IPC-Notes (All 5 Units with case laws)

Unit I

About Indian Penal Code

The Indian security system has been one that has gone through a lot of tests and examinations throughout the time. This is due to the political as well as the social situation and standing of the country. India is a land of diverse cultures and traditions. It is a place where people from various religions as well as ethnic backgrounds live together. As a result of these, there might arise certain disputes amongst the people. The cultural diversity is such that there are disputes and clashes of interest between different states, ethnic to particular cultural consortiums. There are also many intrusions from neighboring countries and terrorist organizations. Then, there is the issue of the Naxalites as well as the day to day common crimes. To counter all such crimes and breach of law, a document has been formulated, that covers each of these situations separately and lists out the penalties for those found guilty under any of the mentioned offences. This is document is known as the Indian Penal Code. The Indian penal code is also applicable to the state of Jammu and Kashmir.However, it was known in this state as the Ranbir Penal Code (RPC).

The Indian Penal code, in its basic form, is a document that lists all the cases and punishments that a person committing any crimes is liable to be charged with. It covers any Indian citizen or a person of Indian origin. The exception here is that any kind of military or the armed forces crimes can not be charged based on the Indian Penal Code. Military as well as the armed forces have a different dedicated list of laws and the Indian Penal Code does not have the privilege to supersede any part of it. The Indian Penal Code also has the power to charge for any crimes committed by a person who is an Indian citizen on any means of transport belonging to India-an Indian aircraft or an Indian ship.

The Indian Penal Code has its roots in the times of the British rule in India. It is known to have originated from a British legislation account in it's colonial conquests, dating back to the year 1860.The first and the introductory draft of the Indian Penal Code was formulated in 1860s and was done under the able supervision of the First Law Comission.The commission was righteously chaired by Lord Macaulay. The first penal code came into existence way back in the year 1862.Since then, a lot of amendments have been made to it in order to incorporate a lot of changes and jurisdiction clauses. One such amendment is the inclusions of section 498-A.The total number of sections contained in the Indian Penal Code are five hundred eleven. All these sections pertain to a

particular category of crimes committed by civilians of Indian origin. There are sections related to Dowry Laws and jurisdictions in India, as well as there are several sections that concern various types of criminal laws. The Indian Penal Code is thus the most fundamental document of all the law enforcer as well as the entire judiciary in India.

Definition of crime- An act or activities prohibited by Law (IPC).

The most precise and least ambiguous definition of crime is that which defines it as behavior which is prohibited by the criminal code. It follows that a criminal is a person who has behaved in some way prohibited by the criminal law.Crime is an intentional act in violation of the criminal law (statutory and case law), committed without defense or excuse, and penalized by the state as a felony or misdemeanor.

Crime is often seen as a social problem. Why is that?

There is no objective set of social conditions whose harmful effects necessarily make them social problems. Something is a social problem only if it is perceived as such. What is regarded as a social problem thus varies over time. For example, in some places and times, prostitution and gambling have been seen as social problems, even ones worthy of criminalization, yet in others the same social practices have been seen as private vices best regulated by individual morality rather than criminal law.

Crime in Indian context-

Since there is no satisfactory definition of Crime, the Indian Penal Code, 1860 uses the word **'Offence'** in place of Crime. Section 40 of the IPC defines Offence as an act punishable by the Code. An Offence takes place in two ways, either by commission of an act or by omission of an act.

When a Crime is done, any member of the public can institute proceedings against the person accused of the offence. Only in certain exceptional cases, the persons concerned alone can institute the criminal proceedings. Example of such crimes includes Matrimonial cases, dowry cases, defamation etc.

Elements of Crime

The following elements are to be satisfied to constitute an act as a crime.

1. Human Being

2. Mens rea
3. Actus reus
4. Injury

1. Human Being
The first essential element of a Crime is that it must be committed by a human being. In case, the crime is committed by an animal, its owner is subject to Civil/Tortious liability.

Example Cases

1. R vs Prince (1875)
2. R vs Bishop
3. R vs Mrs. Talson
4. R vs Wheat & Stock

2. mens rea
Mens Rea: No act per se (itself) is criminal, the act becomes a crime only when it is done with a guilt mind. The jurist determines the Mens Rea.

"guilty mind", *produces criminal liability in the common law based criminal law jurisdiction*
Illustration. A blacksmith is seized by a gang of robbers and he forced to break the doors of a house for robbery to enter, and the robbers committed a robbery.

A crime is done with a criminal intent.

The fundamental principal of criminal liability is that there must be a wrongful act- actus reus, combined with a wrongful intention-mens rea. This principle is embodied in the maxim, **actus non facit reum nisi mens sit rea. Meaning an act does not make one guilty unless the mind is also legally blameworthy.**

3 **Actus Reus:** Comprises the following:

1. Human Conduct or an Activity.
2. The Result of the Act Prohibition by Law.

Illustration: A shoots at B using a rifle intentionally and B dies.

- *A physical act that attracts criminal sanctions.*

Actus reus, *sometimes called the external element or the objective element of a crime, is the Latin term for the "guilty act". Which, when proved beyond a reasonable doubt in combination with the mens rea.,. There should be an external act. The Act and the mens rea should be concurrent and related.*

4 **Injury**
There should be some injury or the act should be prohibited under the existing law. The act should carry some kind of punishment

Offence

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What are the stages of a crime? What is an attempt to commit an offence? Distinguish between Preparation and Attempt.

In general, an offence passes through the following stages -
Conceiving the idea of performing a legally defined harm - It is immaterial whether the person conceiving such an idea knows that it is illegal to perform it. At this stage, there is no action taken to harm anybody and it is not a crime to merely think of doing harmful activity because the person thinking it may not even want to actually do it. For example, merely thinking killing 1000s of people instantaneously, is not a crime.
Deliberation - At this stage, a person consolidates his devious ideas and identifys ways of doing it. Again, there is no action taken and there is no harm done to anybody nor is there any intention to cause injury to anybody. It is still in the thinking stage and is not a crime. For example, merely thinking about how to build a device that can kill 1000s of people instantaneously, is not a crime.

From a legal standpoint the above two stages are inconsequential because man being a thoughtful animal, he thinks about innumerable things without any material result.

Intention (Mens Rea) - This stage is a significant progress from mere deliberation towards actual commission of the crime. At this stage, the person has made up his mind to actually implement or execute his devious plans. There is an intention to cause harm but he hasn't yet taken any action that manifests his intention. Further, there is no way to prove an intention because even devil can't read a human mind. Thus, this is not considered a crime. For example, intention to kill anyone is not a crime in itself. However, it is an essential ingredient of crime because without intention to cause harm, there can be no crime. On the other hand, even a thoughtless act, without any deliberation, can be a crime if there is an intention to cause harm.

Preparation - As this stage, the intention to cause harms starts manifesting itself in the form of physical actions. Preparation consists of arranging or building things that are needed to commit the crime. For example, purchasing poison. However, it is possible for the person to abandon his course of action at this stage without causing any harm to anyone. In general, preparation is not considered a crime because it cannot be proved beyond doubt the goal of the preparation. For example, purchasing knife with an intention to kill someone is not a crime because it cannot be determined whether the knife was bought to kill someone or to chop vegetables.

However, there are certain exceptions where even preparation for committing an offence is crime. These are - Sec 122 - Collecting arms with an intention of waging war against the Govt. of India.
Sec 126 - Preparing to commit depredation on territories of any power in alliance or at peace with the Govt. of India. Sec 235 - Counterfeiting operations for currency. Sec 399 - Preparation to commit dacoity.

Attempt - This stage is attained by performing physical actions that, if left unstopped, cause or are bound to cause injury to someone. The actions clearly show that the person has absolutely no intention to abandon his plan and if the person is left unrestricted, he will complete the commission of the crime. Since the intention of the person can be determined without doubt from his actions, an attempt to commit a crime is considered a crime because if left unpunished, crime is bound to happen and prevention of crime is equally important for a healthy society.

Actual commission of the offence - This is the final stage where the crime is actually done.

Distinction between Preparation and Attempt

There is a very fine line between preparation and attempt. While, IPC does not define either of them, it is very important to distinguish between them because attempt is a crime but preparation is not. Both, Preparation and Attempt are physical manifestations of the criminal intention. But attempt goes a lot father than preparation towards the actual happening of crime. While in Preparation, there is a possibility that the person may abandon his plan, but attempt leaves no room for that. For example, keeping a pistol in pocket and looking for the enemy to kill is a preparation because one can abandon the plan anytime, but taking out the piston and pulling the trigger is attempt because it leaves no room for turning back.. Thus, in general, Preparation involves collecting material, resources, and planning for committing an act while attempt signifies a direct movement towards commission after the preparations are made. Ordinarily, to constitute an attempt the following elements are needed -

1. mens rea to commit the crime
2. ant act which constitutes the actus reus of a criminal attempt
3. failure in accomplishment

In the case of **R vs Cheesman 1862, Lord Blackburn** identified a key difference between the two. He says that if the actual transaction has commenced which would have ended in the crime if not interrupted, there is clearly an attempt to commit the crime.

However, this is not the only criteria for determining an attempt. The following are four tests that come in handy in distinguishing between the two -

1. **Last Step Test or Proximity Rule**

   As per this test, anything short of last step is preparation and not attempt. This is because as long as there is a step remaining for completion of the crime, the person can abandon it. For example, A obtains poison to kill B and mixes it with food that B is supposed to eat. But he has not yet given the food to B. Thus, it is still preparation. As soon as he keeps the food on the table from where B eats everyday, the last step is done and it becomes an attempt.

   In the case of **R vs Riyasat Ali 1881,** the accused gave orders to print forms that looked like they were from Bengal Coal Company. He proofread the samples two times and gave orders for correction as well so that they would appear exactly as forms of the said company. At this time he was arrested for attempt to make false document under section 464. However, it was held that it was not an attempt because the name of the company and the seal were not put on the forms and until that was done, the forgery would not be complete. In the case of **Abhayanand Mishra vs State of Bihar AIR 1961,** A applied to the Patna University for MA exam and he supplied documents proving that he was a graduate and was working as a headmaster of a school. Later on it was found that the documents were fake. It was held that it was an attempt to cheat because he had done everything towards achieving his goal.

2. **Indispensable Element Test or Theory of Impossibility**

   As per this test, all of indispensable elements must be present to equal attempt. For example, a person has the gun to kill but he forgot the bullets. In this case, it would not be an attempt. Further, he goes to place where victim should be but is not then he is not guilty of attempt under this test. In other words, if there is something a person needs to commit the crime but it is not present, then there is not an attempt. This test has generated a lot of controversy ever since it was laid in the case of **Queen vs Collins,** where it was held that a pickpocket was not guilty of attempt even when he put his hand into the pocket of someone with an intention to steal but did not find anything. Similarly, in the case of **R vs Mc Pherson 1857,** the accused was held not guilty of attempting to break into a building and steal goods because the goods were not there.

   However, these cases were overruled in **R vs King 1892,** where the accused was convicted for attempting to steal from the hand bag of a woman although there was nothing in the bag. Illustration (b) of section 511 is based on this decision.

3. **But For Interruption Test**

   If the action proves that the person would have gone through with the plan if not for the interruption such as arrest, then it is an attempt. For example, a person points a gun at another and is about to pull the trigger. He is overpowered and was stopped from pulling the trigger. This shows that if he had not been interrupted, he would have committed the crime and he is thus guilty of attempt even though the last step of the crime has not be performed.

4. **Unequivocality Test or On the job Theory**

   If a person does something that shows his commitment to follow through and commit the crime then it is an attempt. For example, in the case of **State of Mah. vs Mohd. Yakub 1980,** three persons were found with a truck loaded with silver near the sea dock. Further, the sound of engine of a mechanized boat was heard from a nearby creek. They were convicted of attempting to smuggle silver. **J Sarkaria** observed that what constitutes at attempt is a mixed question of law and the facts of a

case. Attempt is done when the culprit takes deliberate and overt steps that show an unequivocal intention to commit the offence even if the step is not the penultimate one.

Distinction between Tort and Breach of Contract

Tort	Breach of Contract
Tort occurs when the right available to all the persons in general (right in rem) is violated without the existence of any contract.	A breach of contract occurs due to a breach of a duty (right in persona) agreed upon by the parties themselves.
Victim is compensated for unliquidated damages as per the judgment of the judges. Thus, damages are always unliquidated.	Victim is compensated as per the terms of the contract and damages are usually liquidated.
Duty is fixed by the law of the land and is towards all the persons.	Duty towards each other is affixed by the contract agreed to by the parties.
Doctrine of privity of contract does not apply because there is no contract between the parties. This was held in the case of **Donaghue vs Stevenson 1932.**	Only the parties within the privity of contract can initiate the suit.
Tort applies even in cases where a contract is void. For example, a minor may be liable in Tort.	When a contract is void, there is no question of compensation. For example, a contract with a minor is void ab initio and so a minor cannot be held liable for anything.
Justice is met by compensating the victim for his injuryand exemplary damages may also be awarded to the victim. **In** Bhim Singh vs State of J K AIR 1986 **- the** plaintiff was awarded exemplary damages for violation of his rights given by art 21.	Justice is met only by compensating the victim for actual loss.

In the case of **Donaghue vs Stevenson 1932,** A purchased ginger beer in a restaurant for his woman friend. She drank a part of it and poured the rest into a glass. Thereby, she saw a dead snail in the drink. She sued the manufacturer. It was held that the manufacturer had a duty towards the public in general for making sure there are no noxious things in the drink even though there was no contract between the purchaser and the manufacturer.

The same principal was applied in the case of **Klaus Mittelbachert vs East India Hotels Ltd AIR 1997.** In this case, Lufthansa Airlines had a contract with Hotel Oberoi Intercontinental for the stay of its crew. One of the

co-pilots was staying there took a dive in the pool. The pool design was defective and the person's head hit the bottom. He was
paralyzed and died after 13 yrs. The defendants pleaded that he was a stranger to the contract. It was held that he could sue even for the breach of contract as he was the beneficiary of the contract. He could also sue in torts where plea of stranger to contract is irrelevant. The hotel was held liable for compensation even though there was no contract between the person and the hotel and the hotel was made to pay 50Lacs as exemplary damages.

Distinction between Tort and Crime

Tort	Crime
Tort occurs when the right available to all the persons in general (right in rem) is violated without the existence of any contract.	Tort occurs when the right available to all the persons in general (right in rem) is violated and it also seriously affects the society.
Act is comparatively less serious and affects only the person.	Act is comparatively more serious and affects the person as well as the society.
Intention is usually irrelevant.	Intention is the most important element in establishing criminal liability. A crime cannot happen without Mens Rea.
It is a private wrong.	It is a public wrong.
Since it is a private wrong the wronged individual must file a suit himself for damages.	Since it is a public wrong, the suit is filed by the govt.
The suit is for damages.	The suit is for punishment.
Compromise is possible between the parties. For example, a person who has been defamed, can compromise with the defamer for a certain sum of money.	There is no compromise for the punishment. For example, if a person is guilty of murder, he cannot pay money and reduce his sentence.
Compounding is possible.	Compounding is generally not possible.
Justice is met by compensating the victim for his injury and exemplary damages may also be awarded to the victim. In **Bhim Singh vs State of J K AIR 1986** -the plaintiff was awarded exemplary damages for violation of his rights given by art 21.	Justice is met by punishing the aggressor by prison or fine. In some specific cases as given in IPC compensation may be given to the victim.

Tortious acts are usually not criminal acts.	Several criminal acts such as assault and battery are also grounds for tortious suit.

34 &149-common intention and common object

Section 34 of the Indian Penal Code refers to common intention. It says 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 that act in the same manner as if it were done by him alone. Common object is dealt within Section 149 of IPC. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

- Common intention requires that the number of persons should be more than one. At least 5 persons are necessary for common object.[Sec.141]
- Common intention does not create a specific and substantive offence. It states a rule of law which is read with other substantive offences. No punishments can be solely based on this sections. Common object on the other hand creates a specific and substantive offence.
- Common intention may be of any form where common object must be one of the five objects specified in Section 141 of IPC.
- In common intention prior meeting of minds is necessary. But it is not a requirement under Common object. The only requirement is that there must be 5 or more persons forming an unlawful assembly.
- Substantive offence under S.141 of the IPC, of unlawful assembly, is also involved in S.149. But S.34 contains only a rule of law. So while specific charge is necessary for S.149 that is not necessary in the case of S.34.

Decisions:Mohanan v. State of Kerala 2000 (2) KLT 562

Hon'ble The Chief Justice Mr. Justice Arijit Pasayat & Hon'ble Mr. Justice K.S. Radhakrishnan Relied

on AIR 1956 SC 731

"Common object" is different from a 'common intention' as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The 'common object' of an assembly is to be ascertained from the acts and language of the members composing it and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the

members and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into

action or be successful. Under the Explanation to S. 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for sometime thereafter, is lawful, may subsequently become unlawful. In other words, it can develop during the course of incident at the spot instantly. (para. 12)

Unit II

General Exceptions IPC-

Indian Penal Code is the major criminal law in India which defines substantive offences and prescribes their respective punishments. Every offence is treated as a crime against society. One of the major requirement to accuse any one of an offence is the presence of mens rea or guilty mind. It is the saying in law that an act should be coupled with necessary mens rea to constitute a crime. In certain cases even if the act is not performed, one can be punished for his guilty mind. Thus forms the importance of mens rea in Penal Law. So we must conclude that the presence of guilty intention is the measure of one's guilty act. But there are circumstances in which the mind can be transformed by some external forces to perform the illegal act. Thus even though an act is criminal the mind had no intention to perform the same. Such is the case when an external force instigates the mind to do a crime.

In criminal law the most heard saying is that no innocent must be punished even if thousand criminals escape. It will not be just to punish someone who was controlled by a criminal as a puppet to do an illegal act. Like wise, there are certain circumstances which would exempt a person from major punishment or entitle to smaller punishments. Such circumstances are termed 'General Exceptions' in the IPC. They are spread throughout Sections 76 to 106 of the Code. The exceptions as provided are as follows with the relevant sections in brackets:

1. Mistake [76, 79]

2. Judicial acts[77,78]
3. Accident[80]
4. Necessity[81]
5. Infancy[82,83]
6. Insanity[84]
7. Drunkenness[85,86]
8. Consent[87 to 93]
9. Compulsion[94]
10. Trifles[95]
11. Private Defence[96 to 106]

The above forms of exceptions are generally divided into two viz. excusable and justifiable. In excusable the mens rea is completely absent. In justifiable the acts are not left excused; but are justified.

Q. How far is mistake of fact, accident, act of child, insanity, and intoxication are valid and good defences under IPC? In IPC, mistake of law is no defence but mistake of fact is a good defence. How? What exemptions have been given by IPC to minors for an offence under General Exceptions? What has to be proved by a person claiming immunity from criminal liability on the ground of Insanity?

The general rule is that it is the duty of the prosecution to prove the prisoner's guilt beyond doubt and if there is any reasonable doubt then the benefit of doubt is given to the accused. The prosecution must prove beyond doubt that the accused performed the act with intention and with full knowledge of the consequences of the act. This is based on the maxim, "actus non facit reum, nisi mens sit rea", which means that mere doing of an act will not constitute guilt unless there be a guilty intent'.

