime and point out their respective liabilities.
5. When an act amounts of affray? How does affray differ from rioting?
6. What are the ingredients of the offence Murder when murder is reduce to culpable homicide?
7. "Robbery is not a distinct offence; it is an aggravated form of theft and extoration" – Analyse.

PART B – (5 X 5 = 25 Marks)
Answer any FIVE questions.
Each question carries 5 Marks.

8. Write a brief note on :
   (a) Criminal attempt
   (b) Accident
   (c) Abetment to do a crime
   (d) Reformative theory
   (e) False evidence
   (f) Public nuisance
   (g) Attempt to commit suicide
   (h) Bigamy