IPC defines certain circumstances in which it is considered that the accused had no evil intention. These circumstances are nothing but exceptional situations that negate mens rea. They create a reasonable doubt in the case of the prosecution that the act was done by the accused with evil intention. However, it is the burden of the accused to prove that such circumstances existed at the time of crime and the presumption of such circumstances is against the accused. If the accused proves that such circumstances indeed existed, then his act is not considered a crime. In **K M Nanavati vs State of Maharashtra AIR 1962,** it was held that it is the duty of the prosecution to prove the guilt of the accused or the accused is presumed to be innocent until his guilt is established by the prosecution beyond doubt. Chapter IV (Sec 76 to 106) of IPC defines such circumstances. Upon close examination of these sections, it can be seen that they define two types of circumstances - one that make the act excusable (Sec 76 to 95), which means that the act itself is not an offence, and second (Sec 96 to 106) that make the act justifiable, which means that although the act is an offence but it is otherwise meritorious and the accused is justified by law in doing it.

Mistake of fact, accident, act of child, insanity, and intoxication - All these cases are defined in General Exceptions of IPC and they make the act of the accused excusable. The presence of any of these conditions is a good defence because they negate the mens rea. Let us look at them one by one.

Mistake of fact

Sometimes an offence is committed by a person inadvertently. He neither intends to commit an offence nor does he know that his act is criminal. He may be totally ignorant of the existence of relevant facts. The knowledge of relevant facts is what really makes an act evil or good. Thus, if a person is not aware of the facts and acts to the best of his judgment, his act cannot be called evil. Under such circumstances he may take the plea that his acts were done under the misconception of the facts. Such a mistake of fact is acknowledged as a valid defence in section 76 and 79 of IPC.

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

Illustration -

A, a soldier fires on a mob upon orders from his superior, in conformity with the commands of the law. He has committed no offence.

A, an officer of court of justice, upon ordered by that court to arrest Y, after due inquiry, believing Z to be Y, arrests Z. He has committed no offence.

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

Illustration -

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

Difference between sec 76 and 79

The only difference between sec 76 and 79 is that in section 76, a person believes that he is bound by to do a certain act while in 79, he believes that he is justified by law to do a certain act. For example, a policeman believing that a person is his senior officer and upon that person's orders fires on a mob. Here, he is bound by law to obey his senior officer's orders. But if the policeman believes that a person is a thief, he is not bound by law to arrest the person, though he is justfied by law if he arrests the person.

To be eligible in either of the sections, the following conditions must be satisfied -

1. it is a mistake of fact and not a mistake of law that is excusable.
2. the act must be done in good faith.

Meaning of Mistake -
A mistake means a factual error. It could be because of wrong information, i.e. ignorance or wrong conclusion. For example, an ambulance driver taking a very sick patient to a hospital may be driving faster than the speed limit in order to reach the hospital as soon as possible but upon reaching the hospital, it comes to his knowledge that the patient had died long time back and there was no need to drive fast. However, since he was ignorant of the fact, breaking the speed limit is excusable for him. A person sees someone remove a bulb from a public pole. He thinks the person is a thief and catches him and takes him to the police only to learn that the person was replacing the fused bulb. Here, he did the act in good faith but based on wrong conclusion so his act is excusable.

To be excusable, the mistake must be of a fact and not of law. A mistake of fact means an error regarding the material facts of the situation, while a mistake of law means an error in understanding or ignorance of the law. A person who kills someone cannot take the defence of mistake saying he didn't know that killing is a crime because this is a mistake of law and not of fact. But, as in **Waryam Singh vs Emperor AIR 1926,** he can take a defence of mistake saying he believed that the killed person was a ghost because that would be a mistake of a fact.

R vs Prince 1875, is an important case where a person was convicted of abducting a girl under 18 yrs of age. The law made taking a woman under 18 from her guardian without her guardian's permission a crime. In this case, the person had no intention to abduct her. She had gone with the person with consent and the person had no reason to believe that the girl was under 18. Further, the girl looked older than 18. However, it was held that by taking a girl without her guardian's permission, he was taking a risk and should be responsible for it because the law made it a crime even if it was done without mens rea. In this case, five rules were laid down which are guidelines whenever a question of a mistake of fact or mistake of law arises in England and elsewhere -

1. When an act is in itself plainly criminal and is more severely punishable if certain circumstances coexist, ignorance of the existence is no answer to a charge for the aggravated offence.
2. When an act is prima facie innocent and proper unless certain circumstances co-exist, the ignorance of such circumstances is an answer to the charge.
3. The state of the mind of the defendants must amount to absolute ignorance of the existence of the circumstance which alters the character of the act or to a belief in its non-existence.
4. When an act in itself is wrong, and under certain circumstances, criminal, a person who does the wrongful act cannot set up as a defence that he was ignorant of the facts which would turn the wrong into a crime.
5. When a statute makes it penal to do an act under certain circumstances, it is a question upon the wording and object of the statute whether responsibility of ascertaining that the circumstances exist is thrown upon the person who does the act or not. In the former case, his knowledge is immaterial.

The above guidelines were brought in Indian law in the case of **The King vs Tustipada Mandal AIR 1951 by Orissa HC.**
In **R vs Tolson 1889,** a woman's husband was believed to be dead since the ship he was traveling in had sunk. After some years, when the husband did not turn up, she married another person. However, her husband came back and since 7 years had not elapsed since his disappearance, which are required to legally presume a person dead, she was charged with bigamy. It was held that disappearance for 7 yrs is only one way to reach a belief that a person is dead. If the woman, and as the evidence

showed, other people in town truly believed that the husband died in a shipwreck, this was a mistake of fact and so she was acquitted.

However, in **R vs White and R vs Stock 1921,** a person was convicted of bigamy. Here, the husband with limited literacy asked his lawyers about his divorce, who replied that they will send the papers in a couple of days. The husband construed as the divorce was done and on that belief he married another woman. It was held that it was a mistake of law.

Good faith

Another condition that must be satisfied to take a defence of mistake of fact is that the act must be done in good faith. **Section 52** says that nothing is said to be done or believed in good faith which is done or believed without due care and attention. Thus, if one shoots an arrow in the dark without ascertaining no one is there, he cannot be excused because he failed to exercise due care.

If a person of average prudence in that situation can ascertain the facts with average deligence, a person taking the defence of mistake of those facts cannot be said to have taken due care and thus, is not excusable.

Accident

Accidents happen despite of nobody wanting them. There is no intention on the part of anybody to cause accident and so a loss caused due to an accident should not be considered a crime. This is acknowledged in Section 80 of IPC, which states thus -

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

Illustration - A works with a hatchet; the head flys off and kills a person standing nearby. Here, if there was no want of proper caution on the part of A, his act is excusable and is not an offence.

From section 80, it can be seen that there are four essential conditions when a person can take the defence of an accident

1. **The act is done by accident or misfortune** - **Stephen** in his digest of criminal law explains that an effect is said to be accidental if the act that caused it was not done with an intention to cause it and if the occurance of this effect due to that act is not so probable that a person of average prudence could take precautions against it. The effect comes as a surprise to the doer of average prudence. SInce he does not expect it to happen, he is unable to take any precaution against it.

For example, a firecraker worker working with Gun powder knows that it can cause explosion and must take precaution against it. If it causes an explosion and kills a third person, he cannot claim defence of this section because the outcome was expected even though not intended.

However, if a car explodes killing a person, it is an accident because a person on average prudence does not expect a car to explode and so he cannot be expected to take precautions against it.

2. There must not be a criminal intent or knowledge in the doer of the act - To claim defence under this section, the act causing the accident must not be done with a bad intention or bad motive. For example, A prepares a dish for B and puts poison in it so as to kill B. However, C comes and eats the dish and dies. The death of C was indeed an accident because it was not expected by A, but the act that caused the accident was done with a criminal intention.
In **Tunda vs Rex AIR 1950,** two friends, who were fond of wrestling, were wresting and one got thrown away on a stone and died. This was held to be an accident and since it was not done without any criminal intention, the defendant was acquitted.

3. The act must be lawful, and done in a lawful manner, and by lawful means - An accident that happens while doing an unlawful act is no defence. Not only that, but the act must also be done in a lawful manner and by lawful means. For example, requesting rent payment from a renter is a lawful act but threatening him with a gun to pay rent is not lawful manner and if there is an accident due to the gun and if the renter gets hurt or killed, defence under this section cannot be claimed.
In **Jogeshshwar vs Emperor,** where the accused was fighting with a man and the man's pregnant wife intervened. The accused aimed at the woman but accidently hit the baby who was killed. He was not allowed protection under this section because he was not doing a lawful act in a lawful manner by lawful means.

4. Proper precautions must be taken while doing the act - The act that causes the harm must have been done with proper care and precautions. An accident caused due to negligence is not excusable. A person must take precautions for any effects that any person with average intelligence would anticipate. For example, a owner of a borewell must fence the hole to prevent children falling into it because any person with average prudence can anticipate that a child could fall into an open borewell.
In **Bhupendra Singh Chudasama vs State of Gujarat 1998,** the appellant, an armed constable of SRPF shot at his immediate supervisor while the latter was inspecting the dam site in dusk hours. The appellant took the plea that it was dark at that time and he saw someone moving near the dam with fire. He thought that there was a miscreant. He shouted to stop the person but upon getting no response he fired the shot. However, it was proven that the shot was fired from a close range and it was held that he did not take enough precaution before firing the shot and was convicted.

Accident in a act done with consent
Section 87 extends the scope of accident to cases where an act was done with the consent of the victim. It says thus -

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

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

This is based on the premise that every body is the best judge for himself. If a person knowingly undertakes a task that is likely to cause certain damage, then he cannot hold anybody responsible for suffering that damage. Thus, a person watching another litting up firecrackers agrees to take the risk of getting burned and must not hold anybody responsible if he gets burned. In Nageshwar vs Emperor, a person asked the accused to try dao on his hand believing that his hand was dao proof due to a charm. He got hurt and

bled to death. However, the accused was acquitted because he was protected under this section. The deceased consented to the risk of trying dao on his hand.

Act of child, insanity, intoxication

As mentioned before, to hold a person legally responsible for a crime, in general, evil intention must be proved. A person who is not mentally capable of distinguishing between good and bad or of understanding the implications of an action cannot be said to have an evil intention and thus should not be punished. Such incapacity may arise due to age, mental illness, or intoxication. Let us look at each of these one by one -

Act of child
It is assumed that a child does not have an evil mind and he does not do things with evil intention. He cannot even fully understand the implications of the act that he is doing. Thus, he completely lacks mens rea and should not be punished. IPC contains for following exemptions for a child -

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

Section 83 - Nothing is an offence which is done by a child above seven years of age and below twelve years of age who has not attained the sufficient maturity of understanding to judge the nature and consequences of this conduct on that occasion.

Through these sections, IPC acknowledges the fact that children under seven years of age cannot have suffient maturity to commit a crime and is completely excused. In Indian law, a child below seven years of age is called **Doli Incapax.** In **Queen vs Lukhini Agradanini 1874** , it was held that merely the proof of age of the child would be a conclusive proof of innocence and would ipso facto be an answer to the charge against him.

However, a child above seven but below twelve may or may not have sufficient maturity to commit a crime and whether he is sufficiently mature to understand the nature and consequences of the act needs to be determined from the facts of the case. To claim a defence under section 83, a child must

1. be above seven and below twelve years of age.
2. not have attained sufficient maturity to understand the nature and consequences of his act.
3. be immature at the time of commission of the act.

Section 83 provides qualified immunity because presumes that a child above seven and below twelve has sufficient maturity to commit a crime and the burdon is on the defence to prove that he did not possess sufficient . Thus, in **Hiralal vs State of Bihar 1977,** the boy who participated in a concerted action and used a sharp weapon for a murderous attack, was held guilty in the absence of any evidence leading to boy's feeble understanding of his actions. In English law, a boy below 14 years is deemed incapable of raping a woman but no such protection is offered in India and in **Emperor vs Paras Ram Dubey,** a boy of 12 years of age was convicted of raping a girl.

Insanity

A person may be rendered incapable of judging an action as right or wrong due to several kinds of deficienty in mental faculty or a disease of mind. Such people are called insane. Their position is same as childern below the age of discretion. From time to time several approches have been adopted to understand insanity and to see whether a person was insane or not at the time of his act.

Wild Beast Test
This test was evolved in **R vs Arnold 1724.** Here, the accused was tried for wounding and attempting to kill Lord Onslow. By evidence, it was clear that the person was mentally deranged. J Tracy laid the test as follows, "If he was under the visitation of God and could not distinguish between good and evil and did not know what he did, though he committed the greatest offence, yet he could not be guilty of any offence against any law whatsoever."

Insane Delusion Test
This test was evolved in **Hadfield's Case in 1800,** where Hadfield was charged with high treason and attempting the assasination of Kind George III. He was acquitted on the ground of insane delusion. Here, the counsel pleaded that insanity was to be determined by the fact of fixed insane delusions with which the accused was suffering and which were the direct cause of his crime. He pointed out that there are people who are deprived of their understanding, either permanently or temporarily, and suffer under delusions of alarming description which overpowers the faculties of their victims.

M' Naghten's Rules
In this case, **Danial M'Naghten** was tried for the murder of a private secretary of the then prime minister of England. He was acquitted on the ground of insanity. This caused a lot of uproar and the case was sent to bench of fifteen judges who were called upon to lay down the law regarding criminal responsibility in case of lunacy. Some questions were posed to the judges which they had to answer. These questions and answers are knows as M'Naghten's Rules which form the basis of the modern law on insanity. The following principals were evolved in this case -

1. Regardless of the fact that the accused was under insane delusion, he is punishable according to the nature of the crime if, at the time of the act, he knew that he was acting contrary to law.
2. Every man must be presumed to be sane until contrary is proven. That is, to establish defence on the ground of insanity, it must be clearly proven that the person suffered from a condition due to which he was not able to understand the nature of the act or did not know what he was doing was wrong.
3. If the accused was conscious that the act was one that he ought not to do and if that act was contrary to law, he was punishable.
4. If the accused suffers with partial delusion, he must be considered in the same situation as to the responsibility, as if the facts with respect to which the delusion exists were real. For example, if the accused, under delusion that a person is about to kill him and attacks and kills the person in self defence, he will be exempted from punishment. But if the accused, under delusion that a person has attacked his reputation, and kills the person due to revenge, he will be punishable.

5. A medical witness who has not seen the accused previous to the trial should not be asked his opinion whether on evidence he thinks that the accused was insane.

The Indian Law recognizes the first two principals and incorporates them in section 84.
Section 84 - Nothing is an offence which is done by a person who, at the time of doing it, by the reason of unsoundness of mind, is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law.

Thus, a person claiming immunity under this section must prove the existence of the following conditions -

1. **He was of unsound mind** - Unsound Mind is not defined in IPC. As per Stephen, it is equivalent to insanity, which is a state of mind where the functions of feeling, knowing, emotion, and willing are performed in abnormal manner. The term Unsoundness of mind is quite wide and includes all varieties of want of capacity whether temporary or permanent, or because of illness or birth defect. However, mere unsoundness of mind is not a sufficient ground. It must be accompanied with the rest of the conditions.
2. **Such incapacity must exist at the time of the act** - A person may become temporarily out of mind or insane for example due to a bout of epilepsy or some other disease. However, such condition must exist at the time of the act. In **S K Nair vs State of Punjab 1997,** the accused was charged for murder of one and greivious assault on other two. He pleaded insanity. However, it was held that the words spoken by the accused at the time of the act clearly show that he understood what he was doing and that it was wrong. Thus, he was held guilty.
3. **Due to incapacity, he was incapable of knowing -**
    1. either the nature of the act.
    2. or that the act is wrong.
    3. or that the act is contrary to law.

The accused in not protected if he knows that what he was doing was wrong even if he did not know that what he was doing was contrary to law. In **Chhagan vs State 1976,** it was held that mere queerness on the part of the accused or the crime does not establish that he was insane. It must be proved that the cognitive faculties of the person are such that he does not know what he has done or what will follow his act.

Intoxication
Several times intoxication due to drinking alcohol or taking other substances cause the person to lose the judgment of right or wrong. In early law, however, this was no defence for criminal responsibility. In recent times this has become a valid defence but only if the intoxication was involuntary. Section 85 says thus -

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

This means that to claim immunity under this section, the accused mus prove the existence of following conditions -

1. He was intoxicated.
4. Because of intoxication, he was rendered incapable of knowing the nature of the act or that what is was doing was wrong or contrary to law.
5. The thing that intoxicated him was administered to him without his knowledge or against his will.

Director of Public Prosecution vs Beard 1920 was an important case on this point. In this case, a 13 yr old girl was passing by a mill area in the evening. A watchman who was drunk saw her and attempted to rape her. She resisted and so he put a hand on her mouth to prevent her from screaming thereby killing her unintentionally. House of lords convicted him for murder and the following principles were laid down -

1. If the accused was so drunk that he was incapable of forming the intent required he could not be convicted of a crime for which only intent was required to be proved.
2. Insanity whether produced by drunkenness or otherwise is a defence to the crime charged. The difference between being drunk and diseases to which drunkenness leads is another. The former is no excuse but the later is a valid defence if it causes insanity.
3. The evidence of drunkenness falling short of proving incapacity in the accused to form the intent necessary to commit a crime and merely establishing that his mind was affected by the drink so that he more readily gave way to violent passion does not rebut the presumption that a man intends the natural consequences of the act.

Q. Define the right of private defence. When does a person not have this right? When does this right extend to causing death? When does this right start and when does it end?

It is said that the law of self defence is not written but is born with us. We do not learn it or acquire it some how but it is in our nature to defend and protect ourselves from any kind of harm. When one is attacked by robbers, one cannot wait for law to protect oneself. Bentham has said that fear of law can never restrain bad men as much as the fear of individual resistance and if you take away this right then you become accomplice of all bad men.

IPC incorporates this principle in section 96, which says,

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

It makes the acts, which are otherwise criminal, justifiable if they are done while exercising the right of private defence. Normally, it is the accused who takes the plea of self defence but the court is also bound take cognizance of the fact that the accused aced in self defence if such evidence exists.

In Section 97 through 106, IPC defines the characteristics and scope of private defence in various situations.

Section 97 - Every person has a right, subject to the restrictions contained in section 99, to defend - first - his own body or body of any other person against any offence affecting the human body.
second - the property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

This allows a person to defend his or anybody else's body or property from being unlawfully harmed. Under English law, the right to defend the person and property against unlawful aggression was limited to the person himself or kindred relations or to those having community of interest e.g. parent and child, husband and wife, landlord and tenant, etc. However, this section allows this right to defend an unrelated person's body or property as well. Thus, it is apt to call it as right to private defence instead of right to self defence.

It is important to note that the right exists only against an act that is an offence. There is no right to defend against something that is not an offence. For example, a policeman has the right to handcuff a person on his belief that the person is a thief and so his act of handcuffing is not an offence and thus the person does not have any right under this section.

Similarly, an aggressor does not have this right. An aggressor himself is doing an offence and even if the person being aggressed upon gets the better of the aggressor in the exercise of his right to self defence, the aggressor cannot claim the right of self defence. As held by SC in **Mannu vs State of UP AIR 1979,** when the deceased was waylaid and attacked by the accused with dangerous weapons the question of self defence by the accused did not arise.

The right to private defence of the body exists against any offence towards human body, the right to private defence of the property exists only against an act that is either theft, robbery, mischief, or criminal trespass or is an attempt to do the same.

In **Ram Rattan vs State of UP 1977, SC** observed that a true owner has every right to dispossess or throw out a trespasser while the trespasses is in the act or process of trespassing and has not accomplished his possession, but this right is not available to the true owner if the trespasser has been successful in accomplishing the possession to the knowledge of the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking resource to the remedies available under the law.

Restrictions on right to private defence
As with any right, the right to private defence is not an absolute right and is neither unlimited. It is limited by the following restrictions imposed by section 99 -

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

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

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

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

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

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

Upon carefully examining this section, we can see that the right to private defence is not available in the following conditions -

1. when an act is done by a public servant or upon his direction and the act
    1. is done under colour of his office - an off duty police officer does not have the right to search a house and right to private defence is available against him. A police officer carrying out a search without a written authority, cannot be said to be acting under colour of his office. If the act of a public servant is ultra vires, the right of private defence may be exercised against him.
    2. the act does not cause the apprehension of death or grievous hurt - for example, a police man beating a person senselessly can cause apprehension of grievous hurt and the person has the right of private defence against the policeman.
    3. is done under good faith - there must be a reasonable cause of action on part of the public servant. For example, a policeman cannot just pick anybody randomly and put him in jail as a suspect for a theft. There must be some valid ground upon which he bases his suspicion.
4. the act is not wholly unjustified - The section clearly says that the act may not be strictly justified by law, which takes care of the border line cases where it is not easy to determine whether an act is justified by law. It clearly excludes the acts that are completely unjustified. For example, if a policeman is beating a person on the street on mere suspicion of theft, his act is clearly unjustified and the person has the right to defend himself.

However, this right is curtailed only if the person knows or has reasons to believe that the act is being done by a public servant. For example, if A tries to forcibly evict B from an illegally occupied premises, and if B does not know and neither does he have

any reason to believe that A is a public servant or that A is acting of the direction of an authorized public servant, B has the right to private defence.

In **Kanwar Singh's case 1965,** a team organized by the municipal corporation was trying to round up stray cattle and was attacked by the accused. It was held that the accused had no right of private defence against the team.

2. when the force applied during the defence exceeds what is required to for the purpose of defence. For example, if A throws a small pebble at B, B does not have the right to shoot A. Or if A, a thief, is running back leaving behind the property that he tried to steal, B does not have the right to shoot A because the threat posed by A has already subsided.
   In many situations it is not possible to accurately determine how much force is required to repel an attack and thus it is a question of fact and has to be determined on a case by case basis whether the accused was justified in using the amount of force that he used and whether he exceeded his right to private defence.

   In **Kurrim Bux's case 1865,** a thief was trying to enter a house through a hole in the wall. The accused pinned his head down while half of his body was still outside the house. The thief died due to suffocation. It was held that the use of force by the accused was justified.
   However, in **Queen vs Fukira Chamar,** in a similar situation, a thief was hit on his head by a pole five times because of which he died. It was held that excessive force was used than required.
3. when it is possible to approach proper authorities - No man has the right to take the law into his hands and so when he has the opportunity to call proper authorities, he does not have the right to private defence. It usually happens when there is a definite information about the time and place of danger. But law does not expect that a person must run away to call proper authorities. The question whether a person has enough time depends on the factors such as -
   1. the antecedent knowledge of the attack.
   2. how far the information is reliable and precise.
   3. the opportunity to give the information to the authorities.
   4. the proximity of the police station.

   In **Ajodha Prasad vs State of UP 1924,** the accused received information that they were going to get attacked by some sections of the village. However, they decided that if they separated to report this to the police they will be in more danger of being pursued and so they waited together. Upon attack, they defended themselves and one of the attackers was killed. It was held that they did not exceed the right of private defence.

Right to private defence of body up to causing death

Section 100 of IPC specifies six situations in which the right of private defence of body extends even to causing death.

Section 100 - The right of private defence of the body extends under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the assailant if the offence which occasions the exercise of the right be of any of the descriptions here in after enumerated, namely -

First - such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault.

Second - such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault.
Third - An assault with the intention of committing rape. Fourth - An assault with the intention of gratifying unnatural lust. Fifth - As assault with the intention of kidnapping or abducting.
Sixth - 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.

Even though this section authorizes a person to cause death of another in certain situation, it is also subject to the same restrictions as given in section 99. Thus, a person cannot apply more force than necessary and must contact the authorities if there is an opportunity.

In **Viswanath vs State of UP AIR 1960,** when the appellant's sister was being abducted from her father's home even though by her husband and there was an assault on her body by the husband, it was held that the appellant had the right of private defence of the body of his sister to the extent of causing death.

To be able to extend this right up to causing death, the apprehension of grievous hurt must be reasonable. In case of **Sheo Persan Singh vs State of UP 1979,** the driver of a truck drove over and killed two persons sleeping on the road in the night. People ahead of the truck stood in the middle of the road to stop the truck, however, he overran them thereby killing some of them. He pleaded right to private defence as he was apprehensive of the grievous hurt being caused by the people trying to stop him. SC held that although in many cases people have dealt with the errant drivers very seriously, but that does not give him the right of private defence to kill multiple people. The people on the road had a right to arrest the driver and the driver had no right of private defence in running away from the scene of accident killing several people.
Yogendra Morarji vs State of Gujarat 1980 is an important case in which SC observed that when life is in peril the accused was not expected to weigh in golden scales what amount of force does he need to use and summarized the law of private defence of body as under -

1. There is no right of private defence against an act which is not in itself an offence under this code.
2. The right commences as soon as and not before a reasonable apprehension of danger to the body arises from an attempt or thread to commit some offence although the offence may not have been committed and it is continuous with the duration of the apprehension.
3. It is a defensive and not a punitive or retributive right. Thus, the right does not extend to the inflicting of more harm than is necessary for defence.
4. The right extends to the killing of the actual or potential assailant when there is a reasonable and imminent apprehension of the atrocious crimes enumerated in the six clauses of section 100.
5. There must be no safe or reasonable mode of escape by retreat for the person confronted with an impending peril to life or of grave bodily harm except by inflicting death on the assailant.

6. The right being in essence a defensive right does not accrue and avail where there is time to have recourse to the protection of public authorities.

Duration of the right of private defence of body
Section 102 specifies the duration of the right of private defence of the body as follows -

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

The right to defend the body commences as soon as a reasonable apprehension of danger to the body arises and it continues as long as such apprehension of danger to the body continues.

Right to private defence of property up to causing death
Section 103 of IPC specifies four situations in which the right of private defence of property extends even to causing death.

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

First - Robbery
Secondly - House breaking by night
Third - Mischief by fire committed on any building, tent, or vessel, which building tent or vessel is used as a human dwelling or as a place for custody of property.
Fourth - 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.

A person may cause death in safeguarding his own property or the property of some one else when there is a reason to apprehend than the person whose death has been cause was about to commit one of the offences mentioned in this section or to attempt to commit one of those offences.

In case of **State of UP vs Shiv Murat 1982,** it was held that to determine whether the action of the accused was justified or not one has to look in to the bona fides of the accused. In cases where there is a marginal excess of the exercise of such right it may

be possible to say that the means which a threatened person adopts or the force which he uses should not be weighed in golden scales and it would be inappropriate to adopt tests of detached objectivity which would be so natural in a court room.

Duration of the right of private defence of property

Section 105 specifies the duration of the right of private defence of the property as follows -

Section 105 - The right of private defence of the property commences as soon as a reasonable apprehension of danger to the property commences. It continues -

in case of theft - till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained or the property has been recovered.

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

in case of criminal trespass - as long as the offender continues in the commision of criminal trespass or mischief.

in case of house breaking by night - as long as the house, trespass which has been begun by such house breaking, continues.

The case of **Amjad Khan vs State AIR 1952,** is important. In this case, a criminal riot broke out in the city. A crowd of one community surrounded the shop of A, belonging to other community. The crowd started beating the doors of A with lathis. A then fired a shot which killed B, a member of the crowd. Here, SC held that A had the right of private defence which extended to causing of death because the accused had reasonable ground to apprehend that death or grievous hurt would be caused to his family if he did not act promptly.

Section 107 of Indian Penal Code, 1860 deals with **Abetment of a thing.** A person abets the doing of a thing, who-

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

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

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

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

Illustration

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

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

Section 108 *of* ***Indian Penal Code,*** *1860 Defines who is an* ***Abettor***

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

Explanation 1

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

Explanation 2

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

Illustrations

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

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

Explanation 3

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

Illustrations

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

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

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

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

Explanation 4

The abetment of an offence being an offence, the abetment of such an abetment is also an offence. **Illustration**

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

Explanation 5

It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence.

Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

Criminal Conspiracy - Section 120-A, IPC

Section 120-A of the I.P.C. defines 'conspiracy' to mean that when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated as "criminal conspiracy.

No agreement except an agreement to commit an offence shall amount to a criminal conspiracy, unless some act besides the agreement is done by one or more parties to such agreement in furtherance thereof.

Section 120-B of the I.P.C. prescribes punishment for criminal conspiracy. It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements:

(1) agreement

(2) between two or more persons by whom the agreement is effected; and

(3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished.

It is immaterial whether this is found in the ultimate objects. The common law definition of 'criminal conspiracy' was stated first by Lord Denman in Jones' case (1832 B & AD 345) that an indictment for conspiracy must "charge a conspiracy to do an unlawful act by unlawful means" and was elaborated by Willies, J. on behalf of the Judges while referring the question to the House of Lords in Mulcahy v. Reg (1868) L.R. 3 H.L. 306 and the House of Lords in unanimous decision reiterated in Quinn v. Leathem 1901 AC 495 at 528 as under:

"A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable of for a criminal object or for the use of criminal means.

The discussion pertaining to standard of proof required for proving the offence of conspiracy can be summarized by the following observations of Supreme Court in the decision reported as *State (NCT of Delhi) v. Navjot Sandhu AIR 2005 SC 3820:-*

"A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused in the offence of criminal conspiracy.

Section 141. *Unlawful assembly*

An unlawful assembly refers to a gathering of individuals who come together in order to commit an unlawful act or to behave in a violent, boisterous or tumultuous manner. Political gathering and demonstration raise the most troublesome issues involving unlawful assembly. The "Unlawful assembly" is the most debated topic in the present political scenario. While the Indian Constitution under the Article 19(1) (b) confers upon all citizens of India the right to assemble peacefully and without arms, but this right is subject to reasonable restriction in the interest of the sovereignty and integrity of India and public order.
For the implementation of the same, the Indian Penal Code, 1870 defines "Unlawful Assembly" and the Code of Criminal Procedure, 1973 lays down the procedure and the powers conferred upon the adjudicating authorities to prevent such assemblies in order to maintain public order. The line of distinction between protecting freedom of assembly and protecting peace and tranquillity of the community is often difficult for the courts to draw.
Section 129 of Criminal Procedure Code, 1973 gives power in the hands of the Executive magistrate or an officer in charge of the police station, or a police officer not below the rank of the sub- inspector to command to disperse. In case of ineffectually the same shall be made to disperse by the military with the use of minimum force according to Section 130 Criminal Procedure Code, 1973. The same power has been vested with the Commissioned or Gazetted officer in case of emergency and the same shall be communicated to the nearest magistrate at the earliest according to Section 131 of Criminal Procedure Code, 1973. The officer has the power to take into the custody any offender (Section 131, Criminal Procedure Code, 1973).

SECTION 149 IPC: Scope and Object

Section 149 IPC has essentially two ingredients viz. (i) offence committed by any member of an unlawful assembly consisting five or more members and (ii) such offence must be committed in prosecution of the common object (under Section 141 IPC) of the assembly or members of that assembly knew to be likely to be committed in prosecution of the common object.
The Supreme Court in Ramachandran Vs. State of Kerala has examined the law relating to offences committed by persons in pursuance of common object being part of an unlawful assembly, as entailed in Section 149 of the Indian Penal Code. The relevant extracts from the judgment are reproduced hereunder;

For **"common object",** it is not necessary that there should be a prior concert in the sense of a meeting of the members of the unlawful assembly, the common object may form on spur of the moment; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. [Vide: Bhanwar Singh & Ors. v. State of M.P., (2008) 16 SCC 657]
Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under second part of Section 149 IPC if it can be held that the offence was such as the members knew was likely to be committed. The expression 'know' does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that if a body of persons go armed to take forcible possession of the land, it would be right to say that someone is likely to be killed and all

the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of Section 149 IPC.

There may be cases which would come within the second part, but not within the first. The distinction between the two parts of Section 149 IPC cannot be ignored or obliterated. [See : Mizaji & Anr. v. State of U.P., AIR 1959 SC 572; and Gangadhar Behera & Ors. v. State of Orissa, AIR 2002 SC 3633].

However, once it is established that the unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act. For the purpose of incurring the vicarious liability under the provision, the liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew before hand that the offence actually committed was likely to be committed in prosecution of the common object. [See : Daya Kishan v. State of Haryana, (2010) 5 SCC 81; Sikandar Singh v. State of Bihar, (2010) 7 SCC 477, and Debashis Daw v. State of W.B., (2010) 9 SCC 111].

The crucial question for determination in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons which were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly.(Vide: Masalti v. State of Uttar Pradesh, AIR 1965 SC 202)

In K.M. Ravi & Ors. v. State of Karnataka, (2009) 16 SC 337, this Court observed that mere presence or association with other members alone does not per se be sufficient to hold every one of them criminally liable for the offences committed by the others unless there is sufficient evidence on record to show that each intended to or knew the likelihood of commission of such an offending act.

Similarly in State of U.P. v. Krishanpal & Ors., (2008) 16 SCC 73, this Court held that once a membership of an unlawful assembly is established it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused. Mere membership of the unlawful assembly is sufficient and every member of an unlawful assembly is vicariously liable for the acts done by others either in prosecution of common object or members of assembly knew were likely to be committed.

In Amerika Rai & Ors. v. State of Bihar, (2011) 4 SCC 677, this Court opined that for a member of unlawful assembly having common object what is liable to be seen is as to whether there was any active participation and the presence of all the accused persons was with an active mind in furtherance of their common object. The law of vicarious liability under Section 149 IPC is crystal clear that even the mere presence in the unlawful assembly, but with an active mind, to achieve the common object makes such a person vicariously liable for the acts of the unlawful assembly.

Thus, this court has been very cautious in the catena of judgments that where general allegations are made against a large number of persons the court would categorically scrutinise the evidence and hesitate to convict the large number of persons if the evidence available on record is vague. It is obligatory on the part of the court to examine that if the offence committed is not in direct prosecution of the common object, it yet may fall under second part of Section 149 IPC, if the offence was such as the members knew was likely to be committed. Further inference has to be drawn as what was the number of persons; how many of them were

merely passive witnesses; what were their arms and weapons. Number and nature of injuries is also relevant to be considered. "Common object" may also be developed at the time of incident.

Rioting: U/Sec 146:

Whenever force or violence is used by an unlawful assembly or by any member thereof in prosecution of the common object of such assembly is guilty of the offence of rioting. **Following are the ingredients of an offence of rioting.**

(i) Use of Force or Violence:

There must be use of force or violence by an unlawful assembly or any member thereof to constitute an offence of rioting. It is not necessary that the force or violence should be directed against any particular person or object.

(ii) By Unlawful Assembly or Any Member:

The force or violence must be use by an unlawful assembly or any member of it, so to constitute an offence of rioting all the ingredients of sec. 141 need to be fulfilled. (ii) In Prosecution of Common Object:

Such force or violence should have been used in prosecution of the common object of such assembly.

(III) Punishment U/Sec 147:

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

(IV) punishment Where Rioting Armed With Deadly Weapon U/Sec 148:

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

A person cannot be found guilty under this section unless he actually has a dangerous weapon in his hands. (PLD 1981 Sc286)

Affray: U/Sec 159:

When 2 or more persons by fighting in a public place disturb the public peace, they are said to commit an affray.

(II) Ingredients:

(i) Two or More Person:

An affray requires two sides fighting. Case Law

PLD 1959 LAH I0I8

It was held that on the offence of affray there must be to or more person. Passive submission by one party to a beating by the other is not affray.

(ii) Public Place:

Fighting must be at public place. A public place is one where the public go, on matter, Whether they have a right to go or not.

(iii) Disturbance of Public Peace:

It is essential that there must be a disturbance of the public peace i.e assault or breath of the peace. Mere quarelling is not sufficient to attract section 159.

(III) Punishment U/Sec 160:
Whoever commits an affray shall be punished with imprisonment of either for a term which may extend to one month or with fine which may extend to one hundred Rs. With both.

Distinction Between Rioting And Affray:

(I) Place
Rioting can be committed at any place whether private or public. Affray can be committed at only Public place.
(II) Number Of Person:
Rioting requires five-or more persons. Affray requires two or more persons.
(III) Liability:
In riot every member of an unlawful assembly is punishable although some of them may not have personally used force or violence. In affray only those actually engaged are liable.
(IV) Object:
In rioting the object to use force or violence must be one mentioned in sec. 141. In affray, the object is to disturb the public peace.
(V) Punishment:
In riot, punishment awarded is imprisonment which may extend to two years or which fine or with both.
The punishment for affray is imprisonment which may extend to one month or with fine which may extend to RS. 100 or with both.
(VI) As To Enhancement Of Punishment:
Enhanced punishment is provided for rioting if a person is armed with a deadly weapon u/sec 148. For affray no such provision is present.

PERJURY(as it is called in English Law)

191: Giving false evidence. (judicial perjury)

Whoever, being legally bound by an oath or any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, or does not believe to be true, is said to be giving false evidence.

ESSENTIAL CONDITIONS FOR PROSECUTION OF JUDICIAL PERJURY

1. Legal obligation to state the truth

2. The making of a false statement

3. Belief in its falsity. Criteria for

establishing offense:

(a) The statement is false

(b) The parson making the statement knew or believed it to be false or did not believe it to be true.

(c) The statement was made intentionally.

All three criteria must be proved for conviction. Intention is most important.

False evidence is said to be given intentionally, if, the person making the statement is aware or has knowledge that it is false and has deliberately used such evidence in a judicial proceeding with the intention of deceiving the court.

ELEMENTS OF PERJURY:

1. False statement made by a person Who is -2. bound by an oath

3. By an express provision of law
4. A declaration which a person is bound by law to make on any subject
5. Which statement or declaration is false and which he either knows or believes to be false or does not believe to be true.

2. Oath must be administered by a person of competent authority. The

authority must be competent to administer the oath.

The proceedings where oath is administered must be sanctioned by law.

3. Express provisions of law include—Plaints, Written Statements, and other

pleadings. CPC casts a legal duty to speak the truth.

Verification of pleadings is a legal obligation.

4. Affidavits are declaration made under oath.

5. A statement could be verbal or otherwise.

Statement that he believes a thing which he does not believe. Statement that he knows a

thing which he does not know. Statement that he knows to be false or does not believe to be

true Statement need not be on a point material to the proceedings.

In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost.

Read a judgment about the above in Vijay Sval Vs. State of Punjab **AIR 2003 SC 4023, 2003 (2) JKJ 197 SC, JT 2003 (5) SC 241**

Section 192 in The Indian Penal Code, 1860

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

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

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

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

Section 268 of Indian Penal Code, 1860 **deals with Public nuisance.**

A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.
A common nuisance is not excused on the ground that it causes some convenience or advantage.

The distinction between private and public nuisance is a matter of fact and not law and can collapse in situations where the right being violated is a public right but the injury is caused to an individual and not the public at large. In many cases it essentially is a question of degree. An example of such a situation is obstruction of a highway affecting houses adjacent to it. In such cases, even though the number of people being affected is not large, the right being violated is public in nature. Unlike private nuisance, public nuisance does not consider easement rights as acceptable defence for nuisance. Merely the fact that the cause of nuisance has been in existence for a long time does not bar any challenge against it as no length of time can legalize a public nuisance.
The definition of nuisance excludes from its ambit the instances of legalized nuisance. Legalized nuisance are cases when the nuisance cause is statutorily approved and in the interest of greater good and social welfare. For instance, the running of railway engines and trains or establishment of the yard, despite being a legitimate cause of nuisance, is not punishable under IPC.

Section 269. Negligent act likely to spread infection of disease dangerous to life

Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six month, or with fine, or with both.

Sections 269 and 270 of the IPC are potent weapons in case of criminal transmission. These provisions, in the past, have been used to address the spread of cholera, plague, syphilis, gonorrhea and other sexually transmitted diseases. However, to establish an offence under Section 269, the action of the accused must be unlawful, negligent and contrary to the provisions of the Indian law. Also, it is necessary that the accused knew or had reason to believe that his or her action could cause harm. This means, that the element of malignancy is crucial in the commission of an offence under Section 270.
The main problem in prosecuting a person who has wilfully transmitted HIV virus to another is the difficulty in establishing that the accused was aware of his or her HIV status and the implications of such status at the time the virus was transmitted to the partner

Unit III

What do you understand by Culpable Homicide? In what circumstances Culpable Homicide does not amount to Murder? What are those exceptions when Culpable Homicide does not amount to Murder?

The word homicide is derived from two Latin words - homo and cido. Homo means human and cido means killing by a human. Homicide means killing of a human being by another human being. A homicide can be lawful or unlawful. Lawful homicide includes situations where a person who has caused the death of another cannot be blamed for his death. For example, in exercising the right of private defense or in other situations explained in Chapter IV of IPC covering General Exceptions. Unlawful homicide means where the killing of another human is not approved or justified by law. Culpable Homicide is in this category. Culpable means blame worthy. Thus, Culpable Homicide means killing of a human being by another human being in a blameworthy or criminal manner.

Section 299 of IPC defines Culpable Homicide as follows -
Section 299 - Who ever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of Culpable Homicide.

Illustrations -

1. A lays sticks and turf over a pit, with the intention of there by causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of Culpable Homicide.
2. A knows Z to be behind a bush. B does not know it A, intending to cause, or knowing it to be likely to cause Z's death, induces B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of Culpable Homicide.
3. A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of Culpable Homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1 - A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death. Explanation 2 - Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skillful treatment the death might have been prevented. Explanation 3 - The causing of the death of child in the mother's womb is not homicide. But it may amount to Culpable Homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.
Based upon the above definition, the following are the essential elements of Culpable Homicide -

1. **Death of a human being is caused** - It is required that the death of a human being is caused. However, it does not include the death of an unborn child unless any part of that child is brought forth.

2. **By doing an act** - Death may be caused by any act for example, by poisoning or by hurting with a weapon. Here act includes even on omission of an act for which one is obligated by law to do. For example, if a doctor has a required injection in his hand and he still does not give it to the dying patient and if the patient dies, the doctor is responsible.
3. **Intention or Knowledge** - There must be an intention of any of the following -
    1. **Intention of causing death** - The doer of the act must have intended to cause death. As seen in Illustration 1, the doer wanted or expected someone to die. It is important to note that intention of causing death does not necessarily mean intention of causing death of the person who actually died. If a person does an act with an intention of killing B but A is killed instead, he is still considered to have the intention.
    2. **Intention of causing such bodily injury as is likely to cause death** - The intention of the offender may not have been to cause death but only an injury that is likely to cause the death of the injured. For example, A might intended only to hit on the skull of a person so as to make him unconscious, but the person dies. In this case, the intention of the person was only to cause an injury but the injury is such that it is likely to cause death of the person. Thus, he is guilty of Culpable Homicide. However, if A hits B with a broken glass. A did not know that B was haemophilic. B bleeds to death. A is not guilty of Culpable Homicide but only of grievous hurt because he neither had an intention to kill B nor he had any intention to cause any bodily injury as is likely to cause death.

    Or the act must have been done with the knowledge that such an act may cause death - When a person does an act which he knows that it has a high probability to cause death, he is responsible for the death which is caused as a result of the act. For example, A knows that loosening the brakes of a vehicle has a high probability of causing death of someone. If B rides such a bike and if he dies, A will be responsible for B's death. In **Jamaluddin's case 1892,** the accused, while exorcising a spirit from the body of a girl beat her so much that she died. They were held guilty of Culpable Homicide. Negligence - Sometimes even negligence is considered as knowledge. In **Kangla 1898,** the accused struck a man whom he believed was not a human being but something supernatural. However, he did not take any steps to satisfy himself that the person was not a human being and was thus grossly negligent and was held guilty of Culpable Homicide.

Murder (When Culpable Homicide amounts to Murder)

Murder is a type of Culpable Homicide where culpability of the accused is quite more than in a mere Culpable Homicide. Section 300, says that Culpable Homicide is Murder if the act by which the death is caused is done

3. with the intention of causing death
4. or with an intention of causing such bodily injury as the offender knows to be likely to cause the death of the person,
5. or with an intention of causing such bodily injury as is sufficient in ordinary course of nature to cause death.
6. It is also Murder if the person committing the act knows that the act is so dangerous that it will cause death or such injury as is likely to cause death in all probability and he has no valid reason for doing that act.

Illustrations -

A shoots Z with an intention of killing him. Z dies in consequence. A commits Murder.

A intentionally gives Z a sword cut that sufficient in ordinary course of nature to cause death. Z dies because of the cut. A commits Murder even though he had no intention to kill Z.

A without any excuse fires a loaded canon on a crowd. One person dies because of it. A commits Murder even though he had no intention to kill that person.

Thus, it can be seen that Murder is very similar to Culpable Homicide and many a times it is difficult to differentiate between them. **J Melvill in the case of R vs Govinda 1876 Bom.** analyzed both in the following table -

Culpable Homicide	Murder
A person commits Culpable Homicide if the act by which death is caused is done	**A person commits Murder if the act by which death is caused is done -**
1. with the intention of causing death.	1. with the intention of causing death.
2. with an intention to cause such bodily injury as is likely to cause death.	2. with an intention to cause such bodily injury as the offender knows to be likely to cause death of the person to whom the harm is caused. 3. with an intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in ordinary course of nature to cause death.
3. with the knowledge that such an act is likely to cause death.	4. With the knowledge that the act is so imminently dangerous that it must in all probability cause death.

Based on this table, he pointed out the difference - when death is caused due to bodily injury, it is the probability of death due to that injury that determines whether it is Culpable Homicide or Murder. If death is only likely it is Culpable Homicide, if death is highly probable, it is Murder.

In **Augustine Saldanha vs State of Karnataka LJ 2003,** SC deliberated on the difference of Culpable Homicide and Murder. SC observed that in the scheme of the IPC Culpable Homicide is genus and Murder its specie. All 'Murder' is 'Culpable Homicide' but not vice-versa. Speaking generally, 'Culpable Homicide' sans 'special characteristics of Murder is Culpable Homicide not amounting to Murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of Culpable Homicide. The first is, what may be called, **'Culpable Homicide of the first degree'.** This is the greatest form of Culpable Homicide, which is defined in **Section 300** as 'Murder'. The second may be termed as **'Culpable Homicide of the second degree'.** This is punishable under the first part of **Section 304.** Then, there is **'Culpable Homicide of the third degree'.** This is the lowest type of Culpable Homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable Homicide of this degree is punishable under the second part of **Section 304.**

It further observed that the academic distinction between 'Murder' and 'Culpable Homicide not amounting to Murder' has always vexed the Courts. They tried to remove confusion through the following table -

Culpable Homicide	Murder
A person commits Culpable Homicide if the act by which death is caused is done	**Subject to certain exceptions , Culpable Homicide is Murder if the act by which death is caused is done -**
INTENTION	
(a) with the intention of causing death; or	1. with the intention of causing death; or
(b) with an intention to cause such bodily injury as is likely to cause death.	2. with an intention to cause such bodily injury as the offender knows to be likely to cause death of the person to whom the harm is caused. 3. with an intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in ordinary course of nature to cause death.
KNOWLEDGE	
(c) with the knowledge that such an act is likely to cause death.	4. With the knowledge that the act is so imminently dangerous that it must in all probability cause death.

Thus, it boils down to the knowledge possessed by the offender regarding a particular victim in a particular state being in such condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not, in the ordinary circumstances, be sufficient to cause death. In such a case, intention to cause death is not an essential requirement. Only the intention of causing such injury coupled with the knowledge of the offender that such injury is likely to cause death, is enough to term it as Murder.

Situations where Culpable Homicide does not amount to Murder

Section 300 also specifies certain situations when the Murder is considered as Culpable Homicide not amounting to Murder. These are - **(Short Details)**

1. If the offender does an act that causes death because of grave and sudden provocation by the other.
2. If the offender causes death while exceeding the right to private defense in good faith.
3. If the offender is a public servant and does an act that he, in good faith, believes to be lawful.
4. If the act happens in a sudden fight in the heat of passion.
5. If the deceased is above 18 and the death is caused by his own consent.

(Full Details)
Exception I - Culpable Homicide is not Murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.
The above exception is subject to the following provisos -

1. That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.
2. That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.
3. That the provocations not given by anything done in the lawful exercise of the right of private defence.

Explanation-Whether the provocation was grave and sudden enough to prevent the offence from amounting to Murder is a question of fact.

Illustrations

1. 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.
2. Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed Murder, but merely Culpable Homicide.
3. A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This Murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.
4. A appears as a witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is Murder.
5. A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of a to prevent him form 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 defence.
6. Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only Culpable Homicide, but A is guilty of Murder.

Exception 2 - Culpable Homicide is not Murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising

such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration - Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed Murder, but only Culpable Homicide.

Exception 3 - Culpable Homicide is not Murder if the offender, being a public servant or aiding a public servant acting or the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4 - Culpable Homicide is not Murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Explanation-It is immaterial in such cases which party offers the provocation or commits the first assault. In a very recent case of **Byvarapu Raju vs State of AP 2007,** SC held that in a Murder case, there cannot be any general rule to specify whether the quarrel between the accused and the deceased was due to a sudden provocation or was premeditated. "It is a question of fact and whether a quarrel is sudden or not, must necessarily depend upon the proved facts of each case," a bench of judges Arijit Pasayat and D K Jain observed while reducing to 10 years the life imprisonment of a man accused of killing his father. The bench passed the ruling while upholding an appeal filed by one Byvarapu Raju who challenged the life sentence imposed on him by a session's court and later affirmed by the Andhra
Pradesh High Court for killing his 'drunkard' father.

Exception 5 - Culpable Homicide is not Murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration - A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted Murder.

Define Hurt and Grievous Hurt. Explain the difference.

In normal sense, hurt means to cause bodily injury and/or pain to another person. IPC defines Hurt as follows - **Section 319** -

Whoever causes bodily pain, disease, or infirmity to any person is said to cause hurt. Based on this, the essential ingredients of

Hurt are -

1. Bodily pain, disease or infirmity must be caused - Bodily pain, except such slight harm for which nobody would complain, is hurt. For example, pricking a person with pointed object like a needle or punching somebody in the face, or pulling a woman's hair. The duration of the pain is immaterial. Infirmity means when any body organ is not able to function normally. It can be temporary or permanent. It also includes state of mind such as hysteria or terror.
2. It should be caused due to a voluntary act of the accused.

When there is no intention of causing death or bodily injury as is likely to cause death, and there is no knowledge that inflicting such injury would cause death, the accused would be guilty of hurt if the injury is not serious. In **Nga Shwe Po's case 1883,** the accused struck a man one blow on the head with a bamboo yoke and the injured man died, primarily due to excessive opium administered by his friends to alleviate pain. He was held guilty under this section. The authors of the code have observed that in many cases offences that fall under hurt will also fall under assault. However, there can be certain situations, where they may not. For example, if A leaves food mixed with poison on B's desk and later on B eats the food causing hurt, it cannot be a case of assault.

If the accused did not know about any special condition of the deceased and causes death because of hurt, he will be held guilty of only hurt. Thus, in **Marana Goundan's case AIR 1941,** when the accused kicked a person and the person died because of a diseased spleen, he was held guilty of only hurt.
A physical contact is not necessary. Thus, a when an accused gave food mixed with dhatura and caused poisoning, he was held guilty of Hurt.

Grievous Hurt
Cases of severe hurt are classified under grievous hurt. The authors of the code observed that it would be very difficult to draw a line between hurt and grievous hurt but it was important to draw a line even if it is not perfect so as to punish the cases which are clearly more than hurt. Thus, section 320 of IPC defines Grievous Hurt as -

Section 320 - The following kinds of hurt only 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 a joint.

5. Destruction or permanent impairing of powers of any member or joint.
6. Permanent disfiguration of the head or face.
7. Fracture or dislocation of a bone or tooth.
8. Any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe body pain or unable to follow his ordinary pursuits.

Thus, it can be seen that grievous hurt is a more serious kind of hurt. Since it is not possible to precisely define what is a serious hurt and what is not, to simplify the matter, only hurts described in section 320 are considered serious enough to be called Grievous Hurt. The words "any hurt which endangers life" means that the life is only endangered and not taken away. Stabbing on any vital part, squeezing the testicles, thursting lathi into rectum so that bleeding is caused, have all been held as Hurts that endanger life and thus Grievous Hurts. As with Hurt, in Grievous Hurt, it is not a physical contact is not necessary.

Difference between Hurt and Grievous Hurt

Only hurts that are defined in section 320 are called Grievous Hurt.

Punishment for voluntarily causing Hurt as defined in section 323 is imprisonment of either description up to 1 year and a fine up to 1000 Rs, while punishment for voluntarily causing grievous hurt is imprisonment of either description up to 7 years as well as fine.

Difference between Grievous Hurt and Culpable Homicide

The line separating Grievous Hurt and Culpable Homicide is very thin. In Grievous Hurt, the life is endangered due to injury while in Culpable Homicide, death is likely to be caused. Thus, acts neither intended nor likely to cause death may amount to grievous hurt even though death is caused.

In case of **Formina Sbastio Azardeo vs State of Goa Daman and Diu 1992 CLJ SC,** the deceased was making publicity about the illicit intimacy between N and W. On the fateful day, N, W, and her husband A caught hold of D and tied him up to a pole and beat him as a result of which he died. They were not armed with any dangerous weapon and had no intention to kill him. N and W were held guilty of only causing grievous hurt.

Wrongful restraint and wrongful confinement Section 339. Wrongful restraint

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has right to proceed, is said wrongfully to restrain that person.

Wrongful restraint means preventing a person from going to a place where he has a right to go. In wrongful confinement, a person is kept within certain limits out of which he wishes to go and has a right to go. In wrongful restraint, a person is prevented from proceeding in some particular direction though free to go elsewhere. In wrongful confinement, there is restraint

from proceeding in all directions beyond a certain area. One may even be wrongfully confined in one's own country where by a threat issued to a person prevents him from leaving the shores of his land.

Object - The object of this section is to **protect the freedom of a person** to utilize his right to pass in his. The slightest unlawful obstruction is deemed as wrongful restraint. Physical obstruction is not necessary always. Even by mere words constitute offence under this section. The main ingredient of this section is that when a person obstructs another by causing it to appear to that other that it is impossible difficult or dangerous to proceeds as well as by causing it actually to be impossible, difficult or dangerous for that to proceeds.

Ingredients:

1. **1. An obstruction.**
2. **2. Obstruction prevented complainant from proceeding in any direction.**

Obstruction:-Obstruction mans physical obstruction, though it may cause by physical force or by the use of menaces or threats. When such obstruction is wrongful it becomes the wrongful restraint. For a wrongful restraint it is necessary that one person must obstruct another voluntarily.In simple word it means keeping a person out of the place where his wishes to, and has a right to be.
This offence is completed if one's freedom of movement is suspended by an act of another done voluntarily.

Restraint necessarily implies abridgment of the liberty of a person against his will.

What is require under this section is obstruction to free movement of a person, the method used for such obstruction is immaterial. Use of physical force for causing such obstruction is not necessary. Normally a verbal prohibition or **remonstrance** does not amount to obstruction, but in certain circumstances it may be caused by threat or by mere words. **Effect of such word upon the mind of the person obstructed is more important than the method.**

Obstruction of personal liberty:Personal liberty of a person must be obstructed. A person means a human being, here the question arises whether a child of a tender age who cannot walk of his own legs could also be the subject of restraint was raised in **Mahendra Nath Chakarvarty v. Emperor.** It was held that the section is not confined to only such person who can walk on his own legs or can move by physical means within his own power. It was further said that if only those who can move by physical means within their own power are to be treated as person who wishes to proceed then the position would become absurd in case of paralytic or sick who on account of his sickness cannot move.

Another points that needs our attention here is whether obstruction to vehicle seated with passengers would amount to wrongful restraint or not.

An interesting judgment of our **Bombay High Court in Emperor v. Ramlala** : "Where, therefore a driver of a bus makes his bus stand across a road in such a manner, as to prevent another bus coming from behind to proceed further, he is guilty of an offence under Sec. 341 of the Penal Code of wrongfully restraining the driver and passengers of another bus".

"It is absurd to say that because the driver and the passengers of the other bus could have got down from that bus and walked away in different directions, or even gone in that bus to different destinations, in reverse directions, there was therefore no wrongful restraint" is the judgment of our High Court which is applicable to our busmen who suddenly park the buses across the roads showing their protest on some issues.
Illustrations-

I. A was on the roof of a house. B removes the ladder and thereby detains A on the roof.

II. A and B were co-ower of a well. A prevented B from taking out water from the well .

Section 340. Wrongful confinement.
Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Object - The object of this section is to **protect the freedom of a person** where his personal liberty has totally suspended or abolish, by voluntarily act done by another.
Ingredients:

I. Wrongful confinement of person.

1. Wrongful restraint of a person

2. Such restraint must prevent that person from proceeding beyond certain limits.

Prevent from proceedings:Wrongful confinement is a kind of wrongful restraint, in which a person kept within the limits out which he wishes to go, and has right to go.There must be total restraint of a personal liberty, and not merely a partial restraint to constitute confinement.For wrongful confinement proof of actual physical obstruction is not essential.

Circumscribing Limits:Wrongful confinement means the notion of restraint within some limits defined by a will or power exterior to our own.

Moral force: Detention through the excise of moral force, without the accomplishment of physical force is sufficient to constituted this section.

Degree of Offense Wrongful restraint is not a serious offence, and the degree of this offense is comparatively lees then confinement.Wrongful confinement is a serious offence, and the degree of this offense is comparatively intensive then restraint.

Principle element In wrongful retraint voluntarily wrongful obstruction of a person personal liberty, where he wishes to, and he have a right to.In Wrongful confinement voluntarily wrongfully restraint a person where he wishes to, and he has a right to, within a circumscribing limits.

Personal liberty It is a partial restraint of the personal liberty of a person in Wrongful restraint. A person is restraint is free to move anywhere other than to proceed in a partial direction.It is a absolute or total restraint or obstruction of a personal liberty in wrongful confinement.
NatureConfinement implies wrongful restraint.Wrongful confinement not implies vice-versa.

NecessityNo limits or boundaries are required in Wrongful restraint. But in wrongful confinement certain circumscribing limits or boundaries requires.

FORCE:
FORCE Under Section 349 of Indian Penal Code the term 'Force' has been defined. The term 'Force' defined in this section contemplates force used by one human being on another human being. The term Force here defined occurs in the English phrase" Vi Et Armis" - Exertion of energy producing change in the outer world.

In order to constitute force there must be at least:- :
In order to constitute force there must be at least: - (i) Causing of a motion (ii) Change of a motion or (iii) Cessation of a motion.

In, Shadshiv Mondal v. Emperor :
In, Shadshiv Mondal v. Emperor The court held that Force does not contemplate the use of force against inanimate objects. This is clear from the use of word "another" in this section. The word "another" refers to another human being in the ambit of this section.

In, Ramakant rajaram v. Manuel Fernandes :
In, Ramakant rajaram v. Manuel Fernandes It was held in this case that , a motion or change of motion or cessation of motion caused to Property without affecting a human being is not the 'Use of Force to Another within the meaning of this section.'

In, Chandrika sao v. State of Bihar :

In, Chandrika sao v. State of Bihar Supreme Court in the case held that it would be clear from a Bare Perusal of the section that one person can be said to have used force against another if he causes motion or cessation of motion to that other. By snatching away the accused necessarily caused a jerk to the hand or the hands of official would be to affect the sense of the feelings of the

hands of the official. Therefore the court held that the action of the accused amounts to use of force as contemplated by Section 349 of Indian Penal Code.

In, Jai Ram v. Emperor :

In, Jai Ram v. Emperor In this case the Accused raises his stick to strike the Plaintiff, the plaintiff seeing the accused raising the stick moves away. It was held by the Court that A uses the force within the meaning of this section.

In, Sheo pratap singh v. Emperor :

In, Sheo pratap singh v. Emperor It was held in the case that inducing an animal to move may amount to using force. **Criminal Force :**

Criminal Force The last Section defined 'force' which by itself is not an offence , for the use of force may take place under circumstances the most benevolent, as where a person pulls another out of a well to save him from being drowned in the well, such an act is not an offence.

When does force becomes Criminal Force? :

When does force becomes Criminal Force? The previous section has defined Section 349, which can also be put to positive or good use. Force becomes criminal only when -- it is used without consent and in order of committing offence. when it is used to cause injury, fear or annoyance to another to whom the force is used.

The essential ingredients of this section are as follows:- :

The essential ingredients of this section are as follows:- (i) Intentional use of force to any person. (ii) Such Force must have been used without the person's consent (iii) The Force must have been used: - (a) In order to committing of an offence. (b) Intending to cause or knowing that is likely to cause Injury, fear or the annoyance to the person to whom the Force is used.

Criminal Force :

Criminal Force Criminal Force is Equivalent to "battery" in English law which means the intentional infliction of force by one person upon another against latter's consent. If A spits over B, then A would be liable for use of Criminal Force as it must have cause annoyance to B.

In, Haystead v. DPP :

In, Haystead v. DPP In this case accused punched a Woman, as a result of which the child in her hand fell to the floor. His prosecution included the charge of "battery", on the child. He contended that the battery required direct application of force which involved direct physical contact with victim either with the body or medium such as Weapon. In, Haystead v. DPP : In, Haystead v. DPP The court rejected this contention and said that battery does not require direct infliction of violence. The accused was guilty because the child's fall to floor had result directly from the assault of mother.

In, Bihari Lal v. Emperor :

In, Bihari Lal v. Emperor In this case a person broke the house in the absence of the occupant, then it is clear that the accused had taken the possession of the house without any force or criminal force. But If, a person struck a pot which another person was carrying and which was in contact with his body, it constitutes the offence of criminal force. Thus the physical presence of a person makes a crucial difference, between an act amounting to criminal force or not.

Intentional :

Intentional The word intentional excludes all Involuntary, accidental or even negligent acts. An Attendant at a bath, who from pure carelessness turns on the wrong tap and causes boiling water to fall on another, an illus. (g) to Sec.350, could not be convicted for the use of Criminal Force.

In, Mohd. Ishaq Khan v. Emperor :

In, Mohd. Ishaq Khan v. Emperor A person raises stick for any purpose of his own and the other B, runs away because of sheer fright then the accused would not be liable for criminal Force. Though in this case the act of the accused A caused fear in the mindset of the other person B even then the accused will not be liable as the act was not done with an Intention to do so.

CONSENT :

CONSENT The word Consent should be taken as defined in section90 of the Indian Penal Code. There is some difference between doing an act "without one's consent" and "against his will". The later involves active mental opposition of the act. MAYNE states :- Where it is an element of an offence that the act should have been done without the consent of the person affected by it , some evidence must be offered that the act was done to him against his will or without his consent.

Assault :

Assault An assault is nothing more than a threat of violence exhibiting an intention to use criminal force, and the present ability and intention to carry the threat into execution. The Section basically requires two things : - (i) Making of any gesture or preparation by a person in the presence of another. (ii) Intention or knowledge of the 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.

Gesture or Preparation :

Gesture or Preparation According to this section , the mere gesture or preparation with the intention or knowledge that it is likely to cause apprehension in the mind of the victim, amounts to an offence of assault. The explanation to this section provides that mere words do not amount to assault , unless the words are used in the aid of the gesture or preparation which amounts to an assault.

Gesture or Preparation :

Gesture or Preparation The following have been held to be instances of assault: - (i) Pointing of a gun, whether loaded or unloaded (ii) Fetching a Sword and advancing towards victim (iii) Lifting one's Lathi (iv) Throwing brick into another's

house (v) Advancing with a threatening attitude to strike blows.

In, Read v. Cooker :
In, Read v. Cooker An assault is constituted by an attempt to apply unlawful force to another or any threat which is accompanied by or consists of any act or gesture showing a present intent to use unlawful force and also accompanied by " a present ability to carry the threat into Execution".

In, Stephens v. Myers :
In, Stephens v. Myers A advanced towards B in a threatening attitude and with the intent of striking B, but was stopped by any other person just before he reached B. The Court held in this case that A's blow would almost immediately have reached B if it had not been stopped he had committed an assault.

In, Hunter v. Johns :
In, Hunter v. Johns In this case A, the master of a board school, detained a child after school hours for not doing home lessons which, under the Elementary Educations Act, 1870 and 1876, he had no power to set. The court held that he was guilty of an Unlawful detention of the child and therefore an assault. Mere words cannot constitute an assault.

Defense to Assault :
Defense to Assault The accused has got two defenses available to him: - (i) That the facts of the case do not constitute an assault or battery if it was an accident or done by consent. (ii) That he was justified and excused. He may, also, where the circumstances permit, specially plead the defense that the matter has already been disposed of by a court of summary jurisdiction .

Difference between Criminal force, Assault and Hurt :- :
Difference between Criminal force, Assault and Hurt :- Section319 of the Indian Penal code defines Hurt. The word assault, criminal force and hurt have distinct meanings and definition in IPC. They deal with different stages of the commission of offence with different effects. Legally assault denotes the preparatory acts which cause apprehension of the use of criminal force against the person. Assault falls short of actual use of Criminal force.

Difference between Criminal force, Assault and Hurt :- :
Difference between Criminal force, Assault and Hurt :- Now Criminal Force is causing motion, change of motion or cessation of the motion without the consent of the person, in order to commit an offence or intending to cause or knowing it will cause injury, fear or annoyance. When the use of such criminal force results in causing of bodily pain or injury, then it would amount to the offence of 'Hurt' under Section 323, Indian Penal Code.

What is meant by kidnapping from India, kidnapping from guardianship, and abduction? Differentiate between Kidnapping and Abduction.

Kidnapping

Kidnapping from India - Kidnapping from India means taking anybody, without his consent, out of the borders of India. Section 360 defines it as follows -

Section 360 - Whoever conveys any person beyond the limits of India without the consent of that person or of some person legally authorized to consent on behalf of that person, is said to kidnanap that person from India.

For example, if A takes B without his consent or without B's lawful guardians consent to Pakistan, A would be committing this offence. The essential ingredient of Kidnapping are -

1. The person should be conveyed out of the borders of India.
2. The person should be conveyed without his consent or without the consent of the person who is legally authorized to consent on his behalf.

Thus, if a person is not capable of giving valid consent as in the case of a minor or a person with unsound mind, the consent of his lawful guardian is required to take him outside India.

Kidnapping from Lawful guardianship - Kidnapping from lawful guardianship means taking a child away from his lawful guardian without the guardian's consent. Section 361 defines it as follows -

Section 361 - Whoever takes or entices any minor under 16 yrs of age if male or 18 yrs of age if female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation - The words lawful guardian in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception - This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.
Based on this section the essential ingredients are -

1. **The person should either be a minor or a person of unsound mind** - This implies that the person is not capable of giving consent. In case of male child the age is 16 yrs while in case of a female child the age is 18 yrs. For a person on unsound mind, age is immaterial.

2. **Such person be taken or enticed away** - This means that either force is used or any enticement that causes the person to leave domain of the lawful guardian is used. For example, if A shows toffee to a child C thereby causing the child to come out of the house and follow A, it fall under this category.
3. **Such person must be taken or enticed away from the lawful guardian** - Only when the child is under the lawful guardian, can he be kidnapped. This means that the child should be under the domain of the lawful guardian. For example, an orphan wandering on the streets cannot be kidnapped because he doesn't have a lawful guardian. However, this does not mean that a child must be with the lawful guardian. For example, a child siting in a school is also under the dominion of his father and if A takes such a child away, it would be kidnapping. Further, a lawful guardianship does not necessarily mean a legal guardian. A legal guardian may entrust the custody of his child to someone else. Taking a child away from such custody will also fall under this section. For example, A entrusts his child to B, his servant, to take the child to school. If, C takes the child away from the servant, this would be kidnapping because the servant has the lawful guardianship of the child.

Distinction between taken away and allowing a child to follow -
In **Vardrajan vs State of Madras AIR 1965, SC** observed that there is a difference between taking away a minor and allowing the minor to follow. If a person knowingly does an act which he has reason to believe will cause the child to leave the guardian, then it would amount to taking away the child, however, if child follows a person even when a person does not do any act meant to entice a child to leave his guardian, he cannot be held responsible. For example, if a child follows an icecream vendor, without any enticement from the vendor, while the guardian fails to keep the watch, the vendor cannot be held guilty under this section.

In **Chajju Ram vs State of Punjab AIR 1968,** a minor girl was taken away out of the house for only about 20 - 30 yards. it was held that it was kidnapping because distance is immaterial.

Kidnapping is complete as soon as the minor or the person with unsound mind leaves the custody of the guardian. It is not a continuing offence. Thus, when a child is kidnapped from place P1 and taken to place P2 and then from P2 to P3, kidnapping was done only once.

Abduction
Section 362 of IPC defines Abduction as follows -

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.

It means compelling a person, or to induce him to go from where he is to another place. The essential ingredients are -

A person goes from one place to another - A person cannot be abducted at the same place where he is. For abduction to take place, the person should physically move from one place to another.

Either by forcible compulsion or by inducement - The movement of the person must be because of some compulsion or because of some inducement. For example, A threatens B on gun point to go from his house to another city. Here, A has compelled B to go from his house and is thus guilty under this section.

Here, the age of the abducted person is immaterial. Thus, even a major can be abducted if he is forced to go from one location. But if a minor is abducted, it may amount to Kidnapping as well. Further, it is a continuing offence. As long as a person is forced to go from place to place, abduction continues.

Differences among Kidnapping from India, Kidnapping from lawful guardian, and Abduction -

Kidnapping from India (Section 360)	**Kidnapping from lawful guardian (Section 361)**	**Abduction (Section 362)**
A person is taken out of the limits of India.	A person is taken away from the lawful guardian.	A person is compelled by force or induced by deception to go from any place.
Age of the person is immaterial.	The person must be less than 16 yrs of age if male, less than 18 if female, or of unsound mind.	Age of the person is immaterial.
It is not a continuing offence.	It is not a continuing offence.	It is a continuing offence.
The person is conveyed without his consent.	Consent of the person kidnapped is immaterial.	Person moves without his consent or the consent is obtained by decietful means.
It can be done without use of force.	It can be done without use of force or deception.	It is always done by the use of force or deception.

New Rape in Indian Penal Code, 1860

Criminal Law (Amendment) Act, 2013

A Criminal Law (Amendment) Act, 2013 passed to amend the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012. It amends sections 100, 228A, 354, 370, 370A, 375, 376, 376A, 376B, 376C, 376D and 509 of Indian Penal Code, 1860. It also inserts new sections 166A, 166B, 326A, 326B, 354A, 354B, 354C and 354D in Indian Penal Code, 1860. It also amends sections 26, 54A, 154, 160, 161, 164, 173, 197, 273, 309, 327 and First Schedule of Code of Criminal Procedure, 1973. It also inserts new sections 357B and 357C of Code of Criminal Procedure, 1973. It also amends sections 114, 119 and 146 of Indian Evidence Act, 1872. It also

inserts new sections 53A in Indian Evidence Act, 1872. It also amends section 42 of Protection of Children from Sexual Offences Act, 2012.

The Criminal Law (Amendment) Bill, 2013 is an Indian legislation passed by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013, which provides for amendment of Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 on laws related to sexual offences.[111121131] The Bill received Presidential assent on 2 April 2013 and deemed to came into force from 3 February 2013. It was originally an Ordinance promulgated by the President of India, Pranab Mukherjee, on 3 February 2013, in light of the protests in the 2012 Delhi gang rape case.[14151]

Contents

Background: 2012 Delhi gang rape case

On 16 December 2012 a female physiotherapy intern[6] was beaten and gang raped in Delhi. She died from her injuries thirteen days later, despite receiving treatment in India and Singapore. The incident generated international coverage and was condemned by the United Nations Entity for Gender Equality and the Empowerment of Women, who called on the Government of India and the Government of Delhi "to do everything in their power to take up radical reforms, ensure justice and reach out with robust public services to make women's lives more safe and secure".[121] Public protests took place in Delhi, where thousands of protesters clashed with security forces. Similar protests took place in major cities throughout the country.

On 22 December 2012, a judicial committee headed by J. S. Verma, a former Chief Justice of India, was appointed by the Central government to submit a report, within 30 days, to suggest amendments to criminal law to sternly deal with sexual assault cases. The Committee submitted its report after 29 days on 23 January 2013, after considering 80,000 suggestions received by them during the period from public in general and particularly eminent jurists, legal professionals, NGOs, women's groups and civil society.[8]M The report indicated that failures on the part of the Government and Police were the root cause behind crimes against women. Major suggestions of the report included the need to review AFSPA in conflict areas, maximum punishment for rape as life imprisonment and not death penalty, clear ambiguity over control of Delhi Police etc.[m]mi

The Cabinet Ministers on 1 February 2013 approved for bringing an ordinance, for giving effect to the changes in law as suggested by the Verma Committee Report.-121 According to Minister of Law and Justice, Ashwani Kumar, 90 percent of the suggestions given by the Verma Committee Report has been incorporated into the Ordinance.-131 The ordinance was subsequently replaced by a Bill with numerous changes, which was passed by the Lok Sabha on 19 March 2013.-14

The Criminal Law (Amendment) Ordinance, 2013

New offences

This new Ordinance created some new offences or have expressedly created certain offences which were dealt under related laws. These new offences like, acid attack, sexual harassment, voyeurism, stalking has been incorporated into the Indian Penal Code (IPC).

Section	Offence	Punishment	Notes
326A	Attempt to Acid attack	Imprisonment not less than ten years but which may extend to imprisonment for life and with fine which may extend to ten lakh rupees	Gender neutral
326B		imprisonment not less than five years but which may extend to seven years, and shall also be liable to fine	Gender neutral
354A		Imprisonment upto one year, or with fine, or with both in other cases	

326A Acid attack

Rigorous imprisonment upto five years, or with fine, or with both in case of offence described in Sexual clauses (i) & (ii)

harassment

(ii) a demand or request for sexual favours; or

Gender neutral

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

Public 354B disrobing of woman	unwelcome physical, verbal or nonverbal conduct of sexual nature. Assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place
354C Voyeurism Imprisonment not less than three years but which may extend to seven years and with fine. In case of first conviction, imprisonment not less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.	Watching or capturing a woman in "private act", which includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy, and where the victim's genitals, buttocks or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the person is doing a sexual act that is not of a kind ordinarily done in public. (iii) making sexually coloured remarks; or (iv) forcibly showing pornography; or
354D Stalking Imprisonment not less than one year but which may extend to three years, and shall also be liable to fine (v) any other	Gender neutral. Whoever follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or whoever monitors the use by a person of the internet, email or any other form of electronic communication, or watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person, commits the offence of stalking

Changes in law

Section 370 of Indian Penal Code (IPC) has been substituted with new sections, 370 and 370A which deals with trafficking of person for exploitation. If a person (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by using threats, or force, or coercion, or abduction, or fraud, or deception, or by abuse of power, or inducement for exploitation including prostitution, slavery, forced organ removal, etc. will be punished with imprisonment ranging from

atleast 7 years to imprisonment for the remainder of that person's natural life depending on the number or category of persons trafficked.[1151] Employment of a trafficked person will attract penal provision as well.[1151]

Change in definition of rape under IPC

The most important change that has been made is the change in definition of rape under IPC. The word *rape* has been replaced with *sexual assault* in Section 375, and have added penetrations other than penile penetration an offence. The definition is broadly worded and gender neutral in some aspect, with acts like penetration of penis, or any object or any part of body to any extent, into the vagina, mouth, urethra or anus of another person or making another person do so, apply of mouth or touching private parts constitutes the offence of sexual assault. The section has also clarified that penetration means "penetration to any extent", and lack of physical resistance is immaterial for constituting an offence. Except in certain aggravated situation the punishment will be imprisonment not less than seven years but which may extend to imprisonment for life, and shall also be liable to fine. In aggravated situations, punishment will be rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine. A new section, 376A has been added which states that if a person committing the offence of sexual assault, "inflicts an injury which causes the death of the person or causes the person to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean the remainder of that person's natural life, or with death."[1161] In case of "gang rape", persons involved regardless of their gender shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life and shall pay compensation to the victim which shall be reasonable to meet the medical expenses and rehabilitation of the victim. The age of consent in India has been increased to 18 years, which means any sexual activity irrespective of presence of consent with a woman below the age of 18 will constitute statutory rape.

Certain changes has been introduced in the CrPC and Evidence Act, like the recording of statement of the victim, more friendly and easy, character of the victim is irrelevant, presumption of no consent where sexual intercourse is proved and the victim states in the court that there has been no consent, etc.

Criticisms

The Criminal Law (Amendment) Ordinance, 2013 has been strongly criticised by several human rights and womens' rights organisations for not including certain suggestions recommended by the Verma Committee Report like, marital rape, reduction of age of consent, amending Armed Forces (Special Powers) Act so that no sanction is needed for prosecuting an armed force personnel accused of a crime against woman.[~~117111811191~~] The Government of India, replied that it has not rejected the suggestions fully, but changes can be made after proper discussion.[~~120~~11211]

The Criminal Law (Amendment) Act, 2013

The Bill was passed by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013, making certain changes from the provisions in the Ordinance. [22][23][24] The Bill received Presidential assent on 2 April 2013 and came into force from 3 April 2013. The changes made in the Act incomparison with the Ordinance is listed as follows:

	Changes
	Fine shall be just and reasonable to meet medical expenses for treatment of victim, while in the Ordinance it was fine upto Rupees 10 lakhs.
	"Clause (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature" has been removed. Punishment for offence under clause (i) and (ii) has been reduced from five years of imprisonment to three years. The offence is no longer gender-neutral, only a man can commit the offence on a woman.
Offence Acid attack	The offence is no longer gender-neutral, only a man can commit the offence on a woman. The offence is no longer gender-neutral, only a man can commit the offence on a woman. The definition has been reworded and broken down into clauses, The exclusion clause and the following sentence has been removed "or watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person, commits the offence of stalking". Punishment for the offence has been changed; A man committing the offence of stalking would be liable for imprisonment up to three years for the first offence, and shall also be liable to fine and for any subsequent conviction would be liable for imprisonment up to five years and with fine.
Sexual harassment	"Prostitution" has been removed from the explanation clause
Voyeurism	
Stalking	
Trafficking of person	
Rape	

The word *sexual assault* has been replaced back to *rape.* The offence is no longer gender-neutral, only a man can commit the offence on a woman. The clause related to touching of private parts has been removed.

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Section 377 of the Indian Penal Code is a piece of legislation in India introduced during British rule of India that criminalises sexual activity "against the order of nature." The section was read down to decriminalize same-sex behaviour among consenting adults in a historic judgement by the High Court of Delhi on 2 July 2009 in Naz Foundation v. Govt. of NCT of Delhi .Section 377 continues to apply in the case of sex involving minors and coercive sex.

Section 377 Unnatural offences.-- Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this **section.**

In a landmark judgment, ***Naz Foundation v. Govt. of NCT of Delhi*** 2009 the Delhi High Court struck down the provision of Section 377 of the Indian Penal Code which criminalised consensual sexual acts of adults in private, holding that it violated the fundamental right of life and liberty and the right to equality as guaranteed in the Constitution.

A Division Bench of Justice A.P. Shah and Justice S. Muralidhar in its 105-page order said: "We declare that Section 377 of the IPC, insofar as it criminalises consensual sexual acts of adults in private, is violative of Articles 21 [Right to Protection of Life and Personal Liberty], 14 [Right to Equality before Law] and 15 [Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex or Place of Birth] of the Constitution.

"We hold that sexual orientation is a ground analogous to sex, and that discrimination on sexual orientation is not permitted under Article 15," the judgment said.

However, the court clarified that "the provisions of Section 377 will continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors."

The judges also said that by adult they meant "everyone who is 18 years of age and above."

"A person below 18 would be presumed not to be able to consent to a sexual act," the judgment said.

The Bench further said that "this clarification will hold till, of course, Parliament chooses to amend the law to effectuate the recommendation of the Law Commission of India in its 172nd Report which, we believe, removes a great deal of confusion."

The judgment also made it clear that it would not result in re-opening of criminal cases involving Section 377 that had already attained finality.

The verdict came on a PIL plea by Delhi-based non-government organisation Naz Foundation that the Section 377 provision criminalising sexual acts between consenting adults in private violated Articles 14, 15, 19 and 21 of the Constitution. The Foundation works among sex workers in Delhi.

Unit IV

Define and explain Theft. Can a man commit theft of his own property? How is Theft different from Extortion? Under what circumstances Theft becomes Robbery? Differentiate between Robbery and Dacoity. A finds a valuable ring on the road. A sells it immediately without attempting to find the true owner. Is A guilty of any offence?

Theft

In general, theft is committed when a person's property is taken without his consent by someone. For example, A enters the house of B and takes B's watch without B seeing and puts it in his pocket with an intention to take it for himself. A commits theft. However, besides the ordinary meaning conveyed by the word theft, the scope of theft is quite wide. **Section 378** of IPC defines theft as follows -

Section 378 - 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.

Based on this definition, the following are the essential constituents of Theft -

1. **Dishonest intention to take property -** There must be dishonest intention on the part of the offender. As defined in **Section 24** of IPC, dishonestly means that there must be a wrongful loss to one or wrongful gain to another. For example, A quietly takes money from B's purse for his spending. Here, A causes wrongful loss to B and is thus guilty of theft. However,if the intention of the offender is not to cause a wrongful loss or wrongful gain, he does not commit theft even if he takes the property without consent. For example, A gives his watch to B for repairing. B takes the watch to his shop. A, who does not owe any debt to B for which B has the right to retain the watch, follows B and forcibly takes back the watch. Here, A does not commit theft because he has no dishonest intention. Similarly, when A, believing, in good faith, a property in possession of B, to be his, takes it from B, it is not theft.
   In **K. N. Mehra v. State of Rajasthan AIR 1957 S. C. 369,** SC held that proof of intention to cause permanent deprivation of property to the owner, or to obtain a personal gain is not necessary for the purpose of establishing dishonest intention. Thus, In **Pyarelal Bhargava vs State AIR 1963,** a govt. employee took a file from the govt. office, presented it to B, and brought it back to the office after two days. It was held that permanent taking of the property is not required, even a temporary movement of the property with dishonest intention is enough and thus this was theft.
2. **Property must be movable -** An immovable property cannot be stolen or moved from the possession so a theft cannot happen in respect of an immovable property. However, as per **Explanation 1** of section 378, as long as a thing is attached to earth, not being movable, is not subject of theft. However, as soon as it is severed from the earth, it is capable of being the subject of theft. Further, **Explanation 2** says that a moving affected by the same act that causes severance, may be theft.
   For example, a tree on A's land is not capable of being the subject of theft. However, if B, with an intention to take the tree, cuts the tree, he commits theft as soon as the tree is severed from the earth.
   In **White's case, 1853,** a person introduced another pipe in a gas pipeline and consumed the gas bypassing the meter. Gas was held to be a movable property and he was held guilty of theft.
3. **Property must be taken out of possession of another -** The property must be in possession of someone. A property that is not in possession of anybody cannot be a subject of theft. For example, wild dogs cannot be a subject of theft and so if someone takes a wild dog, it will not be theft. It is not important whether the person who possess the thing is the rightful owner of that thing or not. If the thing is moved out of mere possession of someone, it will be theft. For example, A, a coin collector, steals some coins from B, a fellow coin collector. A finds out that they were his coins that were stolen earlier. Here, even though B was not the rightful owner of the coins, he was still in possession of them and so A is guilty of theft.
   In **HJ Ransom vs Triloki Nath 1942,** A had taken a bus on hire purchase from B under the agreement that in case of default B has the right to take back the possession of the bus. A defaulted, and thereupon, B forcibly took the bus from C, who was the driver of the bus. It was held that the C was the employee of A and thus, the bus was in possession of A. Therefore, taking the bus out of his possession was theft.
4. **Property must be taken without consent** - In order to constitute theft, property must be taken without the consent of person possessing it. As per **Explanation 5,** consent can be express or implied. For example, A, a good friend of B, goes to B's library and takes a book without express consent of B, with the intention of reading it and returning it. Here, A might

have conceived that he had B's implied consent to take the book and so he is not guilty of theft. Similarly, when A asks for charity from B's wife, and when she gives A some clothes belonging to B, A may conceive that she has the authority to give B's clothes and so A is not guilty of theft.
In **Chandler's case, 1913,** A and B were both servants of C. A suggested B to rob C's store. B agreed to this and procured keys to the store and gave them to A, who then made duplicate copies. At the time of the robbery, they were caught because B had already informed C and to catch A red handed, C had allowed B to accompany A on the theft. Here, B had the consent of C to move C's things but A did not and so A was held guilty of theft.

5. **Physical movement of the property is must** - The property must be physically moved. It is not necessary that it must be moved directly. As per **Explanation 3,** moving the support or obstacle that keeps the property from moving is also theft. For example, removing the pegs to which bullocks are tied, is theft. Further, as per **Explanation 4,** causing an animal to move, is also considered as moving the things that move in consequence. For example, A moves the bullock cart carrying a box of treasure. Here, A is guilty of moving the box of treasure.
In **Bishaki's case 1917,** the accused cut the string that tied the necklace in the neck of a woman, because of which the necklace fell. It was held that he caused sufficient movement of the property as needed for theft.

Theft of one's own property

As per the definition of theft given in section 378, it is not the ownership but the possession of the property that is important. A person may be a legal owner of a property but if that property is in possession, legally valid or invalid, of another, it is possible for the owner to commit theft of his own property. This is explained in **illustration j** of section 378 - A gives his watch to B for repairs. B repairs the watch but A does not pay the repairing charges, because of which B does not return the watch as a security. A forcibly takes his watch from B. Here, A is guilty of theft of his own watch. Further, in **illustration k,** A pawns his watch to B. He takes it out of B's possession, having not payed to B what he borrowed by pawning it, without B's consent. Thus, he commits theft of his own property in as much as he takes it dishonestly.
In **Rama's Case 1956,** a person's cattle was attached by the court and entrusted with another. He took the cattle out of the trustee's possession without recourse of the court. He was held guilty of theft.

Extortion

In Extortion, a person takes the property of another by threat without any legal justification. Section 383 defines extortion as follows -

Section 383 - Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed, which may be converted into a valuable security, commits extortion.
For example, A threatens to publish a defamatory libel about B unless B gives him money. A has committed extortion. A threatens B that he will keep B's child in wrongful confinement, unless B will sign and deliver to A a promissory note binding B to pay certain moneys to A. B signs and delivers such noted. A has committed extortion.

The following are the constituents of extortion -

1. **Intentionally puts any person in fear of injury -** To be an offence under this section, putting a person in fear of injury intentionally is a must. The fear of injury must be such that is capable of unsettling the mind of the person threatened and cause him to part with his property. Thus, it should take away the element of freeness and voluntariness from his consent. The truth of the threat under this section is immaterial. For example, A's child is missing and B, who does not have A's child, threatens A that he will

kill A's child unless A pay's him 1 lac Rs, will amount to extortion. Similarly, guilt or innocence of the party threatened is also immaterial. In **Walton's case 1863,** the accused threatened to expose a clergyman, who had criminal intercourse with a woman of ill repute, unless the clergyman paid certain amount to him. He was held guilty of extortion.

However, in **Nizamuddin's case 1923,** a refusal by A to perform marriage and to enter it in the register unless he is paid Rs 5, was not held to be extortion.

2. Dishonestly induces a person so put in fear to deliver to any person any property - The second critical element of extortion is that the person who has been put to fear, must deliver his property to any person. Dishonest inducement means that the person would not have otherwise agreed to part with his property and such parting causes him a wrongful loss. Further, the property must be delivered by the person who is threatened. Though, it is not necessary to deliver the property to the person threatening. For example, if A threatens B to deliver property to C, which B does, A will be guilty of extortion.

The delivery of the property by the person threatened is necessary. The offence of extortion is not complete until delivery of the property by the person put in fear is done. Thus, **Duleelooddeen Sheikh's case 1866,** where a person offers no resistance to the carrying off of his property on account of fear and does not himself deliver it, it was held not to be extortion but robbery.

Extortion can also happen in respect of valuable security or anything signed that can become a valuable security. For example, A threatens B to sign a promissory note without the amount or date filled in. This is extortion because the note can be converted to valuable security.

In **Romesh Chandra Arora's case 1960,** the accused took a photograph of a naked boy and a girl by compelling them to take off their clothes and extorted money from them by threatening to publish the photograph. He was held guilty of extortion.

In **R S Nayak vs A R Antuley and another AIR 1986,** it was held that for extortion, fear or threat must be used. In this case, chief minister A R Antuley asked the sugar cooperatives, whose cases were pending before the govt. for consideration, to donate money and promised to look into their cases. It was held that there was no fear of injury or threat and so it was not extortion.

Theft (Section 378)	Extortion (Section 383)
The property is taken by the offender without consent.	The property is delivered to the offender by consent although the consent is not free.
There is no element of threat.	There is an element of threat or instillment of fear because of which the consent is given.
Only movable property is subject to theft.	Any kind of property can be subjected to extortion.
Offender takes the property himself.	Property is delivered to offender.

Robbery

Robbery is a severe form of either theft or extortion. In certain circumstances, a theft or an extortion gravitates to robbery. Section 390 defines robbery as follows -

Section 390 - In all robbery there is either theft or extortion.

When theft is robbery - Theft is robbery if, in order to the committing of the theft or in committing the theft, or in carrying away or attempting to carry away property obtained by theft, the offender for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt or of instant wrongful restraint.

When extortion is robbery - 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 of instant hurt, or of instant wrongful restraint to that person, or to some other person, and by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Thus, a theft becomes a robbery when the following two conditions are satisfied -

1. when someone voluntarily causes or attempts to cause
    1. death, hurt, or wrongful restraint or
    2. fear of instant death, instant hurt, or instant wrongful restraint
2. the above act is done
    1. in order to the committing of theft or
    2. committing theft or
    3. carrying away or attempting to carry away property obtained by theft.

For example, A holds Z down, and fraudulently takes Z's money from Z's clothes, without Z's consent. A has committed theft and in order to commit that theft, he voluntarily caused wrongful restraint to Z. Thus, A has committed robbery.

Robbery can be committed even after the theft is committed if in order to carrying away the property acquired after theft, death, hurt, or wrongful restraint or an instant fear of them is caused. The expression "for that end" implies that death, hurt, or wrongful restraint or an instant fear of them is caused directly to complete the act of theft or carrying away the property. In **Hushrut Sheik's case 1866,** C and D were stealing mangoes from tree and were surprised by B. C knocked down B and B became senseless. It was held to be a case of robbery.

Further, the action causing death, hurt, or wrongful restraint or an instant fear of them must be voluntary. Thus, in **Edward's case 1843,** a person, while cutting a string tied to a basket accidentally cut the wrist of the owner who tried to seize it. He was held guilty of only theft.

An extortion becomes a robbery when the following three conditions are satisfied -

1. when a person commits extortion by putting another person in fear of instant death, hurt, or wrongful restraint, and
2. such a person induces the person put in such fear to deliver the property then and there and

3. the offender is in the presence of the person put in such fear at the time of extortion.

For example, A meets Z on high road, shows a pistol, and demands Z's purse. Z in consequence surrenders his purse. Here, A has extorted the purse from Z by putting him in fear of instant hurt and being present at the time of committing the extortion in his presence, A has committed robbery.
In another example, A meets Z and Z's child on the high road. A takes the child and threatens to fling it down a precipice, unless Z delivers his purse. Z in consequence, delivers the purse. Here, A has extorted the purse from Z by causing Z to be in fear of instant hurt of his child who is present there. Thus, A has committed robbery.

For extortion to become robbery, the fear of instant death, hurt, or wrongful restraint is must. Thus, when A obtains property from Z by saying, "Your child is with my gang and will be put to death unless you send us ten thousand rupees", this is extortion but not robbery because the person is not put in fear of instant death of his child.

In presence of the person - The offender must be present where a person is put in fear of injury to commit the offence of robbery. By present, it means that the person should be sufficiently near to cause the fear. By his presence, the offender is capable of carrying out his threat immediately. Thus the person put in such fear delivers the property in order to avoid the danger of instant death, hurt or wrongful restraint.
In **Shikandar vs State 1984,** the accused attacked his victim by knife many times and succeeded in acquiring the ear rings and key from her salwar. He was held guilty of robbery.

DacoityAs per section 391, a Robbery committed by five or more persons is dacoity.
Section 391 - When five or more persons conjointly commit or attempt to commit robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding is said to commit dacoity.

Conjointly implies a collective effort to commit or attempting to commit the action. It is not necessary that all the persons must be at the same place but they should be united in their efforts with respect to the offence. Thus, persons who are aiding the offence are also counted and all are guilty of dacoity.

It is necessary that all the persons involved must have common intention to commit the robbery. Thus, dacoity is different from robbery only in the respect of number of people committing it and is treated separately because it is considered to be a more grave crime.

In **Ram Chand's case 1932,** it was held that the resistance of the victim is not necessary. The victims, seeing a large number of offenders, did not resist and no force or threat was used but the offenders were still held guilty of dacoity.

In **Ghamandi's case 1970,** it was held that less than five persons can also be convicted of dacoity if it is proved as a fact that there were more than 5 people who committed the offence by only less than five were identified.

However, if 5 persons were identified and out of them 2 were acquitted, the remaining three cannot be convicted of dacoity.

Answer to problem

A has not committed theft because the ring is not in possession of anybody. However, as a finder of goods, he has a responsibility to make good faith efforts to find the true owner. Since he has not made any efforts to do so, he is guilty of Dishonest misappropriation of property under Section 403.

CRIMINAL MISAPPROPRIATIONAND CRIMINAL BREACH OF TRUST

CRIMINAL MISAPPROPRIATION :

Section 403 of the Indian Penal Code deals with criminal misappropriation of property. Section 403 says that, 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.

Criminal misappropriation means dishonest misappropriation or conversion of movable property which is already in the possession of the offender. In the case of criminal misappropriation the offender gets the possession of the movable property innocently but subsequently uses the property dishonestly for his own benefit.
eg: A takes property belonging to Z out of Z's possession in good faith, believing, at the time when he takes it, that property belongs to himself. A is not guilty of theft ; but if A, after discovering his mistake, dishonestly appropriates the property to his own use he is guilty of an offence under this section.

Criminal misappropriation takes place when the possession has been innocently come by, but where, by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent[11.

Misappropriation is the wrongful setting apart or assigning of a sum of money to a purpose or use to which it should not be lawfully assigned or set apart[21.
To constitute criminal misappropriation, the property must have come into the possession of the accused innocently in the first instanceOJ.

The chief element for a conviction under section 403 is the dishonest misappropriation or conversion to one's own use. In the absence of any overt act on the part of the accused no dishonest motive can be imputed to him simply because he has detained certain documents in his custody[41.

Dishonestly misappropriates or converts to his own use

There are two things necessary before an offence under section 403, IPC can be established. Firstly that the property must be misappropriated or converted to the use of the accused, and secondly, that he must misappropriate or covert it dishonestly.

Essential Ingredient of Criminal misappropriation

i) The property must be a movable one.

ii) There should be a dishonest misappropriation or conversion of a property for a person's own use. Temple property

The property of an idol or a temple must be used for the purpose of that idol or temple; any other use would be a malversation of that property, and if dishonest, would amount to criminal misappropriation{5J.

Retention of money paid by mistake

Where a money is paid by mistake to a person, and such person, either at the time of receipt or at anytime subsequently, discovers the mistake, and determines to appropriate the money, that person is guilty of criminal misappropriation^].

The offence of criminal misappropriation is non cognizable, bailable and compoundable with the permission of the court.

Section 404 deals with dishonest misappropriation of property possessed by deceased person at the time of his death.

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

This section relates to a description of property needing protection. The essential ingredient of offence under section 404, was the knowledge on the part of the accused that the property in question as in possession of the deceased person at the time of that person's death and had not since been in the possession of any person legally entitled to such possession.

Dhulji vs Kanchan 1956 CriLJ 224

Section 404 deals with dishonest misappropriation or dishonest conversion of property peculiarly needing protection particularly when the previous owner, who was possessed of it, is dead and the subsequent owner has not obtained possession thereof. The Section prescribes different sentences where the offence is committed by strangers and when the offence is committed by persons who occupy position of confidence.Thus if the word property in Section 404, I.P.C. is read as movable property it will mean that offence under Section 404, I.P.C. is an aggravated form of an offence under Section 403, I.P.C.It is for this reason that a provision is made by which dishonest misappropriation or conversion under these circumstances is made specially punisnable with a higher

sentence. It is clear that in the case of immovable property no such risk is involved except where the immovable property is first demolished and converted into moveable property and thereafter it is dishonestly misappropriated or converted.
It is therefore clear that the word property in Section 404, I.P.C. can mean no other property

Both Calcutta and Bombay High Courts have taken the view that the word property in Section 404, I.P.C. does not include immovable pro-perty vide - 'Jugdown Sinha v. Queen Empress' 23 Cal 372 (A) and-'Reg v. Girdhar' 6 Bom HCR Cr 33 (B).

In 'Daud Khan v. Emperor' AIR 1925 All 675 (C), Allahabad High Court differed from this view mainly on the ground that the word used in Section 404, I.P.C., is 'Property' and not 'movable property' as in Section 403, I.P.C.

OF CRIMINAL BREACH OF TRUST :

Section 405 of the Code defines Criminal Breach of Trust. Under section 405, whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriated or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or any legal contract, express or implied, which he has made touching the discharge of such trust or willfully suffers any other person so to do, commits 'criminal breach of trust'.
eg: A, being executer to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriated them to his own use. A has committed criminal breach of trust.

A person is liable to e punished for criminal breach of trust if the following conditions are satisfied:
i) He should have been entrusted with property or with any dominion over property.
ii) He should have dishonestly misappropriated or converted the property so entrusted to his own use; or
iii) He should have used or disposed of that property in violation of any direction of law prescribing the mode in which trust was to be discharged or of any legal contract

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

In Shiv Sagar Tiwari Case[71, the Supreme Court held that a Minister is in the position of a trustee in respect of public property under his charge and discretion and hence he must deal with people's property in just and fair manner, failing which he or she should be personally liable for criminal breach of trust.

In Karanavir Case[8] , Supreme Court ruled that once entrustment of money is proves, prosecution need not prove misappropriation and it is for the accused to prove hoe the property entrusted to him was dealt with.
In the recent case of Dalip Kaur v. Jagnar Singh[9] , the supreme court reiterated that , "405 - Criminal breach of trust. Whoever, being in any manner entrusted with property, @page-SC3193

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

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[4] Ram Bais Rai v. Emperor, AIR 1918 pat 489.

[5] Gadgayya v. Guru Siddeshvar, (1897) Unrep Cr C 919.

[6] Sham Soondur v. (1870) 2 NWP 475.

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[8] Karanavir v. State of H.P. AIR 2006 SC 2211.

[9] Dalip Kaur v. Jagnar Singh AIR 2009 SC

3191. **Stolen Property Sec. 410**

Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designed as **"stolen property".**

Dishonestly receiving stolen property- Section 411 of Indian Penal Code

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

Dishonestly receiving property stolen in the commission of a dacoity - Section 412 of Indian Penal Code

Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with [imprisonment for life 1, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Habitually dealing in stolen property - Section 413 of Indian Penal Code

Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with [imprisonment for life 1, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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

Cheating: An Offence under Indian Penal Code

Cheating is a offence under **Section 415 of Indian Penal Code.** According to this section "Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to **"cheat".**

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

Illustrations:

- A , by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
- A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.
- A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

Essential Ingredients of Cheating

The section is divided into two distinct clauses. Under the first clause, the person deceived must have been fraudulently or dishonestly induced to deliver property. The second clause does not require the inducement to be fraudulent or dishonest. But it requires that by reason of the intentional inducement, damage or harm in body and mind, reputation or property was caused to the person deceived. Thus, cheating may be committed in either of the two ways.

1. *Deception:-* It is the essence of the offence of cheating. The word "deceiving" means causing to believe what is false, or misleading as to mater of fact, or leading into error. It means a trick or sham committed by words or conduct. It is a willful misrepresentation to mislead another. It has to shown that that misrepresentation made was false to the accused's knowledge at the time when it was made and the intention was to mislead a person. If the representation is made innocently, it will not amount to deception. Deceit must have been practiced before the property is delivered. Dishonest intention at the inception of the delivery of property is the gist of the offence.
2. *Fraudulent or dishonest intention:-* Section 415 requires the deceiving of a person as well as inducing him with intention to cause wrongful gain to one person or wrongful loss to another. Cheating amounts to inducing the victim to enter into a bargain, which he would not enter into, if he knew the real facts. A breach of promise may be unethical, but cannot be criminal unless the promise and its breach were the result of the necessary mens rea. The mere puffing of goods by vendor is no offence. A simple misrepresentation of the quality of goods is not a false pretence. But when the thing sold is of an entirely different description from what it is represented to be and the statements made are not in form of an expression of opinion or mere praise, the offence of cheating will be committed e.g. where a gold chain represented to be of 15 -carat but was only of 6-carat.
3. *Any property: -* The word 'property' as has been used in its widest sense in Section 415. The 'property' does not have to be a thing which has market or pecuniary value. Thus, documents like passport, admit-cards, etc. are also 'property' under this section.

4. *Inducing person deceived to delivered property:* - Mere deception is not in itself sufficient to constitute cheating. It will be cheating only when on account of the deception practised, the complainant is induced to deliver or part with property or to do or omit to do certain acts which were detrimental to his interest.
5. *Causes or is likely to cause damage or harm in body, mind, reputation or property:*- It is not necessary that the resulting damage or likelihood of damage should have been within actual contemplation of the accused when the deceit was practiced. But the person deceived must have acted under influence of deceit, the facts must establish damage or likelihood of damage and the damage must not be too remote.

Cheating by Personation:- Under section 416, a person commits cheating when pretends to some other person, real (living or deceased) or imaginary e.g. false representation as to caste, martial status, economic status, etc. Where the accused representing himself to be B at a University examination , got a hall-ticket under the examinee's name and wrote papers in B's name , it was held that the accused has committed cheating by Personation and the offence of forgery. The punishment for cheating by Personation is provided in Section 419 i.e. Imprisonment up to 3 years, or fine or both.

Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect is defined in Section 418. This section deals with cheating a guardian, a trustee, a pleader, an agent, or manager of Hindu family or by directors or managers of a bank in fraud of the shareholders and depositors.

Cheating and Dishonestly Inducing Delivery of Property is defined in Section 420. This section deals with certain specified classes of cheating. It deals with the cases of cheating whereby the deceived person is dishonestly induced:

1. to deliver any property to any person; or
2. to make, alter or destroy (a) the whole or any part of a valuable security , or ,(b) anything which is signed or sealed and which is capable of being converted into valuable security.

The difference between Section 415 and Section 420 is that where in pursuance of the deception, no property passes but inducement generated in the mind, the offence comes under Section 415. But where, in pursuance of the deception property is delivered; the offence is punishable under Section 420. Punishment for offence under Section 415 is one year, while under Section 420, up to 7 years imprisonment.

The Case: Bhola Nath v. State 1982 Cr. L J. 1482 (Delhi) This case is regard to deception being done by the petitioner regarding the payment of a cheque given by them to complainant for the purpose of inducing them to deliver certain property to the petitioner. The Cheques given were post dated and were not cleared by the bank for lack of funds in the particular account

on which cheques were drawn. That bank account was opened by the petitioner for that business deal only which clearly shows their intention to deceive the complainant. The court emphasize on harmonious construction of the various statues ton derive the true meaning out of them. Also the matter of jurisdiction was being looked into by the court.

This case was more near to English cases in its approach as it stresses on the point of unwillingness to pay amount in bank then on the mere argument that dispute was there with regard to quality of the goods.This was a revision petition in front of Delhi High Court to again see in the decision of lower court.

425- Mischief -

Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".
Explanation 1.-It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not. Explanation 2.-Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations

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

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

Criminal trespass
Section 441.

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

Or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

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

Forgery

Forgery consists of filling in blanks on a document containing a genuine signature, or materially altering or erasing an existing instrument. An underlying intent to defraud, based on knowledge of the false nature of the instrument, must accompany the act. Instruments of forgery may include bills of exchange, bills of lading, promissory notes, checks, bonds, receipts, orders for money or goods, mortgages, discharges of mortgages, deeds, public records, account books, and certain kinds of tickets or passes for transportation or events. Statutes define forgery as a felony.

Section 464. Making a false document

464. Making a false document

A person is said to make a false document-

First- Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or
Thirdly- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or the nature of the alteration.

Illustrations

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

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

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

Illustrations

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

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

Illustration

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

Defamation

There is a need to balance the public right to free speech & expression with the private right to reputation. Legislation about

defamation is an attempt to do the same.

Defamation is a Civil as well as a criminal offence. Under Criminal Law, Indian Penal Code, defines defamation as - "Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person." (1)

Explanations in IPC-

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

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

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

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

Essentials:

Under **Criminal Law** three essentials are to be proved to establish wrong of

Defamation -

1. There should be existence / publication of an imputation made by a person.

2. Such imputation may be words spoken or written signs, or visible representation.
3. It should be made to injure or having knowledge to believe that it will injure reputation of a person.

Civil Law about Defamation is still governed by English Common Law rules, according to which 4 essentials are to be proved -

1. The statement be defamatory.

2. Reference of it to the plaintiff.

3. Publication of it by defendant.

4. Statement must be substantially untrue. **Exceptions:**

There are ten exception mentioned in **Indian Penal Code** under which a person can escape his liability from an action of Defamation:

1. True Imputation made / published for the 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 or not it is for the public good is a question of fact." It is also sometimes referred as *plea for justification,* according to which it's not only essential to prove that the imputation was substantially true but also that it, was made / published for the public good.

2. Public conduct of public servants "It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct and no further." It is essential that it should be necessarily an expression of opinion and not that statement of fact, and further expressed in good faith - ' done honestly' { Sec.3(22) of General clauses act } & 'with due care and attention' { sec.52 } whose measure can be that of a prudent man.

3. Public Question of a Person "Conduct of any person touching any public question- It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further" here also it's essential that the statement be an opinion and made in good faith.

4. Publication of reports of proceedings of Courts- "It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings." It's essential that it be just a report and no further expression of statements on conduct of persons or proceedings and further it must be substantially true.

5. Merits of case decided in Court or conduct of witnesses and others concerned- "It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further." it's essential that the statement be an opinion and made in good faith.

6. Merits of public performance- "It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further." A public performance can be work like a book, drama, movie etc, and statement made should be an opinion and that too expressed in good faith.

7. Censure passed in good faith by person having lawful authority- "It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates." Censure cannot be considered to be defamation if it's passed in course of exercising authority like the authority of a father over son, a teacher's over student.

8. Accusation preferred in good faith to authorized person- "It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject- matter of accusation". The accusation should be made in good faith and that too within extent of lawful authority over the other person.

9. Imputation made in good faith by person for protection of his or other's interests- "It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good." Though it is a vague exception but the Imputation should be made in good faith and for interest of own or some other person concerned. **10. Caution intended for good of person to whom conveyed or for public good-** "it is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is

interested, or for the public good" It is generally a warning to someone for protection of his / public good about another persons character in good faith.

Under **Civil Law** all the general defences, which are available for an action of Torts, can be pleaded for action of defamation too but there are three additional defences for Defamation.

1. Truth / Justification Being true of a defamatory statement is a complete defence in civil action unlike criminal action the reason being that the law allows no one to claim damages for a character which one never possessed or to presume undeserved dignity, thus plea of justification; truth of the statement published is a complete defence.

2. Fair Comment It is necessary that the imputation be expression of opinion or a comment rather than being a statement of fact, it should be fair i.e. honestly expressed and without any malice further it is necessary that the statement should be made/publicised for public good; all these are matter of facts.

3. Protection of interest When the statement is made for general or public interest, without any malice no action for defamation lies.

4. Privilege There are circumstances when the Law grants Privilege to a person to express himself, in these occasions Right to speech and expression overshadows or eclipses one's right to reputation. There are two kinds of privileges which can be pleaded - Absolute and Qualified privilege. **Absolute privilege** can be taken by-

(a) Members of parliament of both the houses about anything stated in course of Parliamentary proceedings in side four walls of the house. {Art.105 (2) for Lok Sabha & 194(2) for Rajya Sabha}

(b) Statements made by Judges, counsels, witnesses, or parties in course of judicial proceedings before any court of Law provided that the statements are not such that have no relevance at all in the case.

(c) Communication relating to affairs of state made by one officer of state to another in course of duty. In these circumstances no civil action for defamation lies even though the statement is absolutely false and is made with malafied intentions.

Qualified Privilege can be pleaded in these cases -

(c) Statement made in performance of a duty may be legal, social, or moral duty.

(d) Statement made for protection of general or public interest.

(e) Fair report of Public proceedings like judicial, parliamentary proceedings and public meetings. In these cases privilege is only considered when the statement is made without any malice.

Kinds of Defamation

Though Indian Law does not distinguish, but defamation is of two types, as contained in English law too -

Slander and Libel; when a defamatory imputation is made on a temporary source of communication like verbally defaming someone then it is classified as **Slander;** when defamatory imputation is made on a permanent source of communication like publication in a newspaper or on electronic source, it's called as **Libel.**

Liabilities of different persons

Author: of an article or book, is primarily liable for any illegality in the work like obscenity, defamation.

Contributor: would be liable if the article contributed by him have legal discrepancy. **Editor:** is individually liable

for any illegal matter published in his paper, magazine, etc.

News - Vendor / Bookseller: Under Civil Law a Bookseller is not liable for defamatory publication of material sold by him unless he actually knew it was defamatory, or he could have with due diligence, come to know that it was
defamatory. Under Criminal Law IPC Sec 502, he shall be liable only if he knew about defamatory property of the material he sold at the time of selling it.

Printer: is individually liable for printing of objectionable matter.

Proprietor: can be made liable for any matter published in his paper, magazine, etc only if there's positive proof that he was responsible for publishing it or for its selection for publication.
Publisher: is liable for anything published in his paper, magazine, etc which is defamatory. **Reporter:** is liable like printer,

publisher, editor, if he sends some work which is defamatory in character. Defamation - Recent Law

Information Technology Act, 2000 - Defamation through E-Mails will be punishable with liability for compensation. Threat may result in imprisonment up to 2 years.

Case Law-Khushwant Singh v. Maneka Gandhi AIR 2002 Delhi 58

Judges : Devinder Gupta, Sanjay Kishan Kaul-'It cannot be said that an autobiography must relate to the person concerned directly. An autobiography deals not only with the individual by whom it is written but about the people whom he claims to have interfered with. This is a matter between the author and the people who want to read him. Fetters cannot be put on to what an author should and should not write. It is the judgment of the author." Para 73

Unit V

Bigamy Section 494

What is bigamy? Bigamy is the act of entering into a marriage with someone, while still being legally married to another. In other words, it is a condition of having two spouses at the same time; a man may have two wives or a woman may have two husbands. Either way when this happens, the second marriage is considered null and void and is therefore annulled.

The person who knowingly enters into the second marriage, that is, the bigamous marriage is guilty of the crime of bigamy. Most often the act of bigamy takes place accidentally. For instance, if one thinks that their divorce has been finalized, but in reality it isn't and they go ahead with their second marriage, then the second marriage is considered the bigamous marriage. However, there are some cases where it is done intentionally so as to acquire another's property and wealth. The person accused of this fraudulent scheme is then prosecuted for bigamy.

Sec.494 of IPC says:

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either descripttion for a term which may extend to seven years, and shall also be liable to fine.

Exception. —This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

Exception is understandable in that if a person whose marriage with such husband or wife means the husband and wife of first marriage is declared void by a competent, this section is not applicable to such person. Second exception is, if a person contracts a marriage during life of a former husband or wife, who at the time of marriage is continually absent from such person for a period of seven years or not even heard of being alive, and provided person contracting subsequent marriage should not hide about fact relating to earlier marriage with the person he/she is marrying in subsequent marriage.

To that extent law is very clear. However, the problem is relating to interpretation of the main section viz.,
Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either descripttion for a term which may extend to seven years, and shall also be liable to fine.

Here, interestingly, the HC in the above quoted judgment had acquitted the offender based on a finding that, the marriage between Accused and Complainant has not been divorced and hence, during the subsistence of their marriage if the Accused marries the co-accused, such marriage itself is void in the eyes of law because the marriage took place during the subsistence of marital relationship with earlier spouse, and hence the accused has not married the co-accused at all, and for this reason he is not liable under Sec.494 of IPC. The HC relied on similar judgments of Calcutta HC and AP HC.

In Satyanarayana v. State of A.P. (1962 Mad LJ Cri 138) : (1962) 27 Cri LJ 644 where the learned Judge has observed that :-

"This object of the person committing bigamy and which is sought to be defeated by S. 494, Penal Code, by declaring it an offence, is not achieved if the second marriage is one which is no marriage at all in the eye of law, or which is otherwise void, in which case it cannot be said that there was a valid marriage, and the meaning of the word 'marries' in S. 494 of the Penal Code is not satisfied. There may be many instances where a second marriage may be no marriage at all and in which case there could be no question of bigamy, as, for example, where the parties are so closely related that a marriage between them is void according to their personal laws, or where the person sought to be taken in second marriage is himself or herself not eligible to be taken in marriage; and there may be many other instances, and it is unnecessary to notice all of them in this connection, I am inclined to agree with Mr. Rama Rao when he contends that the second marriage should be something which could be regarded as a marriage in the sense in which

marriages are understood and if it is no marriage at all and if it cannot have any validity in law, apart from the fact that by reason of its being a bigamous marriage it would be declared void it cannot be said that the offence of bigamy had been committed."

Here what is interesting to note is that in Sec.494, the word bigamy is not mentioned at all. It only says, Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine which means that anyone having a husband or wife living marries in any case in which such marriage is void by reason of taking place during the life of such husband or wife, shall be punished....here the fact that a subsequent marriage is void by virtue of already having a wife or husband is not an impediment to punish the offender. It only says, such marriage is void by reason of a person already having a spouse, it does not say - as the marriage is void because of the reason of a spouse already existing such marriage is not considered marriage at all hence bigamy has not been committed and hence the accused can be acquitted.
The fact that any marriage being void for any reason is not an impediment to punish the offender according to the main section. Whether a marriage is valid or not, is a point to be considered if it is a section relating to "bigamy". That is, the section is presumed to punish those people involved in "bigamy" and "bigamy" means one who has two wives or two husbands. And so if one has second husband or second wife, the requirement of law is that the marriage with second husband or second wife must not be void and valid in the eyes of law.

This is entirely true, if Sec.494 is a bigamy law, but the fact is Sec.494 is not a law of bigamy, it has nothing to do with whether a marriage is valid or not or void or not. In fact the section itself says clearly, "marries in any case in which such marriage is void by reason of its taking place during life of such husband or wi fe" which means that the section itself recognizes such marriage as a void marriage but the fact that it is void marriage is not a bar to avoid punishment to the offender. If it is wrongly presumed as a bigamy law, then a judge comes to the conclusion that a certain marriage is not valid marriage or it is a void marriage hence the second marriage is deemed to have not taken place, for that reason, Sec.494 is not applicable. However, nowhere in Sec.494 it is mentioned that it is a bigamy law.

If a marriage being a void marriage does not preclude liability on the accused, then other reasons adduced for a marriage being void also does not preclude liability on the accused.

This also means that law accords sanction to Court to punish the accused while simultaneously declaring that the accused is participating in a void marriage and the fact that is is a void marriage is not a bar to punish him. Hence the fact of solemnization of subsequent marriage and the relevance of evidence relating to solemnization of subsequent marriage becomes irrelevant because the law does not demand that it be a valid marriage in order that the offender be punished. Law itself says, it is void marriage even then, the accused is punishable.

Adultery

The word "adultery' has been derived from the Latin term "adulterium' and is defined as consensual sexual relationship between a married woman and an individual other than his/her spouse. Almost all religions throughout the world condemn it and treat it as an unforgivable offense. However, this may not be reflected in the legal jurisdictions of the countries but adultery is recognized as a solid ground for divorce in all penal laws.

The Indian penal code also recognizes adultery as a crime and a punishable offence. This law comes under the criminal law of India and has been placed under chapter XX that deals with crimes related to marriage. The laws as stated in the Indian penal code are:-
Section-497- Adultery "Whoever has sexual intercourse with a person who is and whom he know s or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case, the wife shall not be punishable as an abettor."

Section-498- Enticing or taking away or detaining with criminal intent a married woman "Whoever takes or entices any woman who is and whom he knows or has reasons to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".

These laws were drafted in 1860 when India was under British rule and the condition of Indian woman was pathetic. During those periods, a man could've several wives and women were socially and economically dependent on men. Women were treated as an object and considered the property of men. Thus, while drafting the laws it was presumed that women are hapless victims, not capable of committing such an offence, instead, it must be a man who will entice her and involve her in an adulterous relationship. But these laws definitely treat a man and a woman unequally in the institution of marriage. According to these laws:-

1. Man is always a seducer and the married woman just an innocent and a submissive victim.
2. Wife is no more than a chattel to her husband and a third person had committed the crime of intruding upon his marital possession by establishing a physical relationship with his wife.
3. Only the husband of the treacherous woman (or a person who had care of the married woman) is a distressed party and he is liable to file a complaint against the third party.
4. There is no provision in the law for a woman to file a complaint against her adulterous husband. If a married man commits adultery with an unmarried woman or a widow or with a married woman with the consent of her husband, his wife is not regarded as an aggrieved party and she is not permitted to make any official grievance against her husband.

Considering the changes our society has witnessed in recent times, the Indian penal code must revise these laws and upgrade them keeping in mind the equality of men and women and enabling women to have more freedom and liberty in making their choices.

The payment of a **dowry** gift, often financial, has a long history in many parts of the world. In India, the payment of a dowry was prohibited in 1961 under Indian civil law and subsequently by Sections 304B and 498a of the Indian Penal Code were

enacted to make it easier for the wife to seek redress from potential harassment by the husband's family. Dowry laws have come under criticism as they have been misused by women and their families.
In India, there are civil laws, criminal laws and special legislative acts against the tradition of Dowry. Someone accused of taking dowry is therefore subject to a multiplicity of legal processes.

IPC Section 304B

This Section of the Indian Penal Code was inserted by a 1986 amendment. The wording of the law states: Section 304B. Dowry death

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death.

Explanation:-For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.[m]

IPC Section 498A

Section 498A was inserted into the Indian Penal Code in 1983 via an amendment. It reads:

498A. Husband or relative of husband of a woman subjecting her to cruelty.

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purpose of this section, "cruelty" means-

(a) 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

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her meet such demand.[181]

This section is non-bailable,non-compoundable (i.e. it cannot be privately resolved between the parties concerned) and cognizable.

Prosecution for a non-compoundable offense can only be quashed by a High Court of India under its powers under section 482 of Criminal Procedure Code of India. Usually, cases under 498A are quashed by mutual agreement when the husband and wife reconcile with each other, or agree to divorce by mutual consent.

After registration of an FIR for a cognizable, non-bailable offense, the police in India can arrest any and all of the accused named in the complaint.

Status of Second wife under Anti-Dowry Law- I [2008] DMC 279- Bombay High Court- Justice C.L. Pangarkar —Ranjana Gopalrao Thorat Vs. State of Maharashatra- Hindu Marriage Act,1955—Section 17—Bigamy—Second wife cannot assume a character as wife--- It is no marriage in eyes of law—[Pg.280 {Para6}]-- Indian Penal Code—Section 498A—cruelty—word "relative"—meaning of- "Person who is related to husband either by blood or marriage—Thus she does not fall within scope of Section 498A-- Indian Penal Code— Pg.280 {Para6}]

"Every Suicide After Marriage cannot be presumed to be Suicide due to Dowry Demand"- 2011[1] JCC Page No.668- In The High Court of Delhi- Hon'ble Mr. Justice Shiv Narayan Dhingra- Dated: - 2 December 2010- Rani Vs. State of NCT of Delhi- Criminal Appeal No. 93 of 2004- Indian Penal Code, 1860- Section 304B/ 498A Read With Section 34- Conviction- allegation of demanding of Rs.50,000/- and scooter were vague in nature- Whether it was done by husband, mother-in-law or father-in-law- Answers to all these questions are absent—Ingredients of Section 304B IPC were totally absent- Unnatural Death can be called a dowry death only if after making a demand made by accused is not fulfilled by perpetuation of cruelty upon the victim- The list of dowry show that both parties belonged to poor strata of society- No evidence, whatsoever was collected by police about the real facts- Every suicide after marriage cannot be presumed to be a suicide due to dowry demand- The tendency of the court should not be that since a young bride has died after marriage, now somebody must be held culprit and the noose must be made to fit some neck.

Criminal Intimidation-Section 503 of IPC
503. Criminal intimidation
Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not

legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

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

Illustration

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

Interpretation of Section 503:As implied by the words 'whoever threatens another', the section requires that a threat, in order to constitute criminal intimidation, must be communicated by one party to another. This is also necessary given that the basis of the offence is the effect of the threat on the mind of the person threatened, which presupposes that "it must be either made to him by the person threatening or communicated to him in some way." Communication of the threat need not be direct, and in the presence of the complainant- it is sufficient even if addressed to a third party, so long as it is intended to reach the victim.In addition, the threat made need not be targetted at any one person in particular. The offence under this section is made out if the threat is addressed to a class or group of persons. However, it must be aimed at a "defined and ascertained body of individuals. With regard to S. 503, it was noted that based on the interpretation given to the section by the Courts, the essential features of the offence are a threat of a certain kind, coupled with an intention of either causing the target of the threat to do, or abstain from doing, something he was not legally bound to do, or had a legal right to do, or of causing him alarm. In connection with this interpretation, it was noted that although the Indian law is adequate in most respects, the inclusion of 'alarm' in this section, as opposed to a section punishing insult, is incongruous and regrettable. This is because alarm can be caused very often, not by a threat, but simply by abuses and insults

504. Intentional insult with intent to provoke breach of the peace

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

187[505. Statements conducting to public mischief.

188[(1) Whoever makes, publishes or circulates any statement, rumour or report,-

(a) with intent to cause, or which is likely to cause, any officer, soldier, 189[sailor or airman] in the Army, 190[Navy or Air Force] 191[of India] to mutiny or otherwise disregard or fail in his duty as such; or

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

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

shall be punished with imprisonment which may extend to 192[three years], or with fine, or with both.

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

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

Exception- It does not amount to an offence, within the meaning. of this section when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it 193[in good faith and] without any such intent as aforesaid.]

506. Punishment for criminal intimidation

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

If threat be to cause death or grievous hurt, etc- and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 152[imprisonment for life], or with

imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or With fine, or with both.

507. Criminal intimidation by an anonymous communication

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

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

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

Illustrations

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

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

509. Word, gesture or act intended to insult the modesty of a woman

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

510. Misconduct in public by a drunken person

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

What do you mean by attempt to commit murder? Whether without causing injury can a person be held guilty of attempt to commit murder? Do the elements of Sec 511 (attempt to commit an offence) apply to section 307, 308, & 309 (attempt to commit murder, culpable homicide, and Suicide)?

Attempt to commit murder

Section 307 of IPC states that whoever does any act with intention or knowledge, and under such circumstances, that, if by that act he caused death he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act the offender shall be either liable to imprisonment for life.

This means that if a person intentionally does something to kill another and if the other person is not killed, he would be liable for attempt to murder. However, his action must be capable of killing. For example, if a person picks up a pebble and throws it on someone saying, "I will kill you", it is not attempt to murder because it is not possible to kill someone with a pebble. But if someone swings a thick lathi and misses the head of another person, it is attempt to murder.

Illustrations -

1. A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder. A is liable to punishment under this section.
2. A, with the intention of causing the death of a child of tender years, exposes it is a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.
3. A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of] this section.
4. A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z' s table or delivers it to Z's servant to place it on Z's table. A has committed the offence defined in this section.

Is Injury necessary

From the wordings of this section, it is clear that a person is liable under this section even if no injury is caused to anyone. However, if hurt is caused, the punishment is more severe. Further, as held in the case of **State of Mah. vs Balram Bama Patil 1983,** SC held that for conviction under sec 307, it is not necessary that a bodily injury capable of causing death must be inflicted but the nature of the injury can assist in determining the intention of the accused. Thus, this section makes a distinction between the act of the accused and its result.

Whether act committed must be capable of causing death

In **Vasudev Gogte's Case 1932,** the accused fired two shots at point blank range at the Governor of Bombay. However, it failed to produce any result because of defect in ammunition or intervention of leather wallet and currency. It was held that to

support conviction under this section the accused must have done the act with intention or knowledge that but for any unforeseen intervention, it would cause death. Thus, he was held guilty.

Penultimate Act not necessary
In the case of **Om Prakash vs State of Punjab, AIR 1961,** SC held that a person can be held guilty under this section if his intention is to murder and in pursuance of his intention he does an act towards its commission, even if that act is not the penultimate act. As per **J B K Sharma,** the intention of the culprit is the key and it must be gathered from all the circumstances and not merely from the location, number, and type of injury.

Section 307, 308, 309 and Section 511

Attempts are dealt with in IPC in three ways -
1. Some sections such as 196 and 197, deal with the offence as well an attempt for that offence.
2. Some sections such as 307 and 308 deal exclusively with an attempt of an offence.
3. The attempts for offenses that are not dealt with in above two are covered by section 511.

Thus, a case of attempt to murder may fall under section 307 as well as section 511. There is a conflict of opinion among the high courts regarding this matter. In the case of **R vs Francis Cassidy 1867, Bombay HC** held that section 511 is wide enough to cover all cases of attempt including attempt to murder. It further held that for application of section 307, the act might cause death if it took effect and it must be capable of causing death in normal circumstances. Otherwise, it cannot lie under 307 even if it has been committed with intention to cause death and was likely, in the belief of the prisoner, to cause death. Such cases may fall under section 511. However, in the case of **Queen vs Nidha 1891, Allahabad HC** expressed a contrary view and held that sec 511 does not apply to attempt to murder. It also held that section 307 is exhaustive and not narrower than section 511.

In the case of **Konee 1867,** it was held that for the application of section 307, the act must be capable of causing death and must also be the penultimate act in commission of the offence, but for section 511, the act may be any act in the series of act and not necessarily the penultimate act. However, this view has now been overruled by SC in the case of **Om Prakash vs State of Punjab AIR 1967,** where the husband tried to kill his wife by denying her food but the wife escaped. In this case, SC held that for section 307, it is not necessary that the act be the penultimate act and convicted the husband under this section.

Section 511 Attempts-

In every crime, there is first, intention to commit, secondly, preparation to commit it, thirdly, attempt to commit it. If the third stage, that is, attempt is successful, then the crime is complete. If the attempt fails the crime is not complete, but law punishes the person attempting the act. Section 511 is a general provision dealing with attempts to commit offences not made punishable, by other specific sections. It makes punishable all attempts to commit offences punishable with imprisonment and not only those punishable with death. An attempt is made punishable, because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is the same as if he had succeeded. Moral guilt, must be united to

Injury in order to justify punishment. As the injury is not as great as if the act had been committed, only half the punishment (half of life imprisonment is defined in Section 57 IPC) is awarded.

One of the most difficult questions in Criminal law which creates riddle is, "why the 'Attempt to commit an offence' is being criminalized?" How the penal law should treat those acts, which cross the stage of being preparatory to the commission of an offence, constitute an attempt to commit the offences, but for some reason are not actually completed, has been the subject of great amount of debate and discussion amongst jurists, judges and those concerned about criminal law. In other words what are the values that criminalize the Attempt?

The criminal law punishes not only completed crimes but also short of completion of crimes this category of uncompleted crimes is often called Inchoate crimes. The doctrine of inchoate crimes is applied specifically to three crimes; Attempt, Conspiracy, and Abetment. In this regard, incomplete criminal conducts raise a question as to whether it is proper to punish someone who has harmed no one or to set free determined to commit a crime. The criminal law answers the question by imposing lesser penalties for inchoate crimes than for completed crimes that have been attempted, abetted, conspired. (K.N.C.Pillai " Genaral Principle of Criminal Law", p. 199). Especially in attempt we have to see that the actors have done all they had intended to do but have still not realized their criminal objective. In relation to this we have to take glance of the stages of crime. In this assignment, I am going to deal with certain aspects which will justify how certain values criminalize the attempt. For this purpose there is need to discuss on the concept of attempt vis-a-vis elements of crime from the perspective of Inchoate crimes, and also how the attempt is being defined by distinguishing it from the preparation. And also to discuss criminalization of attempt with the help of English and Indian cases and through various tests which have been laid down by courts for distinguishing the values such as intention, preparation, Attempt to commit an offence

Preparation not Punishable- In general preparation is not punishable, because a preparation apart from its motive would generally be a harmless act. It would be impossible in most cases to show that the preparation was directed to a wrongful end, or was done with an evil motive or intent, and it is not the policy of law to create offences that in most cases it would be impossible to bring home the culprit, or which might lead to harassment of innocent persons.

Preparation punishable in Exceptional cases:- There are exceptional cases wherein the contemplated offence may be so grave that it would be of the utmost importance to stop it at initial stage and punish it at the preparatory stage itself. These are preparations thereto:-

1) Collecting arms, etc, with the intention of waging war against the Government of India (section 122, IPC);
2) Committing depredation on territories of power or at peace with the Government of India (section 126, IPC);
3) Making or selling or being in possession of instrument for counterfeiting coin or Government stamps (section 223- 235and 257, IPC);
4) Possession of counterfeit coin, Government Stamp, False weight, or measure (section 242, 243, 259 and 266, IPC); and
5) Making preparation to commit dacoity (section 399, IPC).

Five Tests Laid down by courts:- Thus, it is simple to say that an attempt to commit offence begins where preparation to commit it ends, but it is difficult to find out where one ends and the other begins. To solve this riddle various tests have been laid down by the courts. These are as follows: 0 The Proximity test, 0 The locus poenitentiae test, 0 The impossibility test, 0 The social danger test, and 0 The equivocal test

1) The Proximity Test:- Proximity cause as explains is the causal factor which is closes, not necessarily in time or space, but in efficacy to some harmful consequences; in other words, it must be sufficiently near the accomplishment of the substantive offence.

In Sudhir kumar Mukherjee case and Abyanand Mishra case, the Supreme Court explained the offence of attempt with help of the proximity test, saying that:-

"A person commits the offence of 'attempt to commit a particular offence' when-

a) he intends to commit that particular offence; and
b) he having made preparation with the intention to commit the offence, does an act towards its commission; such an act need not to be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence.

2) The Locus Poenitentiae test:- The Latin expression speaks about time for repentance. In Locus Poenitentiae the word Locus means, a place,- a word frequently used to denote the place in or at which some material act or even

such as crime, delict or breach of contract took place. Locus Poenitentiae means the opportunity to withdraw from a bargain before it has become fully Constituted and become binding. In simple language an act will amount to a mere preparation if a man on his own accord, before the criminal act is carried out, gives it up. It is, thus, possible that he might of its own accord, or because of

the fear of unpleasant consequences that might follow, desists from the completed attempt. If this happens, he does not go beyond the limits of preparation and does not enter the arena of attempt. He is, thus at the stage of preparation which can not be punished.

Malkiat singh v. *state of Punjab,* (1969) 1 SCC 157 explains this second test, in this case, a truck carrying a paddy was stopped at Samalkha Barrier, a place 32 miles away from Delhi. Evidently, there was no export of paddy within the meaning of para 2(a) f the Punjab Paddy (Export Control) Order, 1959, the Court decided that there was no attempt to commit the offence export. It was merely a preparation. Distinguishing between attempt and preparation Supreme Court observed that the test of distinction between two is whether the overt acts already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless. In the present case, it is quite possible that the appellants may have been warned that they had no licence to carry the paddy and they may have changed their mind at any place between Samalkha Barrier and the Delhi-Punjab boundary and not have proceeded further in their journey.

3) Impossibility Test:- In Queen Express v. Mangesh Jivaji, the Bombay high court held that within the meaning of section 511 of IPC, an attempt is possible, even when the offence attempted cannot be committed. In Asagarali Pradhaniu v. Emperor (1934) ILR 61, 64, what the appellant did was not an "act done towards the commission of offence", and therefore, he could not be convicted. But in a Malaysian case the accused was held liable for an attempt to cause abortion when the woman was not pregnant. Even the appeal court held the accused liable because the circumstances in this case seemed to be exactly covered by the illustration to section 511 IPC.

The act itself is impossible of performance and yet it constitutes an offence of attempt to commit crime. This was precisely the position in English Law before Houghton v. Smith case.

In R v. Shivpuri (1987) 1 AC 1 (HL) it has been held that, if the mental element has proceeded to commit the act but failed his responsibility for attempt would be evaluated in the light of facts as he thought them to be (putative facts).

4) In Social Danger Test:- In order to distinguished and differentiate an act of attempt from an act of preparation the following factors are contributed.

A) The seriousness of the crime attempted;

B) The apprehension of the social danger involved.

In this test the accused's conduct is no examined only partially but the consequences of the circumstances and the fullness of the facts are taken into consideration. For example, X administers some pills to a pregnant woman in order to procure abortion. However, since the pills are innocuous they do not produce the result. In spite of this X would be held liable for an attempt from the view point of the social danger test, as his act would cause as alarm to society causing social repercussions.

5) The Equivocality test:- It is a situation wherein there are two opinions about the crime here, as decided by the Madras High court, an attempt is an act of such a nature that it speaks for itself or that it is in itself evidence of the criminal intent with which it is done. A criminal attempt bears criminal intent upon its face. In other words, if what is done indicates unequivocally and beyond reasonable doubt the intention to commit the offence, it is an attempt, or else it is a mere preparation.

   The reasoning behind the imposition of responsibility for criminal attempts has been stated to be to control dangerous conduct or person. What are the values which criminalizes the attempt? Answer to this question lies in the values which impose the criminal liability to commission of crime. For the commission of crime by person involves four stages viz, formation of the intention or mental element, preparation for commission of crime, acting on the basis of preparation, commission of the act resulting in an event proscribed by law. To criminalize attempts these four stages are involved but the last stage fails to complete. As stated by Kenny, criminal liability will not begin until the offender has done some act which not only manifests his *mens rea* but also goes some way towards carrying out it. In this regard, to commit offence of attempt *mens rea,* preparation and *actus reus* are necessary

   values but the *actus reus* is failed to be completed. This values generally criminalize the attempt and impose criminal liability on the person who commits the offence of Attempt. **The Case of State of Maharashtra v. Mohd.Yakub** (1980) 3 SCC 57. A jeep driven by the respondent and a truck was stopped at about midnight near a bridge. The respondents started removing the bundle from the truck. At this time customs officials acting on a clue reached the spot and accosted the respondents. At the same time, the sound of a mechanized sea-crafts engine was heard near the side of the creek. Two persons from the neighborhood were called and in their presence silver ingots were recovered from the vehicles. Respondent no-1 had a pistol, a knife and some currency notes. On the questioning it was found that the respondents were not the dealers in silver. The trial court convicted the accused u/s 135(1)(a) read with section 135(2) of the Customs Act for attempting to smuggle out of India silver ingots worth about Rs 8 lakhs in violation

of Foreign Exchange Regulation Act, the Imports and Exports (control) Act and the Custom Act. But the Additional session judge acquitted them on the ground that the facts proved by the prosecution fell short of establishing that the accused had 'attempted' to export silver in contravention of the Law. The High Court upheld the acquittal. The Supreme Court however allowed the appeal and set aside the acquittal.

Two separate but concurring judgments of Justice Sarkaria and Justice Chinnappa Reddy call for a critical evaluation with a view to appreciating their import for the law of Attempt in India

Justice Sarkaria Observed: - "what constitutes an 'attempt' is a mixed question of law and fact depending largely upon the circumstances of a particular case. 'Attempt' defies a precise and exact definition. Broadly speaking all crimes which consist of the commission of affirmative acts is proceeded by some covert or overt conduct which may be divided into three stages. The first stage exists when the culprit first entertains the idea or intention to commit an offence. In the second stage, he makes preparation to commit it. The third stage is reached when the culprit takes deliberate overt act or step to commit the offence. Such overt act or step in order to be 'criminal' need not be penultimate act t owards the commission of the offence. It is sufficient if such act or act were deliberately done, and manifest a clear intention to commit aimed, being reasonable proximate to the consummation of the offence."

Justice Chinnapa Reddy undertook the definitional exercise even more rigorously. He explored the English decisions and finally concluded: - "In order to constitute an 'attempt' first, there must be an intention to commit a particular offence, second, some act must have been done which would necessarily have to be done towards the commission of offence, and

third, such act must reveal with reasonable certainty, in conjunction with the other facts and circumstances and not necessarily in isolation, an intention, as distinguished from mere desire or object, to commit that particular offence"

--THE END-